

NORTH CAROLINA
LOAN PARTICIPATION PROGRAM

Agreement No. _____

MASTER LOAN PARTICIPATION AGREEMENT

between

RURAL ECONOMIC DEVELOPMENT CENTER, INC.

and

(PARTICIPATING LENDER)

(ADDRESS)

(CITY/STATE/ZIP)

(FEIN)

ATTN: _____
(CONTACT & TITLE)

(PHONE)

(E-mail ADDRESS)

NORTH CAROLINA LOAN PARTICIPATION PROGRAM

MASTER LOAN PARTICIPATION AGREEMENT

This Loan Participation Agreement (the "*Agreement*") is entered into as of this _____ day of _____, **20** by and between _____ (the "*Lender*"), a _____ (e.g. a *national/state banking association, a CDFI, etc.*), having its principal office located at _____ and the **Rural Economic Development Center, Inc.** (the "*Rural Center*"), having its principal office located at **4021 Carva Drive, Raleigh, North Carolina 27610.**

RECITALS

Whereas the State of North Carolina through the Department of Commerce has created the SSBCI Loan Participation Program (as hereinafter defined) under the authority granted to it by the federal State Small Business Credit Initiative ("SSBCI") of the Small Business Jobs Act of 2010 (Title III of Public Law 111-240); the Allocation Agreement, as amended and dated January 25, 2012 between the United States Treasury (the "US Treasury") and the State of North Carolina; and

Whereas the purpose of the SSBCI Loan Participation Program (the "Program") is to foster economic development in North Carolina by enhancing the availability of credit to small and medium-sized businesses from private sources of capital; and

Whereas, in pursuit of those goals, the Department of Commerce has entered into a contract with the Rural Center to offer the Program; and the Rural Center may be willing, from time to time, to purchase participation interests in loans, including principal and interest payable there under, made by the Lender to certain Program-eligible businesses.

Now therefore, in consideration of the premises and the agreements contained herein, the Lender and the Rural Center hereby agree as follows:

1. DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, each of the following words and terms used in this Agreement shall have the following meaning unless the context or use indicates a different meaning. Definitions shall be applicable to both the singular and plural forms of the terms as the context may require:

"Allocated Funds" means funds awarded to the State of North Carolina on account of the Allocation Agreement as amended and dated January 25, 2012, between the US Treasury and the State of North Carolina or funds from other sources as determined by the Rural Center.

"Borrower" means the recipient of a Loan from the Lender for which a Participation Certificate has been or will be issued by the Lender and acknowledged by the Rural Center, and all successors and assigns of such Borrower; provided such Borrower:

- A. is a for-profit corporation, limited liability company, partnership, joint venture, sole proprietorship, state-designated charitable, religious, or other non-profit or eleemosynary institution, government-owned corporation, consumer or marketing cooperatives, or faith-based organization having five hundred (500) or fewer employees and the loan proceeds will be used for a business purpose in the State of North Carolina;
- B. is not:
 - i. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the Borrower and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the Borrower;

- ii. a business that earns more than half of its annual net revenue from lending activities; unless the Borrower is a non-bank or non-bank holding company certified as a Community Development Financial Institution (CDFI);
 - iii. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
 - iv. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted, including the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution; or
 - v. a business engaged in gambling enterprises, unless the Borrower earns less than 33 percent of its annual net revenue from lottery sales; and
- C. is not an executive officer, director or principal shareholder of the Lender or a company which controls the Lender, or a subsidiary or affiliate of the Lender; nor a member of the immediate family of an executive officer, director or principal shareholder of the Lender or a company which controls the Lender, or a subsidiary or affiliate of the Lender; nor an entity controlled by an executive officer, director or principal shareholder of the Lender or a company which controls the Lender, or a subsidiary or affiliate of the Lender; nor a member of the immediate family of an entity controlled by an executive officer, director or principal shareholder of the Lender or a company which controls the Lender, or a subsidiary or affiliate of the Lender. For purposes of this paragraph, the terms "executive officer," "director," "principal shareholder," and "immediate family" shall be as defined in 12 C.F.R. Sec. 215.2 (1991), including any amendments thereto.

"Closing Documents" means all documents executed or delivered by the Borrower or the Lender with respect to a Loan, including without limitation a copy of the Note, the loan agreement, any security agreement, any financing statement or Uniform Commercial Code filing, any guaranty, any mortgage or assignment of rents, any pledge agreements, and any other document that secures repayment of the Loan.

"Commitment Letter" is a contingent commitment letter prepared by the Rural Center notifying the Lender that the Rural Center is willing to purchase a Participation interest in a loan, and sets forth any special conditions related to the Participation that are binding. All commitments are contingent upon the Lender and Borrower meeting all requirements and providing adequate support documentation sufficient to comply with applicable laws and regulations to allow the Rural Center to file the Loan Documents in order to obligate and obtain funds. (A sample Commitment Letter is attached as Exhibit A). The Commitment Letter, together with any approved revisions, will also set forth other terms and conditions specific to an individual Participation and are binding on the Lender and the Borrower.

"Lender" means a financial institution with which the Rural Center has entered into an agreement or contract to provide loans to small businesses, in which the Rural Center purchases an undivided interest in the otherwise qualifying loan.

"Lender Rate" means an interest rate set by the Lender, either fixed, adjustable, or variable (determined by the promissory note) used in calculating the amount of interest shared by the Lender and the Rural Center pro rata on a given Loan, which rate shall initially be that referenced in the Commitment Letter related to such Loan. If the Lender Rate is adjustable or variable, the Rural Center rate shall be adjusted upwards or downwards every time the interest rate charged the Borrower is adjusted, so that the pro rata share shall always be the same as it was on the Purchase Date.

"Loan" means a loan made by the Lender to a Borrower in which the Rural Center has or will have a Participation.

"Loan Documents" means the Closing Documents, the Participation Certificate, the Commitment Letter, and all other documents executed or delivered by the Borrower, guarantor, or Lender with respect to a Loan, including without limitation the Borrower's application, business plan, and historical and projected financial statements and any financial statements and reports delivered by the Borrower to the Lender on an ongoing basis, the Lender's financial, repayment and collateral analysis, credit reports, and all periodic reports required to be delivered to the Rural Center by the Lender under this Agreement.

"Note" means the promissory note of the Borrower payable to the order of the Lender evidencing the Loan.

"Participation" means, with respect to a Loan, the Rural Center's undivided participation interest in such Loan, the Loan Documents and all of the Lender's right, title and interest pertaining to the Loan and all proceeds arising therefrom including, without limitation, any collateral for such Loan and any guaranties, mortgages, or other security interests obtained in connection therewith, expressed as a percentage and calculated from time to time by reference to the outstanding principal balance of the Loan.

