

Health Resources and Services Administration
Health Care Facility Loan Guarantee Program

LOAN GUARANTEE AGREEMENT

Date: _____

Lender	Borrower
Lender's Address	Borrower's Address
Principal Amount of Loan	Health Center
Project Description and Address	Health Center Address

The Lender has made a loan to the Borrower, in relation to the Health Center, in the principal amount described above as evidenced by one or more notes as described herein. The Health Resources and Services Administration ("HRSA"), an agency of the United States Department of Health and Human Services, an executive branch department of the government of the United States of America, acting through the Bureau of Primary Health Care, a bureau within HRSA, has entered into a "Conditional Commitment for Guarantee" dated _____, with the Lender and the Borrower and, in connection with the execution of this agreement, is entering into a "Loan Note Guarantee" with the Lender applicable to such loan under the Health Care Facility Loan Guarantee Program established pursuant to Title XVI, Part A of the Public Health Service Act, 42 U.S.C. 300q et seq. and the rules and regulations thereunder, as may be amended (the "Program").

The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan, the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed eighty percent (80%) of the outstanding principal and, in accordance with the terms described below, accrued interest, protective advances and any liquidation costs, fees and expenses as described in articles X, XI and XII below.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which HRSA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by HRSA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan.

A. The Lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The Lender must fully disburse and properly close a loan prior to sale of the note(s) on the secondary market. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the applicant, the Borrower or the Health Center or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. The Lender is not permitted to share any premium received from the sale of a guaranteed loan in the secondary market with a loan packager or other loan service provider. If the Lender desires to market all or part of the guaranteed portion of the loan at, or, subsequent to, loan closing, such loan must not be in default under the terms of the note. The Lender may proceed under the following options:

1. **Single Note System.** The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The Lender must retain title to the note, retain the Lender's interest in the collateral, and retain the servicing responsibilities for the guaranteed loan. When

the loan is evidenced by one note, the Lender may not at a later date cause any additional notes to be issued. The Lender may assign all or part of the guaranteed portion of the loan to one or more Holders by using an Assignment Guarantee Agreement. The Lender must complete and execute the Assignment Guarantee Agreement and return it to HRSA for execution prior to Holder execution. In order to validate authenticity, Holders are encouraged to consult with HRSA. Additionally, a Certificate of Incumbency and Signature may be requested. The Holder, with prior written notice to the Lender and HRSA, may reassign the unpaid guaranteed portion of the loan, in full, sold under the Assignment Guarantee Agreement. Holders may only reassign the entire guaranteed portion they have received and cannot subdivide or further split the guaranteed portion of a loan or retain an interest strip. Upon notification and completion of the Assignment Guarantee Agreement, the assignee shall succeed to all rights and obligations of the Holder thereunder. Subsequent assignments require prior written notice to the Lender and HRSA using any format, including that used by the Securities Industry and Financial Markets Association (formerly known as the Bond Market Association), together with the transfer of the original Assignment Guarantee Agreement. HRSA will neither execute a new Assignment Guarantee Agreement to effect a subsequent reassignment nor reissue a duplicate Assignment Guarantee Agreement unless the original was lost, stolen, destroyed, mutilated, or defaced. The Assignment Guarantee Agreement clearly states the percentage and corresponding amount of the guaranteed portion it represents and the Lender's servicing fee. A servicing fee may be charged by the Lender to a Holder and is calculated as a percentage per annum of the unpaid balance of the guaranteed portion of the loan assigned by the Assignment Guarantee Agreement. HRSA is not and will not be a party to any contract between the Lender and another party where the Lender sells its servicing fee. HRSA will not acknowledge, approve, nor have any liability to any of the parties of this contract.