"Participation Amount" means, with respect to a Loan, that portion of the original principal amount of the Loan purchased by the Rural Center from the Lender, minus the aggregate principal amount repaid, as of any date, on that portion of such Loan purchased by the Rural Center from the Lender.

"Participation Certificate" means the document evidencing the Rural Center's Participation with respect to a Loan made between the Lender and the Borrower. A sample Participation Certificate is attached hereto as Exhibit B.

"Participation Percentage" means the Rural Center's undivided participation interest in such Loan divided by the amount of the Loan as set forth in the Commitment Letter and the Participation Certificate.

"Project" means the project of the Borrower for which Loan funds are to be used, including without limitation the Loan, any equity or any other funds provided by owners, shareholders, banks, or other financial institutions.

"Prompt Payment" means the time period within which the Lender must forward or remit the Rural Center's pro rata share of the Borrower's payment of its Loan to the Rural Center in order to avoid late fees hereunder. If the Rural Center has one Participation with Lender, payment is considered timely for this purpose if the Lender remits in immediate funds said payment to the Rural Center within five (5) business days of receipt of payment. If the Rural Center has more than one Participation with Lender, payment may be combined for all Participations and remitted within five (5) business days of the end of each month. In the event a payment is not remitted to the Rural Center within five (5) business days of its above mentioned due date, a late fee of the greater of 4% of the total payment due (per payment being withheld) or \$50 (per payment being withheld), whichever is greater, shall be automatically assessed. Arrearage will be determined from the date the payment should have been remitted through the date the payment is actually remitted. This late fee will be immediately due and owing. Additionally, any and all late fees due to Lender's delinquency shall not be the responsibility of, and shall not be absorbed by or charged to, the Borrower. In compelling circumstances and upon the Lender's written request, the Rural Center may, within its sole discretion, agree to waive any late fees due to a late payment.

"Purchase Date" means, with respect to a Participation, the date on which such Participation is purchased.

"Servicing Expenses" means any and all out-of-pocket liabilities, obligations, losses, penalties, expenses (including reasonable legal expenses and fees), disbursements, costs and damages, but excluding salaries and wages of its officers and employees and overhead expenses, incurred by the Lender, or for which the Lender is responsible, directly or indirectly, in connection with or arising as a result of (a) the enforcement of rights or remedies with respect to a Loan or the collection of same (including those arising due to suits, claims or counterclaims by another party against the Lender), and (b) the protection of the interests in any collateral securing the repayment of the Loan. "Servicing Expenses" does NOT include services or products provided by or through the Lender for the benefit of the Borrower, guarantor, or other responsible party to facilitate their compliance with agreed terms and conditions. The mere fact that the Lender pays an expense does not in itself qualify it as a "Servicing Expense;" rather there must be a clear correlation to the enforcement of the Lender's rights or remedies. Business restructuring expenses do not constitute "Servicing Expenses" unless prior written approval is obtained from the Rural Center.

2. APPLICATIONS AND APPROVAL; SALE AND PURCHASE OF PARTICIPATION

2.1 Applications. The Lender shall accept applications from prospective Borrowers and, if found creditworthy by the Lender and meeting the Program requirements contained in Section 3 below, the Lender shall submit the Application for Participation in substantially the form attached hereto as Exhibit D, supporting documents, and the details of the proposed Loan in a form satisfactory to the Rural Center, for the Rural Center's review and purchase approval. The Lender must also obtain and submit to the Rural

Center a Certification executed by the Borrower (with necessary attachments) in substantially the form attached hereto as Exhibit C. The Rural Center expressly reserves the right, in its sole discretion, to accept or reject any Borrower and/or any Loan. Once the Lender receives a Commitment Letter, it may consummate the Loan and shall sell a Participation therein to the Rural Center, pursuant to the terms and conditions set forth herein.

2.2 Maximum Rural Center Participation Amount. The Lender shall sell, assign and transfer, and the Rural Center shall purchase and accept, subject to the terms and conditions of this Agreement, a Participation of not less than Thirty-seven Thousand Five Hundred Dollars (\$37,500) nor more than Two Hundred and Fifty Thousand Dollars (\$250,000). In no case shall the amount of a Participation exceed fifteen percent (15%) of the lesser of the appraised value or the total cost of any Project for which a Loan is made, and in no case shall the term of the Loan be any longer than ten (10) years, however the loan may be amortized for a longer period, but not longer than twenty-five (25) years. The Rural Center's Participation is computed by dividing the Rural Center's principal balance by the Loan's principal balance. The Lender is responsible for monitoring and ensuring that, at any given time, the Rural Center's Participation never exceeds its participation percentage. In the event the Rural Center's Participation is ever greater than the Rural Center's original participation percentage, the Lender must immediately pay the Rural Center the excess principal to bring the Rural Center's Participation into compliance with the Commitment Letter.

2.3 The Rural Center Commitment. Upon receipt from the Lender of an Application for Participation with the applicable documents, the Rural Center, in its sole discretion, shall determine whether it will purchase a Participation interest in the loan. The Rural Center shall make every attempt to make its determination within thirty (30) days of receipt of the Application for Participation and applicable documents. If the Rural Center approves the Application for Participation, it will issue and send, via electronic communication, a Commitment Letter to the Lender, which shall remain in effect for thirty (30) days. The Lender shall, within thirty (30) days after the Commitment Letter is issued, sign it and return the original to the Rural Center or the Commitment Letter shall expire. If the Lender does not close the Loan within one hundred twenty (120) days after the Commitment Letter is issued, the Rural Center's commitment will expire, unless a written extension of time is granted by the Rural Center. The Rural Center, in its sole discretion, may grant an extension of time provided that no material change in either the scope of the Project, the financial condition of the Borrower (including guarantors), or its ability to repay the Loan as originally approved has occurred. If the Rural Center declines the Application for Participation, it will make every attempt to so advise the Lender within thirty (30) days of receipt of the application.

2.4 Purchase and Funding of Participation. Upon the closing of a Loan for which the Lender has received a Commitment Letter, the Lender shall notify the Rural Center's Vice President for Finance and Administration, or authorized designee, of the closing and shall deliver all Closing Documents to the Rural Center within fifteen (15) business days of the closing, otherwise the Rural Center's Participation shall be void, unless the fifteen day period is waived or extended in writing by the Rural Center. The Rural Center shall acknowledge the Participation Certificate (a sample of which is attached as Exhibit B) by having its President or authorized designee execute the Certificate and return it to the Lender. The Rural Center shall process the Participation Certificate and any other documents necessary to fund its Participation, and then simultaneously or as soon as practicable shall initiate the actions to cause delivery of its Participation Amount to the Lender. The Participation will be considered funded on the date the Rural Center funds are transferred to the Lender by ACH transfer. Interest will begin to accrue on the date of closing. The Lender will be responsible for the timely movement/distribution of the Rural Center funds to the Borrower.

3. SSBCI PROGRAM REQUIREMENTS

Obligations of the Rural Center will cease immediately without penalty or further payment being required if the Allocated Funds for the Program are no longer available (whether they have all been otherwise utilized or the Rural Center no longer has access to them). The Rural Center and the Lender acknowledge that the Program will be funded, in whole or in part, by State Small Business Credit Initiative Program funds, as available, and as such, both the Rural Center and the Lender agree that the use of funds

pursuant to this Agreement shall be governed by, and not be in derogation of, any rules, regulations, or guidelines for the Program promulgated or issued by the US Treasury or the State of North Carolina. As to each Loan in which the Rural Center purchases a Participation, the Lender agrees that it will have determined that all of the following are true and correct:

- A. The proceeds of the Loan will not be used:
 - i. to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
 - ii. to repay taxes held in trust or escrow (e.g., payroll or sales taxes);
 - iii. to reimburse funds owed to any owner of the Borrower, including any equity injection or injection of capital for the Borrower's continuance;
 - iv. to purchase any portion of any ownership interest in the Borrower;
 - v. for activities that relate to acquiring or holding passive investments, such as commercial real estate ownership and the purchase of securities; and lobbying activities, as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended; or
 - vi. to refinance a loan previously made to the Borrower by the Lender;
- B. No principal of the Borrower or the Lender has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911));
- C. The Lender is in material compliance with all federal and state laws, rules, and regulations pertaining to the making of loans (including 31 C.F.R. § 103.121);
- D. The Borrower is ready to implement the Project and has the financial ability to carry out the Project;
- E. The Borrower is responsible and creditworthy;
- F. The Loan is protected by security, which may include, as available, first or second mortgage positions on real or personal property, royalty payments on sales of products or services, or any other security satisfactory to the Lender to secure repayment of the Loan. Personal notes or guaranties have been executed by persons owning more than twenty (20) percent of the Borrower;
- G. The Loan Documents are in an amount and form, and contain such terms and provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, delinquency charges, default remedies, additional security, and other matters, adequate to protect the State's interest in ensuring repayment;
- H. Guarantors are responsible and creditworthy. Guarantors' assets have been verified and will undergo periodic review both to ensure their continuing capacity to provide performance guaranties in the amounts required to ensure repayment, and to ensure that the same assets have not been pledged or are supporting other loans or guaranties.

4. COMPENSATION TO LENDER

The Borrower shall pay interest to the Lender at the rate agreed upon between the Lender and the Borrower. All application and origination fees collected by the Lender, with respect to the Loan, will be shared pro rata with the Rural Center, unless waived by the Rural Center.

5. OWNERSHIP INTEREST IN PARTICIPATION LOAN, LOAN DOCUMENTS AND RECORDS, LIENS, SECURITY, GUARANTIES, AND OTHER COLLATERAL

5.1 The Rural Center's Undivided Interest. Upon the Rural Center's purchase of a Participation in a Loan, and pursuant to the provisions of Section 2, the Rural Center shall, without the necessity of any written instrument of assignment or other document, become vested with an undivided equitable ownership interest (proportional to such Participation from time to time) in: (i) the Loan; (ii) the Loan Documents; and

(iii) any other rights and claims of the Lender with respect to the Loan. If the Lender acquires any security interests or liens granted by any of the Loan Documents, the Rural Center shall have an undivided interest in such security interest or lien equal to its Participation in the Loan, notwithstanding the fact that the security interest or lien is in the name of, and/or possession is maintained by, the Lender.

5.2 The Lender as Trustee. All Loan Documents and the rights conveyed by them executed and delivered in connection with the Loan shall be held by the Lender in trust for the pro rata benefit of the Lender and the Rural Center, and as servicing agent for the Rural Center. The Lender is authorized to retain the Note and the Loan Documents in the Lender's name and to deal with parties other than the Rural Center as though the Lender were an absolute owner of the Loan and the Loan Documents. Any person, firm or corporation may deal with the Lender concerning the Loan in the same manner as if the Participation was not outstanding and the Lender was the sole owner of the Loan, as limited by Section 6.5, 6.6, and 6.7 of this Agreement. The Lender may perform any of its obligations hereunder by or through its agents, employees or attorneys.

5.3 Limits of the Rural Center's Interest. Although the Lender holds for the Rural Center's proportional benefit all collateral securing performance and payment of a Borrower's obligations and liabilities under and in connection with any Loan, the Rural Center shall have no interest in any other property taken as security for any other credit, loan or financial accommodation made or furnished to the Borrower by the Lender in which the Rural Center has no Participation. This shall include any property now or hereafter in the Lender's possession or under the Lender's control or in any deposit held that may be or may become security for performance or payment of a Borrower's or guarantor's obligations and liabilities under and in connection with other indebtedness owing to Lender by reason of the general description contained in any other instrument held by the Lender or by reason of any right of setoff, counterclaim, banker's lien or otherwise; provided, however, if such property, deposit, indebtedness or the proceeds thereof shall be applied to the payment or reduction of principal, interest, fees or any other amounts owing by a Borrower or guarantor in connection with a Loan, then the Rural Center shall be entitled to its pro rata share of such payment. All collateral securing performance and payment of a Borrower's obligations and liabilities under and in connection with any Loan may be used by Lender in connection with other indebtedness owing to Lender, but only if indebtedness is specifically subordinate to the Loan.

6. COLLECTIONS, DISBURSEMENTS AND ADMINISTRATION

6.1 Collection and Transfer of Payments.

- A. The Lender, as servicer of the Loan, shall be obligated to collect, as the Rural Center's trustee with respect to the Rural Center's pro rata share thereof, all payments of interest and principal due and payable on the Loan, together with any charges, fees, costs, expenses and any and all other amounts due on or in connection with the Loan Documents, including without limitation all Servicing Expenses incurred by Lender. If the Lender receives, collects or applies in full an interest payment with respect to a Loan, the Lender will remit to the Rural Center its pro rata share. If the Lender receives, collects or applies only a partial payment of interest with respect to a Loan, unless the Rural Center has subordinated with respect to payment, the Lender will remit to the Rural Center interest on the Participation Amount of such Loan at a rate equal to the amount due the Rural Center under the preceding sentence multiplied by the Participation Percentage. If the Lender receives, collects or applies a principal payment or prepayment with respect to a Loan, the Lender will remit to the Rural Center its pro rata share of such amount. Unless the Lender is otherwise entitled to apply payments as provided in Section 9 hereof, the Lender shall promptly remit the Rural Center's share of payments on account of principal and interest to the Rural Center within five (5) business days of receipt or five (5) business days of the end of each month if the Rural Center has more than one Participation.
- B. Payments are to be made by ACH transfer from the Lender's account. Payments must be coordinated with the Rural Center's loan servicing representative in the Rural Center Accounting Office. A Monthly Report/Payment Distribution Summary and Transmittal must be completed and submitted with each and every payment remitted to the Rural Center. If the

Rural Center has more than one Participation Loan with the Lender, the Lender may make one ACH transfer combining payments into one remittance. The Report/Payment Distribution Summary and Transmittal shall disclose information, including but not limited to, the date the Lender received payment from or on behalf of each Borrower, the manner in which the Lender apportioned said payment between interest and principal between the Lender and the Rural Center, and the outstanding balance of the Loan. In the event that a Borrower fails to remit a scheduled payment to the Lender, the Lender, nevertheless, must submit the Monthly Report/Payment Distribution Summary and Transmittal to the Rural Center indicating either that no payment was received or that no payment was due and owing to the Rural Center.