2. **Multi-Note System.** Under this option, the Lender may provide one note for the unguaranteed portion of the loan and no more than five notes for the guaranteed portion. All promissory notes must reflect the same payment terms. The Lender must retain its interest in the collateral and servicing responsibilities for the guaranteed loan. When the Lender selects this option, the Holder will receive one of the Borrower's executed notes and Loan Note Guarantee attached to the Borrower's note. An Assignment Guarantee Agreement will not be used when the multi-note option is used.

a. **At Loan Closing:** Provide for up to five notes for the guaranteed portion and one note for the unguaranteed portion retained by the Lender. When this option is selected, HRSA will provide the Lender with a Loan Note Guarantee for each of the notes.

b. **After Loan Closing:**

(1) Upon written approval by HRSA, the Lender may cause to be issued a series of new notes, as replacement for previously issued guaranteed notes provided:

- (a) The Borrower agrees and executes the new notes.
- (b) The interest rate does not exceed the interest rate in effect when the loan was closed.
- (c) The maturity of the loan is not changed.
- (d) HRSA will not bear any expenses for reissuing of notes.
- (e) There is adequate collateral securing the notes.
- (f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.
- (g) HRSA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantees which will be canceled by HRSA.

3. **Participations.**

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender may participate both the guaranteed portion of the loan and the unguaranteed portion of the loan.

c. The Lender must retain a majority of the guaranteed portion of the loan and a majority of the unguaranteed portion of the loan.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder, the Holder shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. The Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement and HRSA Program regulations, and to future HRSA Program regulations not inconsistent with the express provisions hereof. The Lender shall retain all rights to the collateral securing the notes and all responsibility for loan servicing and liquidation. All rights under the security instruments will remain with the Lender and in all cases inure to its and HRSA's benefit notwithstanding any contrary provisions of state law.

C. The Holder upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

D. The Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

E. Except as otherwise permitted by this section, neither party to this agreement may sell, assign, encumber or otherwise directly or indirectly transfer all or any portion of its interests, rights or obligations under this agreement without first obtaining the written consent of the other party; provided, however, that HRSA may, to the extent necessary to comply with any legal requirement related to the Program, effect a transfer without the consent of the Lender. No such transfer by HRSA shall modify in any respect the guarantee of the loan pursuant to this agreement and the obligations of the transferee guarantor after giving effect to any transfer shall be backed by the full faith and credit of the United States of America.

IV. The Lender agrees loan funds will be used for the purposes authorized in the Program and in accordance with the terms of the Conditional Commitment for Guarantee.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the Borrower or the Health Center. The Lender certifies that none of the Borrower, the Health Center or their respective officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower or the Health Center, the Health Center's business, or any of their respective parents, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement or loan instruments concurred in by HRSA has been or will be signed with the Borrower.

VIII. HRSA has designated _____

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(together with its successors and assigns as approved by HRSA), as the “Lender Coordinator” for the Program. The Lender agrees to cooperate with, and comply with the requests of, the Lender Coordinator, to facilitate the timely and efficient administration by the Lender Coordinator of its duties in connection with the transactions contemplated by this agreement and the Program, as it relates to the loan, prior to and post-closing.

IX. Servicing

A. The Lender must service and administer the loan in a manner consistent with accepted standards of loan servicing employed by prudent lenders generally. The Lender will service the entire loan and will remain mortgagee or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The Lender may charge each Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of HRSA. Subsequent to full disbursement, completion of construction and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender’s responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that the Lender Coordinator is notified of deviations from the overall development schedule and that the Lender Coordinator concurs with material deviations to the overall development schedule.

C. Lender’s servicing responsibilities include, but are not limited to:

1. Certifying compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements (collectively, the “Loan Documents”) and notifying in writing HRSA, the Lender Coordinator and the Borrower of any violation or default under the Loan Documents.