6.2 Loan Servicing and Application of Payments.

- A. In its handling of the Loan and any collateral security rights under the Loan Documents, the Lender shall exercise the same care and due diligence it exercises when it processes loans and collateral security rights on its own behalf and within the covenants and requirements in Sections 6.5, 6.6, and 6.7. Except for the express warranties contained herein, the Loan and Participation shall be for the amounts specified in the Commitment Letter. Except as provided for in Section 18.1, a Participation or a Loan may not be transferred by the Rural Center or the Lender (as applicable), in whole or in part, without the written consent of the other party. It is also understood that the Lender shall have no independent responsibility for the performance of a Borrower's obligation, nor for any failure or delay in exercising any rights or powers given the Lender by the Loan Documents, beyond undertaking the same care that the Lender exercises in the making and handling of loans and credits for its own account.
- B. All security evidenced by the Loan Documents and any additional security given by a Borrower shall be held by the Lender primarily as security for the Loan and shall not be used or applied toward payment of other obligations of the Borrower to the Lender, as long as the Loan remains unpaid and as long as this Agreement remains in effect; provided however, that nothing herein shall prevent the Lender from collecting payments from the Borrower for other indebtedness, or foreclosing upon other security that is not securing a Loan covered under this Agreement, if the other loans or credits are in default, are separately stated on the books of the Lender, and the security or other collateral is segregated at all times, and provided that any such action triggers an event of default under the Loan Documents.
- C. The Lender shall, if possible, provide the Rural Center with advance notice of a change in the Lender Rate with respect to a Loan, and shall in all cases provide such notice to the Rural Center no later than the date on which the first payment affected by the rate change is delivered to the Rural Center.

6.3 Lender's Late Payments to the Rural Center.

- A. If the Lender fails to make Prompt Payment to the Rural Center for its pro rata share of any payment the Lender receives from, or on behalf of, the Borrower with respect to a Loan, the Lender shall pay the Rural Center a late fee and/or interest as described in Section 1 (Prompt Payment) of this Agreement.
- B. If all or part of any payment made to the Lender is rescinded or must otherwise be returned to a Borrower for any reason (other than the Lender's negligence or misconduct), and if the Lender has, prior thereto, paid to the Rural Center its pro rata share of such payment, the Lender shall, after telephone notice to the Rural Center and confirmed later in writing, subtract the appropriate portion of such rescinded or returned payment from the Rural Center's next payment hereunder.

6.4 Application of Monies. Except as provided in Section 6.7, all monies collected or received by the Lender in connection with any Loan (other than the fees) shall be applied and distributed in the following order of priority: (i) to the payment of all Servicing Expenses (if any); (ii) to the payment of accrued and unpaid interest on the Note; and (iii) to the payment of principal on the Note. Before any distribution to the Rural Center, with respect to any such application being made, the amount thereof shall be adjusted to the extent that any amount is owed by either party to the other, in accordance with the terms hereof.

6.5 Lender's Powers. The Rural Center authorizes the Lender, and the Lender hereby agrees, to act as trustee for the Rural Center subject to the limitations contained herein, including the provisions of Sections 6.2(B), 6.6 and 6.7 hereof: (i) to negotiate, control, manage and service the Loan; (ii) to enforce or to refrain from enforcing the Loan Documents; (iii) to give consents, commitments or waivers in connection with the Loan Documents; (iv) to acquire additional security for the Loan; (v) to take or refrain from taking any action and make any determination provided for herein or in the Loan Documents; and (vi) to exercise all such powers as are incidental thereto. The Lender acknowledges its status as trustee and represents that it has the power to perform the services listed in this Section. In acting under this Agreement, the Lender agrees to exercise the same degree of care in administering each Loan as it would use in managing its own loans in which no Participation has been issued. The Lender agrees that the exercise of these fiduciary responsibilities as trustee for the Rural Center includes the full and complete pursuit of amounts owed in relation to any unpaid portion of the entire Loan until released from that responsibility in writing by the Rural Center, while the Rural Center retains an undivided interest in the Loan and any related Loan Documents. Further, the Lender agrees that it will take no independent action, unless agreed to in advance and in writing by the Rural Center, that directly, or indirectly by nature of a proceeding or process, releases the Borrower or any guarantor or other responsible party or entity, in full or in partial satisfaction, from a continuing responsibility to repay the Loan and/or other applicable charges/fees in relation to debt collection activities, until all amounts due are paid in full.

6.6 Lender's Covenants with Respect to the Loans.

- A. The Lender hereby covenants with respect to each Loan that it shall not, without the Rural Center's prior written consent or approval:
- i. consent to or accept any cancellation, termination, revision, or settlement of any Loan Document, or agree to any transfer or termination of any instrument now or hereafter assigned to it as security for the Loan;
 - ii. release, partially or fully, any collateral given as security for the Loan or any guarantor of the Loan;
 - iii. extend the maturity date of the Loan or the date of any interest or principal payment there under;
 - iv. reduce the amount of any payment of principal or the applicable Lender Rate;
 - v. increase the maximum amount of the Loan or the obligations of the Lender or the Rural Center pursuant to any Loan Document;
 - vi. require the acceptance of a new note evidencing the Loan, in substitution for the Note;
 - vii. waive or consent to the modification of any Loan Document that would cause the Loan to no longer be in compliance with the requirements of Section 3; or
 - viii. consent to any amendment or modification to a Loan Document that would be, in the judgment of a prudent financial manager, material to the Loan.
- B. In the event that the Lender breaches any of the above enumerated covenants, it agrees that it shall purchase the Rural Center's outstanding Participation as of the date of the breach.
- C. In the event that Lender seeks the Rural Center's consent or approval for any of the matters enumerated above the Rural Center shall make every effort to respond to the Lender's request within ten (10) business days after such request. Such response may be by telephone, to be confirmed in writing promptly thereafter.
- D. Upon the occurrence of any default by the Borrower or guarantor under any of the Loan Documents, the Lender shall consult in good faith with the Rural Center. Notwithstanding the foregoing, if such a default is caused by the nonpayment of principal or interest, by the bankruptcy of the Borrower or a guarantor, or by the occurrence of an event that would have a material adverse effect on the repayment of the Loan or the collateral securing the Loan (in the Lender's reasonable judgment), the Lender shall not waive such default without the written

consent of the Rural Center. If, at any time during the continued occurrence of such a default, the Rural Center informs the Lender of its desire that the Lender commence foreclosure proceedings under the terms of the Loan Documents, the Lender shall either commence such proceedings or purchase the Rural Center's Participation in accordance with Section 7 hereof.

6.7 Subordination after Default. The Lender and the Rural Center may agree to the subordination of amounts (both principal and interest) owed to the Rural Center under certain circumstances. Such subordination shall be effective only if noted on both the relevant the Commitment Letter and Participation Certificate. If the Lender and the Rural Center so agree, the amounts owed by the Lender to the Rural Center with respect to a Participation shall be subordinated to amounts owed by the Borrower to the Lender from and after the occurrence of all of the following events: (i) the occurrence of any default under any of the applicable Loan Documents; (ii) notice thereof to the Rural Center; (iii) acceleration of the applicable Loan; and (iv) commencement and continuation of foreclosure proceedings and other collection efforts, which shall include enforcing all guaranties with respect thereto.

However, in any foreclosure proceeding where the Lender is the successful bidder at the foreclosure sale and the sale results in a loss to either the Lender and/or the Rural Center, or if Lender otherwise acquires title to such property in lieu of a foreclosure, such as by a deed in lieu of foreclosure, and in any such case the Lender subsequently sells the foreclosed or otherwise acquired property within twelve (12) months thereafter for a gain or profit in excess of the value of the loan, the Lender is obligated to remit a pro rata share of said gain or profit equal to the Rural Center Participation Amount within thirty (30) calendar days thereafter. This also applies to any situation where the Lender takes judicial or non-judicial ownership of collateral assets for subsequent disposition.

Breach of any of the Covenants or requirements specified in Sections 6.5, 6.6, or 6.7 renders all subordination null and void as of the date of the breach. Unless a new subordination agreement is executed in writing by the Lender and the Rural Center, any amounts recovered upon the Borrower's default are to be distributed on a pro rata basis equal to the Rural Center Participation Amount, plus recovered interest and fees if any.

6.8 Retention of Counsel. In the event of actual or threatened litigation affecting a Loan or the security for such Loan, and if the Lender is of the opinion that the services of an attorney should be retained to protect those interests, the Lender may, following ten (10) business days' prior written notice to the Rural Center (unless, in the judgment of the Lender, immediate action is required, whereupon any reasonable form of notice to the Rural Center shall be acceptable), retain counsel to represent the Lender. The Lender shall seek to cause the Borrower to pay the reasonable fees and expenses of such counsel in accordance with the terms and conditions of the Loan Documents, but if the Borrower fails to pay such fees and expenses, then the Lender shall pay all reasonable costs thereof as Servicing Expenses. The Rural Center shall not have any right in connection with such litigation to retain other counsel, except at the sole cost and expense of the Rural Center.

7. REPURCHASE BY LENDER OF THE PARTICIPATION

7.1 Repurchase by Lender. At any time during which the Loan is outstanding, the Lender shall have the unconditional right, within its sole and exclusive discretion, to repurchase the Participation in the Loan, upon written notice to the Rural Center.

7.2 Price Payable by the Lender. The purchase price to be paid by the Lender to the Rural Center under Sections 6.6(B) and 7.1 hereof shall be an amount equal to the Participation Amount, together with any accrued interest thereon and fees (if any).

7.3 Consummation of Repurchase. Any such repurchase shall occur on a date selected by the Lender, which date shall be no later than (a) ten (10) business days after the giving of written notice by the Lender of the exercise of its option to repurchase, or (b) twenty-five (25) business days after the Lender begins foreclosure proceedings. The purchase price paid by the Lender to the Rural Center shall be paid on such date in immediately available funds, and concurrently therewith the Rural Center shall execute, and deliver to the Lender, document(s) reassigning to the Lender the Participation, without recourse, covenant or warranty, express or implied (except that the Rural Center shall warrant its ownership of the Participation,

the amount of indebtedness outstanding thereunder and its authority and capacity to execute such documents).

8. LENDER'S RIGHT OF OFFSET

To the extent that at any time a Borrower, guarantor or any other party makes any payment under the relevant Loan Documents to the Lender by exercise of a right of offset of any kind, including any right applying to deposits, accounts, moneys or other property of such Borrower or guarantor deposited at or held by the Lender (but excluding any property securing the Loan pursuant to the Loan Documents), such payments shall be applied to reduce the Loan. Immediately thereafter, the Borrower's outstanding balance shall be automatically readjusted to reflect such payment, and the Lender shall purchase from the Rural Center as much of the Participation Amount so as to return the Lender's and the Rural Center's respective interests to the percentages existing prior to the offset.

9. SUBORDINATION OF THE RURAL CENTER'S PARTICIPATION TO SERVICING EXPENSES

Subject to the terms and conditions of this Agreement, each Participation shall be subordinated in payment until such time as the Lender's Servicing Expenses (if any) with respect to the applicable Loan have been paid in full. Accordingly, and in consideration thereof, Servicing Expenses shall be the sole responsibility of the Lender, and the Lender hereby indemnifies the Rural Center for any and all liability for Servicing Expenses. In all other events, subject to the terms of this Agreement, payments made on the Participation shall be pari passu with amounts retained by the Lender with respect to the Borrower's outstanding balance, pro rata in accordance with their respective percentage interests.

10. BOOKKEEPING ENTRIES

The Lender will reduce, for the purpose of recording the value of its assets in its financial books and records, the value of any Loan asset by the amount of the Rural Center's Participation Amount. The Lender shall, within ten (10) business days after a request by the Rural Center or US Treasury, allow the Rural Center or US Treasury to examine the Lender's books and records concerning the Loan.