2. Delivery to HRSA and the Lender Coordinator within 45 days of loan closing, true, correct and complete copies of the Loan Documents and the closing/settlement statement executed in connection with the loan (which shall at a minimum set forth a summary of total loan proceeds disbursed at loan closing and a schedule of fees and expenses paid by the Borrower at loan closing). Further, the Lender agrees that upon the request of HRSA and/or the Lender Coordinator, the Lender will furnish to HRSA and the Lender Coordinator complete copies of written draw requests (or similar documentation), if any, submitted by the Borrower and approved by the Lender in connection with advances made subsequent to the loan closing.

3. Approving amendments and modifications to, or waivers of, the provisions of the Loan Documents other than Material Amendments, which such Material Amendments shall require the prior written consent of HRSA. All amendments, modifications and waivers shall be in writing between the Lender and the Borrower. The Lender agrees to provide to HRSA and the Lender Coordinator a true, correct and complete copy of any such amendment, modification, or waiver not later than 20 days after the full execution thereof. The Lender acknowledges that its failure to provide timely and accurate copies of any and all amendments, modifications, and waivers to HRSA and the Lender Coordinator as aforesaid may result in a reduction of the Guarantee Amount, by an amount equal to the damages suffered by HRSA as a result of such failure. The Lender acknowledges that if it executes any Material Amendment without HRSA’s prior written consent, HRSA may, in its reasonable discretion, cancel this agreement by written notice to the Lender, and from and after HRSA’s delivery of any such notice of cancellation, HRSA shall have no obligations or liabilities hereunder. Any and all requests to enter into a Material Amendment shall be made in writing by the Lender to HRSA and the Lender Coordinator. For purposes of this agreement, a “Material Amendment” of a Loan Document shall mean any amendment or modification that effects:

- a. an increase in the principal amount of the notes;
- b. an increase in the interest rate of the notes (excluding interest rate changes by means of a variable rate feature previously included in the notes or other interest rate changes expressly provided for in the notes);
- c. an extension of the maturity date of the notes;
- d. a waiver of any claim or defense of the Lender against the Borrower or any other person liable for payment of all or any portion of the loan;
- e. any sale, assignment or other change or transfer of legal or equitable control of the Borrower or the Health Center or the issuance, sale, merger, consolidation, transfer, pledge, assignment or disposition of any ownership interest of the Borrower or the Health Center;
- f. any further assignment, pledge or disposition of the collateral securing the loan or any part thereof (other than dispositions related to the preservation of collateral in accordance with Section IX.7(d) below); or
- g. the voluntary creation or imposition of a lien or encumbrance on any loan collateral (other than the liens and encumbrances expressly contemplated by the loan documents).

For the avoidance of doubt, ordinary course structural changes to a loan or the related Loan Documents resulting from a New Markets Tax Credits financing shall not constitute a Material Amendment hereunder.

4. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holders of their pro rata share thereof determined according to their respective interests in the loan, less only Lender’s servicing fee. The loan may be reamortized, renewed, rescheduled or written down only with agreement of the Lender and Holders of the guaranteed portion of the loan and only with HRSA’s written concurrence.

5. Inspecting the collateral as often as necessary to properly service the loan.

6. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party and Fidelity Bond coverage if required.
7. Protecting the collateral by doing the following:
 - a. Assuring that taxes, assessments or ground rents against or affecting collateral are paid;
 - b. Protecting the collateral during any litigation, including but not limited to foreclosure or bankruptcy;
 - c. Using insurance payments (in the event there is a loss, e.g., from a fire), or condemnation or other similar payments to either pay down the debt (in lien priority order) or replace the "loss" through rebuilding or acquiring replacement collateral – with HRSA approval;
 - d. Using the proceeds from the sale or disposition of collateral to either (1) pay down the debt (in lien priority order) or (2) if machinery, equipment or furniture is being disposed of, the lender may use those proceeds to acquire replacement machinery, equipment or furniture. In the case of (2), the Lender may use up to \$ _____ of proceeds for replacements without needing HRSA approval; amounts in excess thereof shall require HRSA's approval; and
 - e. Assuring the Borrower and Health Center comply with all laws and ordinances that pertain to the loan, the collateral and the facility.
8. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to HRSA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.
9. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by HRSA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by HRSA.
10. Assuring that the Borrower obtains marketable title to the collateral.
11. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with HRSA regulations.
12. Providing HRSA and the Lender Coordinator with loan status reports quarterly within 60 days of the end of each calendar year quarter, indicating loan and payment status and covenant compliance, on the form provided by the Lender Coordinator. Each report must be accompanied by the Borrower and the Health Center's unaudited quarterly balance sheet, income and expense reports with comparison to budget, calculations for financial ratio covenants when tested under the Loan Documents, and quarterly billable visit volume with comparison to budget.
13. Obtaining from the Borrower or the Health Center, and providing to HRSA and the Lender Coordinator the following:
 - a. All financial statements and reports of the Borrower or the Health Center set forth in the Loan Documents, as and when the same are required to be delivered pursuant to the Loan Documents; provided that HRSA and the Lender Coordinator shall receive audited financial statements no later than 150 days after the fiscal year end of the Borrower or the Health Center. The Lender is responsible for analyzing the financial statements, taking any servicing actions and providing a record of actions to HRSA and the Lender Coordinator;
 - b. Promptly following any request by HRSA or the Lender Coordinator, such additional information, reports and statements respecting the Borrower's or the Health Center's business operations and financial condition, the collateral and/or any affiliated business and investments, as HRSA or the Lender Coordinator may request (including, without limitation, any information, schedules, or reports as shall be required from time to time by regulatory governmental agencies having supervisory authority over HRSA;
 - c. As soon as available, and in all events within 7 days after the Borrower or the Health Center receives notice or knowledge thereof or learns facts which would lead a reasonable person to undertake diligent inquiry with respect thereto, a report or statement executed by an executive officer of the Borrower or the Health Center, in reasonable detail and in form acceptable to the Lender Coordinator, with respect to: (1) the occurrence of any default under the Loan Documents or any act, event or condition which, with notice or the passage of time, or both, would constitute a default under the Loan Documents, and any action taken or contemplated with respect thereto; (2) the occurrence of any default under any lease or HRSA grant document; (3) the existence of any act, event, condition or change in status of any pending or threatened litigation or administrative proceeding or investigation against or affecting the Borrower or the Health Center or any of their respective property which, if determined adversely, would have a material adverse effect upon the financial condition or operations of the Borrower or the Health Center or prejudice HRSA's rights under this agreement, the notes, the collateral or any Loan Document, and any reserves set aside or to be set aside in connection with any such proceedings in accordance with GAAP; (4) any act, event or condition that would cause any of the Borrower's representations to HRSA in the Loan Documents to no longer be true and accurate; and (5) any report, citation, notice, demand or other written or oral communication concerning the Health Center to or from any governmental agency or entity empowered to enforce, investigate or oversee compliance with any applicable law, including, without limitation, any environmental requirements.
 - d. As soon as available and in any event within 45 days prior to the beginning of each fiscal year of the Health Center, commencing with the fiscal year beginning _____ 1, 20____, for each of the Borrower and the Health Center, (1) an annual operating budget for the ensuing fiscal year, approved by the board of directors, board of managers or other governing body of the Borrower or the Health Center, which shall include projected revenues and expenses, in such detail and by such categories as may be requested by HRSA and the Lender Coordinator; (2) an annual strategic plan for the ensuing fiscal year, or updates to a pre-existing long term strategic plan reflecting expectations for the ensuing year; and (3) a schedule of anticipated sources of financing, including grants and loans, for the ensuing fiscal year.

Add additional reporting obligations due to the Lender under the Loan Documents:

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14. Monitoring the use of loan funds to assure they will be used in accordance with the requirements of the Program.