11. ACKNOWLEDGEMENTS AND AGREEMENTS BY THE PARTIES

The Rural Center and the Lender acknowledge and agree with respect to each Loan that:

- A. The Lender is expected to exercise due diligence in determining (i) the accuracy of any statement, warranty, representation or certification made by the Borrower and/or any guarantors in, or in connection with, any document relevant to the Loan, and (ii) the financial condition of the Borrower and any guarantor with respect to the Loan or the performance or observance of any obligations by the Borrower or any guarantor with respect to the Loan.
- B. The sale of a Participation does not constitute the sale of a "security" under or as defined in the Securities Act of 1933 and the Securities Exchange Act of 1934.
- C. The relationship between the Lender and the Rural Center is and shall be that of a seller and purchaser of a property interest and not a debtor-creditor relationship. This Agreement is not intended to constitute, nor shall it be construed to establish, a partnership or joint venture between the Lender and the Rural Center.
- D. The Rural Center is relying upon the Lender to undertake, on behalf of the Rural Center, the review and approval of the credit, collateral valuation, security documentation and determination of eligibility of the Borrower.

12. NOTICE OF EVENTS OF DEFAULT

Upon the occurrence of a default or an Event of Default (as defined in the Loan Documents) or upon default in the payment of any principal of, or interest on, the Note or in the observance of the

performance of any of the terms, covenants and conditions of any of the Loan Documents, the Lender shall, within ten (10) business days thereafter, notify the Rural Center in writing of the existence and nature of the default.

13. INFORMATION

The Lender shall promptly furnish to the Rural Center an executed copy of the Loan Documents and copies of all such documents pertaining to the Loan, including, without limitation, periodic financial information required to be delivered to the Lender which the Lender has in its possession from time to time.

14. LENDER REPORTS

Section 14.1. Lender Documents. Upon execution of this Agreement, the Lender shall prepare and deliver to the Rural Center samples of all Loan Documents and a Lender report containing such information regarding the Lender as the Rural Center shall request, and any other documentation as determined necessary by the Rural Center or as otherwise identified in this Agreement.

Section 14.2. Monthly Reports. The Lender shall prepare and deliver to the Rural Center a Monthly Report/Payment Distribution Summary as described in Section 6.1.B.

Section 14.3. Annual Reports. For each year ending June 30, the Lender shall prepare and deliver to the Rural Center by July 31:

- A. A report listing Borrowers and outstanding balances of all Loans in which a Participation has been purchased by the Rural Center as of the end of that preceding calendar year. Such report must indicate the following:
 - a. **Name of Borrower**
 - b. **Total Amount of Loan**
 - c. **Total Amount of Participation**
 - d. **Outstanding Balance of Loan**
 - e. **Outstanding Balance of Participation**
 - f. **Amount of any additional financing by the Lender to the Borrower at or subsequent to the closing of the Loan**

Section 14.4. Notification of Non-sex Offender Noncompliance. Should an event occur that renders obsolete the statement regarding non-sex offender compliance in Section 3.B., the Lender shall promptly notify the Rural Center.

15. OTHER TRANSACTIONS BETWEEN THE LENDER AND THE BORROWER

The Lender and its affiliates may accept deposits from, lend money to, extend other financial accommodations to, or for the benefit of, any Borrower, and may act as trustee under the indentures for, and generally engage in, any kind of business with any Borrower, any person who may do business with any Borrower, or any affiliate of any Borrower.

16. CONFIDENTIALITY

Except as may be required by law, including under the Freedom of Information Act, the Rural Center will endeavor to maintain the confidentiality of all information furnished to the Rural Center hereunder or in connection with any document relative to a Loan, except the Rural Center will have no obligation of confidentiality with respect to information that may be generally available to the public, or becomes generally available to the public through no fault of the Rural Center. The sharing of information with or providing of information to another agency or authority of the State of North Carolina by the Rural Center shall not be deemed to violate this undertaking, provided that such agency or authority shall remain

bound by the confidentiality provisions contained herein. The Rural Center shall be authorized to publicize information regarding its interest in a Loan in which it has purchased a Participation, including, without limitation, information related to the name of the Borrower, the name of the Lender, the amount of the Loan and the amount of the Rural Center Participation in the Loan. Notwithstanding anything set forth herein to the contrary, the Rural Center shall be authorized to share with the US Treasury any information or any document related to the Program or a Loan thereunder, upon the request of the US Treasury.

17. TERM OF AGREEMENT

This Agreement shall have no expiration date: provided however, that either the Rural Center or the Lender may terminate the agreement with thirty (30) days written notice. If terminated, it shall remain effective and its terms and conditions shall remain applicable to any Participation purchased during the time it was effective.

18. MISCELLANEOUS

18.1 Assignment. Neither the Rural Center nor the Lender may, without the prior written consent of the other party, transfer or assign all or any portion of its rights and obligations hereunder, except that the Rural Center may affect such a transfer or assignment to the State of North Carolina or an agency thereof, or to another organization designated by the State of North Carolina.

18.2 Notices. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, facsimile or telecopy; (c) overnight courier; or (d) registered or certified, first class mail, return receipt requested.

IF TO THE LENDER:

Name of Lender: _____

Address: _____

City, State, Zip: _____

Attention: _____ **Title:** _____

Telephone: _____

Facsimile: _____

Email: _____

IF TO THE RURAL CENTER:

Rural Economic Development Center, Inc.

4021 Carya Drive

Raleigh, North Carolina 27610

Attention: Vice President of Finance

Telephone: (919) 250-4315

Facsimile: (919) 250-4325

Email: mkclifford@ncruralcenter.org

These addresses may be changed by notice to the other party given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and if sent pursuant to clause (d) shall be deemed received two (2) business days following deposit in the mail.

18.3 Authorization. The Lender and the Rural Center each hereby represents to one another that: (a) any and all necessary corporate and other action has been taken to authorize the execution, and the performance of, its obligations under this Agreement; and (b) this Agreement is binding and enforceable against it.

18.4 Applicable Law. This Agreement shall be deemed a contract made under, and governed by, the laws of the State of North Carolina, without regard to conflict of laws principles.

18.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

18.6 Amendments, Changes, and Modifications. This Agreement may be amended, changed, modified or altered, only by written agreement signed by the Lender and the Rural Center (or their successors or assignees).

18.7 Entire Agreement. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intent has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not expressly set forth herein. This Agreement shall be binding upon, and shall inure to the benefit of, the Lender and the Rural Center and (subject to the provisions of Section 18.1 hereof) their respective successors and assigns.

18.8 Counterparts. This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one and the same Agreement.

18.9 Conflict of Interest. No director, officer or employee of the Lender shall participate in any decision relating to any Borrower's business that affects the director's, officer's or employee's personal interest or the interests of any corporation, partnership or association in which the director, officer or employee is directly interested. In extending credit to directors, officers or employees, not otherwise prohibited by this Agreement or federal law, the Lender is required to follow credit underwriting procedures that are as stringent as those applicable to comparable transactions by the Lender with persons that are not officers or employees of the Lender, not involving more than a normal risk of repayment.