X. Default.

A. The Lender will notify HRSA and the Lender Coordinator when the Borrower is 30 days past due on a payment or if the Borrower or the Health Center has not met its responsibilities of providing the required financial statements to the Lender or is otherwise

in default. The Lender will notify HRSA and the Lender Coordinator of the status of a Borrower's default in a manner consistent with the template provided by HRSA. A meeting will be arranged by the Lender with the Borrower and HRSA to resolve the problem. Actions taken by the Lender with written concurrence of HRSA will include, but are not limited to the following or any combination thereof

1. Deferment of principal payments (subject to rights of any Holder).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder).
4. Transfer and assumption of the loan.
5. Reorganization.
6. Liquidation.
7. Subsequent loan.
8. Changes in interest rates with HRSA, Lender, and the Holders approval; provided, such interest rate is adjusted

proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder within 30 days of written demand by the Holder when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the Borrower within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. The Holder will concurrently send a copy of the demand to HRSA and the Lender Coordinator. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the Borrower to cure the default, where reasonable. The Lender will notify the Holder, HRSA and the Lender Coordinator of its decision.

D. If the Lender does not repurchase as provided by paragraph C, the Holder may submit a written demand to HRSA to purchase from Holder the unpaid principal balance of the guaranteed portion herein together with accrued interest to the date of HRSA's purchase.

The Holder will concurrently send a copy of the demand to HRSA, the Lender Coordinator and the Lender. The Holder will include in its demand to HRSA: (a) evidence of its right to require payment from HRSA; and (b) the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to HRSA or the original of the Assignment Guarantee Agreement properly assigned to HRSA without recourse including all rights, title, and interest in the loan. HRSA will be subrogated to all rights of the Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Unless otherwise agreed to by HRSA, such proposed payment will not be later than 30 days from the date of the Holder's demand to HRSA.

HRSA or the Lender Coordinator will promptly notify the Lender of the Holder's demand for payment. The Lender will promptly provide HRSA and the Lender Coordinator with the information necessary for HRSA's determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved before payment will be approved. HRSA will notify both parties who must resolve the conflict before payment by HRSA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, HRSA will review and verify the demand and remit a check to the Holder.

E. Lender consents to the purchase by HRSA and agrees to furnish on request by HRSA or the Lender Coordinator a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed on the loan and the amount due the Holders. Lender agrees that any purchase by HRSA does not change, alter or modify any of the Lender's obligations to HRSA arising from the loan or guarantee, nor does such purchase waive any of HRSA's rights against Lender and HRSA will have the right to set-off against Lender all rights inuring to HRSA from the Holder against HRSA's obligation to Lender under the Loan Note Guarantee. To the extent HRSA holds a portion of a loan, it will not be paid to the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When HRSA purchases from a Holder, HRSA will pay the Holder only the amounts due the Holder, and HRSA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged HRSA, and no such fee is collectible from HRSA.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with HRSA. When HRSA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless HRSA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holders the guaranteed portion of the loan. The Holders will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement. If the Lender does not purchase the guaranteed portion of the loan, HRSA will be notified immediately in writing, HRSA will then purchase the guaranteed portion of the loan from the Holder. If HRSA holds any of the guaranteed portion, HRSA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. **Lender's proposed method of liquidation.** Within 30 days after the decision to liquidate, the Lender will advise HRSA in writing of its proposed detailed method of liquidation (called a liquidation plan) and will provide HRSA with:

1. Such proof as HRSA requires to establish the Lender's ownership of the guaranteed loan promissory notes and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal loan balance including accrued interest is less than \$200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of \$200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and HRSA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by HRSA and the Lender.

B. HRSA's response to Lender's liquidation plan. HRSA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If HRSA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should HRSA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between HRSA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should HRSA opt to conduct the liquidation, HRSA will proceed as follows:

1. The Lender will transfer to HRSA all rights and interest necessary to allow HRSA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by HRSA.

2. HRSA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to HRSA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or HRSA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to HRSA or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide HRSA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to HRSA any payments received from the Borrower and pro rata share of liquidation or other proceeds, etc. when HRSA is the holder of a portion of the guaranteed loan. When HRSA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. HRSA will have the right to recover losses paid under the guarantee from any party liable.

1. HRSA will provide a format for calculating all estimated and final loss determinations. Estimated loss payments may be approved by HRSA after the Lender has submitted a liquidation plan approved by HRSA. Payments will be made in accordance with applicable HRSA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to HRSA an estimate of loss that will occur in connection with liquidation of the loan. HRSA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender in a format to be provided by HRSA, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the report of loss estimate has been approved by HRSA and within 30 days thereafter, HRSA will send the original report of loss estimate for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted by the Lender to HRSA using a format to be provided by HRSA.

3. After the Lender has completed liquidation, HRSA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If HRSA has any questions regarding the amounts set forth in the final report of loss, it will investigate the matter. The Lender will make its records available to and otherwise assist HRSA in making the investigation. If HRSA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When HRSA finds the final report of loss to be proper in all respects, it will be tentatively approved.

4. When the Lender has conducted liquidation and after the final report of loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, HRSA will send the additional amount owed by HRSA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse HRSA for the overpayment plus interest at the note rate from date of payment.

5. If HRSA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by HRSA when the final report of loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by HRSA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee and shall not include interest accruing after 90 days from the date of original demand letter. If HRSA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date HRSA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by HRSA.

G. Application of HRSA Loss Payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by HRSA will be applied by the Lender on the guaranteed portion of the loan debt. However, such

application does not release the Borrower from liability. At time of final loss settlement, the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final report of loss prepared and submitted by the Lender must be processed by HRSA in order to close out the files.

H. **Income from collateral.** Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. **Lender's Prohibition on Additional Collateral.** The Lender may not acquire, nor require the Borrower to provide additional security, surety or insurance to protect and/or collateralize the loan or any benefit derived by the Lender from this agreement without the prior written consent of HRSA.

J. **Liquidation costs.** Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation cost will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with HRSA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure HRSA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

K. **Foreclosure.** The parties owning the guaranteed portion and unguaranteed portions of the loan will join the foreclosure action or, in lieu of foreclosure, to take a deed of conveyance. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

L. **Payment.** Such loss will be paid by HRSA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). HRSA's written authorization is required on all protective advances that exceed a total cumulative advance amount of \$5,000 to the same borrower. Protective advances include, but are not limited to advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of HRSA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by HRSA any future finds which may be recovered by the Lender, will be pro-rated between HRSA and the Lender. HRSA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. [Reserved].

XVI. Bankruptcy.

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 9, 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or liquidation plan in a Chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. Loss Payments

1. Estimate Loss Payments

a. If the Borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by HRSA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing HRSA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use a template provided by HRSA, to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete a template provided by HRSA, and forward it to HRSA.

2. Interest Loss Payments.

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI.B.1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction that extends beyond the period of the reorganization plan.

c. The report of loss will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, HRSA will close out the estimated loss account at the time notification of payment in full is received.

4. **Payment Application.** The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify HRSA.

5. **Overpayments.** Upon completion of the reorganization plan, the Lender will provide HRSA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by HRSA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse HRSA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. **Protective Advances.** If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on the report of loss.

XVII. Debt Write-down.

The maximum amount of loss payment associated with a loan which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the write-down and the outstanding balance of the loan after the write-down. The Lender will use a template provided by HRSA to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVIII. Other Requirements.

This agreement is subject to all of the requirements of the Program, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future HRSA regulations not inconsistent with this agreement.

XIX. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon HRSA with respect to the execution of such contract until such time as the Loan Note Guarantee is executed by HRSA. HRSA in no way warrants that such a contract has been or will be executed.