18.10 Records Retention. The Lender agrees to maintain, for a minimum of five (5) years after the repayment, repurchase or other termination of the Rural Center's Participation, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the Loan and Loan Documents. The Lender agrees that all books, records, and supporting documents related to the Loan and the Loan Documents shall be available for review and audit by the North Carolina State Auditor and the North Carolina Attorney General, and agrees to cooperate fully with any audit and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the Rural Center for the recovery of any amounts paid by the Rural Center pursuant to the Participation for which adequate books, records, and supporting documentation are not available to support their purported disbursement. The Lender further agrees that it will make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 *et seq.*), including detailed loan records, as applicable.

19. CERTIFICATIONS

19.1 Compliance with Applicable Law. The Lender certifies that it is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in section 5312 (a)(2) and (c)(1)(A) of title 31, United States Code, to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. The Lender certifies that it shall comply with all applicable provisions of Federal, State and local law in the performance of its obligations pursuant to this Agreement.

19.2 Federal, State and Local Laws; Tax Liabilities; State Agency Delinquencies. The Lender certifies that it will comply with all federal, state and local laws, including but not limited to the filing of any and all applicable tax returns. In the event that a Borrower is delinquent in filing and/or paying any federal, state and/or local taxes, the Rural Center shall disburse loan funds only if the Borrower enters into an installment payment agreement with said tax authority and remains in good standing therewith. Borrower is required to tender a copy of any such installment payment agreement to the Rural Center. In no event may Borrower utilize loan funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. The Lender certifies that (i) it is current as to the filing and payment of any federal, state and/or local taxes applicable to Lender; and (ii) it is not delinquent in its payment of moneys owed to any federal, state, or local unit of government.

19.3 Lien Waivers. The Lender shall monitor any construction undertaken as part of a Project to assure that necessary contractor's affidavits and waivers of mechanics liens are obtained prior to release of Loan funds to contractors and subcontractors.

19.4 Americans with Disabilities Act Compliance. The Lender certifies that services, programs, and activities contemplated under this Agreement are and will continue to be in compliance with the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*) and the regulations thereunder (28 CFR 35.130), which prohibit discrimination against persons with disabilities, whether directly or through contractual arrangements, in the provision of any aid, benefit, or service. The Lender further certifies that all facilities utilized by it in the performance of this Agreement comply with State accessibility laws.

19.5 International Anti-Boycott Certification. The Lender certifies that neither it nor any affiliate company is participating or will participate in an international boycott, as defined by the provisions of the U.S. Export Administration Act of 1979 or by the regulations of the U.S. Department of Commerce promulgated pursuant to the Act.

19.6 Capital at Risk. Consistent with OMB Circular A-129, the Lender certifies that it has at least 20% of its own capital at risk in any loan enrolled in the Program, unless a waiver has been granted.

19.7 Sex Offense Against Minor. The Lender certifies that no principal of the Lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification and the Lender's required annual certification "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity."

19.8 Financial Privacy. The Lender certifies that it is in compliance with the Right to Financial Privacy Act (12 U.S.C. Section 3401 *et seq.*), as applicable.

**20. FEDERAL TAXPAYER IDENTIFICATION NUMBER,
NAME AND LEGAL STATUS DISCLOSURE**

This Lender does business under the legal name of _____, which corresponds to the name of which the below listed FEIN is registered with the Internal Revenue Service. Under penalties of perjury, the Lender certifies that _____ is its correct Federal Taxpayer Identification Number (FEIN).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their duly authorized officers as of the day and year first written above.

Lender's execution of this Agreement shall serve as its certification under oath that Lender has read, understands and agrees to all provisions of this Agreement and that the information contained in this Agreement is true and correct to the best of its knowledge, information and belief and that the Lender shall be bound by the same. Lender acknowledges that the individual executing this Agreement is authorized to act on the Lender's behalf. Lender further acknowledges that the award of Participations under this Agreement is conditioned upon the above certification.

Lender: By: _____
Printed Name: _____
Title: _____
Date: _____

Attested By: _____
Printed Name: _____
Date: _____

Rural Center: By: _____
Printed Name: _____
Title: _____
Date: _____

Attested By: _____
Printed Name: _____
Date: _____

**RURAL ECONOMIC DEVELOPMENT CENTER, INC
LOAN PARTICIPATION PROGRAM**

**EXHIBIT A
SAMPLE COMMITMENT LETTER**

Date

Loan Officer, Title
Lender Name
Address
City, State & Zip

RE: Borrower Name(s)

Dear Loan Officer Name:

Pursuant to the Master Loan Participation Agreement No. _____ dated _____ by and between _____ (the "Lender") and the **Rural Economic Development Center, Inc.**, (the "Rural Center") the Rural Center hereby agrees to purchase a Participation Interest in the following Loan:

Borrower(s):

Borrower Name
Address
City, State & Zip

Guarantor(s):

Guarantor Name
Address
City, State & Zip

The Participation Interest in the Loan is for a total of _____ Dollars and ____ cents (\$ _____,00) which is _____ percent (____%) of the total Loan amount. This Participation Interest is based on the terms and conditions stated in the Application for Participation submitted by the Lender to the Rural Center.

Among the terms applicable to this Loan are the following:

- a) Loan Number: _____
- b) Total Loan Amount: \$ _____
- c) Lender Portion: \$ _____ Lender Percentage: _____%
- d) Rural Center Portion: \$ _____ Rural Center Percentage: _____%
- e) Loan Purpose: **The loan proceeds shall be used for the sole purpose of** _____.
- f) Lender's Loan Rates & Terms:
 - 1. **Interest Rate:** The Interest Rate will be _____.
 - 2. **Loan & Repayment Terms:** _____.

3. **Other Terms:** Those other terms and conditions outlined in the Lender's Loan Commitment Letter issued on _____. The Lender's Loan Commitment Letter has been executed by the Lender, Borrower(s) and Guarantor(s), and a copy is attached hereto.

g) Other Terms/Requirements:

- **LENDER:** Prior to the Rural Center's transfer of the Participation Funds, the Lender is required to provide the following items to the Rural Center:

1. Final approval of the loan is subject to a Real Estate Appraisal on the subject property located at _____. The Lender must provide the Rural Center with a copy of the approved appraisal and assessment as soon as it is available;
2. Copies of all Loan closing documents executed on the loan closing date including the Settlement Statement and the Loan Amortization Schedule;
3. Copies of all Loan closing documents executed by the Borrower and/or Guarantor for the Loan closing. The Lender also must provide copies of the HUD or Settlement Statement and the Loan Amortization Schedule;
4. Copy of Lease Agreement by and between _____, Lessor and _____, Lessee. The Lease term, including options to renew exercisable solely by _____, Lessee, shall be for the duration of the Loan and the monthly Lease payment shall be at least the total amount of the monthly Loan Payment (including Principal and Interest);
5. The following ORIGINAL fully executed documents: Rural Center Commitment Letter to Lender, Participation Certificate (Exhibit B), Borrower's Certification (Exhibit C) and the Application for Participation (Exhibit D) of the Master Participation Agreement; and

NOTE: The Borrower's Certification must be executed by: A) Borrower(s), Individually; (and if applicable) B) Member(s), Manager(s), Owner(s) and/or President of the Real Estate Holding Company and C) Member(s), Manager(s), Owner(s) and/or President of the Operating Company. The reporting data requested within the Certification should be that of the Business/Operating Company only.