XX. Notices.

Any notice or other communication in connection with this agreement shall be in writing and delivered personally or by certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier services, and if mailed, shall be deemed to have been given upon receipt, or if delivered personally, on the date delivered, or if by overnight courier, on the first business day after deposited with such overnight courier. Any such notice or communication shall be addressed to a party hereto as provided below (or at such other address as such party shall specify in writing to the other parties hereto in accordance with the provisions hereof):

if to HRSA: Health Resources and Services Administration
Bureau of Primary Health Care
Office of Policy and Program Development
5600 Fishers Lane
Rockville, Maryland 20857
Attention: Health Center Loan Facility Guarantee Program

if to the Lender: _____

If to the Lender
Coordinator: _____

XXI. Program Eligibility.

The Lender represents, warrants and covenants to HRSA that on the date hereof, the Lender: (1) is not currently debarred or suspended from participation in any United States Government contracting program, or, to its knowledge, delinquent on any debt owed to the United States Government or any agency or instrumentality thereof; and (2) is regulated by a federal financial institutions regulatory agency or has otherwise been approved by HRSA as a lender eligible to participate in the Program. The Lender agrees that if any of the foregoing representations, warranties or covenants proves to have been incorrect or untrue as of the date hereof HRSA's obligations under this agreement shall cease and terminate.

XXII. Certain Program Participation Criteria and Covenant.

A. For so long as this agreement is in effect, the Lender agrees that it shall:

- a. have a continuing ability to evaluate, process, close, disburse, service and liquidate the loan (except as such rights may be limited by the terms of this agreement);
- b. be supervised and/or examined by a Federal regulatory authority; and
- c. provide to HRSA and/or the Lender Coordinator, not later than 15 days after a written request therefor, copies of all records and documents relating to the loan reasonably requested by either of them.

B. The Lender further agrees and acknowledges that:

- a. HRSA or its designee shall review and document the Lender's continuing eligibility for prospective participation in the Program at least every 2 years in accordance with HRSA's then current monitoring and evaluation procedures; and

b. records and reports maintained by the Lender Coordinator with respect to the loan and the Lender's performance as a lender in the Program will be at all times accessible to HRSA and any of its designees (including, without limitation, the United States Comptroller General and The United States Department of Health and Human Services Office of Inspector General).

XXIII. Suspension or Revocation of Eligibility to Participate.

HRSA may suspend or revoke the prospective eligibility of the Lender to participate in the Program as a result of a violation of any legal requirements related to the Program, a breach or violation of this agreement or any other agreement with HRSA and a failure to cure the same within any applicable notice and/or cure period or a change of circumstances resulting in the Lender's inability to meet any state or federal regulatory requirements applicable to the operation of its business, provided no such suspension or revocation will invalidate this agreement or HRSA's obligations hereunder.

XXIV. Environmental Requirements.

The Lender will ensure that the Borrower complies with the measures identified in HRSA's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

XXV. Miscellaneous.

All rights and remedies of the parties hereunder are cumulative and not alternative. Indulgence by either party with respect to any of the terms and conditions herein contained or the failure of either party to exercise any of its rights hereunder shall not constitute a waiver thereof. No provision hereof may be waived or modified orally, but all such waivers or modifications shall be in writing. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns. The captions and headings in this agreement are for convenience purposes only and shall not limit, define or have any effect on the agreements set forth herein. This agreement may be executed in counterparts, each of which shall, when taken together with the other counterparts, constitute a single original.

XXVI. Service of Process; Waiver of Jury Trial.

The Lender and HRSA waive personal service of any process on themselves and their respective officers and/or registered agents, and consent that such process may be made by certified mail, return receipt requested, directed to each party at the address set forth above, and service so made shall be deemed completed within 10 days after it has been mailed. The Lender and HRSA also waive trial by jury in any litigation in any court arising out of this agreement, any Loan Document and any other document executed in connection with this agreement or the loan.

Dated this _____ day of _____, _____

ATTEST:

LENDER:

By _____

Title _____

THE UNITED STATES OF AMERICA

The Health Resources Services Administration, or its successor

By _____

Title _____