6. Copy of the Lender's Wire Transfer instructions and a Request for Funding email. The Funding email should include the date funds were distributed, total amount of funds distributed and the amount of Participation Funds being requested from the Rural Center.

- **RURAL CENTER:**

1. The Rural Center's portion of the Lender fees is waived.
2. In the event of a default, payment to the Rural Center will be subordinate to the Lender.

3. **The Lender will repurchase the Rural Center's remaining Participation interest at one hundred twenty (120) months.**
4. **Those other terms and conditions outlined in the Lender's Loan Commitment Letter issued on _____. The Lender's Loan Commitment Letter has been executed by the Lender, Borrower(s) and Guarantor(s), and a copy is attached hereto.**

Any changes to sections a) through f) above must be preapproved by the Rural Center prior to the Loan closing date. The Lender hereby agrees to notify the Rural Center immediately of such changes and agrees to execute the necessary documents to incorporate any changes prior to or after the closing of the Loan.

This commitment, and any subsequent funding of the Participation, is subject to the following contingencies:

1. If the Loan supports a new extension of credit that repays an amount due on a matured loan or line of credit (including bridge or construction loans funded or partially funded prior to this agreement) that all the following conditions must be met: a. the new loan or line of credit includes the advancement of new monies to a small business borrower (excluding closing costs); b. the new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay and a new approval by the lender/investor; c. proceeds from the new credit may only be used to satisfy the outstanding balance of a loan or line of credit that has already matured or otherwise termed and the prior debt was used for an eligible business purpose, as defined by the SSBCI Policy Guidelines; and, d. the new credit has not been extended for the sole purpose of refinancing existing debt owed to that same financial institution lender and new monies advanced must be for a different purpose.
2. Lender shall provide one Note evidencing the full amount of the Loan.
3. In no case will the Rural Center's term of obligation exceed the maturity date as shown on the Note.
4. At all times during which the Rural Center owns a Participation interest in a Loan or until the Loan is paid in full, Lender shall continue to own at least twenty-five percent (25%) of the total amount of the Loan, and shall not assign or sell more than sixty percent (60%) of the total amount of the Loan to other participants other than the Rural Center. Additionally, the Rural Center principal balance may never exceed the agreed upon Participation percentage of the Borrower's principal balance.
5. This purchase of a Participation in such Loan is made pursuant to and shall be governed by the Master Participation Agreement, by and between you and the Rural Center (the "Master Participation Agreement"). All capitalized terms used in this Commitment Letter not otherwise defined herein shall have the meanings ascribed to them in the Master Participation Agreement.
6. As per Section 3 of the Master Participation Agreement, the Rural Center's obligations will cease immediately, notwithstanding this Commitment Letter, without penalty of further payment being required if the Allocated SSBCI Funds for the Program are not available (whether they have all been otherwise utilized or the Rural Center does not have access to them).
7. This Commitment Letter does not obligate the Rural Center for an extension of credit beyond the terms as described above. It is mutually understood and agreed that this Commitment Letter and/or the Master Participation Agreement represents the entire understanding between the Lender and the Rural Center regarding the terms applicable to this Participation and that no oral representations or inducements regarding the terms applicable to this Participation that are not included or embodied in this letter or the agreement shall be of any force and effect.

8. Lender is notified that, in any instance where the length of the principal amortization schedule exceeds the number of years of the Loan term to which the Rural Center is committing, thus obligating the Borrower to make a balloon payment at the end of the initial Loan term, the Rural Center is under no obligation, whatsoever, to participate in any financing of said balloon for any future term.
9. After the Lender closes the Loan, the Lender must provide an original Participation Certificate (Exhibit B of the Master Participation Agreement) and copies of the Lender's executed Loan Documents as described in Section 1(A) of the Master Loan Participation Agreement within fifteen (15) business days of closing. Once these documents are received, the Rural Center shall process the Participation Certificate and any other documents necessary to fund its Participation, and then simultaneously or as soon as practicable shall initiate the actions to cause delivery of its Participation Amount to the Lender. The Participation will be considered funded on the date the Rural Center funds are transferred to the Lender by ACH or other approved method. The Lender will be responsible for the timely processing and application of the Rural Center funds.
10. The Rural Center shall provide the Lender with a funds transfer confirmation via email once the transfer of funds has been completed. The Lender shall notify the Rural Center immediately via email or other approved method if the funds transfer confirmation is incorrect.
11. Payments will be made via ACH or other approved method to the Rural Center at 4021 Carya Drive, Raleigh, NC 27610. Please include with each payment the Report/ Payment Distribution Summary and Transmittal showing the receipt of the payment and the distribution between principal and interest.
12. **The Loan must close within one hundred twenty (120) days of this Commitment Letter, unless a written extension of time is granted by the Rural Center, otherwise this Commitment Letter will expire.**

This will confirm your acceptance of these conditions. **Pursuant to the Master Loan Participation Agreement, this Commitment Letter will expire thirty (30) days from the date of this letter, unless a written extension is granted.**

The Rural Center looks forward to working with you and your staff on this loan. If you have questions, please feel free to contact _____(Loan Officer)

RURAL ECONOMIC DEVELOPMENT CENTER, INC.

By: _____
Rural Center Loan Officer Name
 N.C. Small Business Credit Initiative

By: _____
Rural Center
 Finance and Administration

LENDER NAME

By: _____
 Printed Name: _____
 Title: _____
 Dated: _____

**RURAL ECONOMIC DEVELOPMENT CENTER, INC
LOAN PARTICIPATION PROGRAM**

EXHIBIT B

PARTICIPATION CERTIFICATE

The undersigned lender (*the "Lender"*) and the Rural Economic Development Center, Inc. (*"Rural Center"*) have entered into a **Master Participation Agreement Number #** _____ **dated** _____ (*the "Master Agreement"*) pursuant to which such parties have agreed that the Rural Center from time to time may purchase from the Lender, Participations in loans made by the Lender.

This Participation Certificate shall acknowledge the purchase of such a _____% participation (*the "Participation"*) in a loan (*the "Loan"*) of the Lender to _____ (*the "Borrower"*), Lender Loan Number _____ and Rural Center Participation Loan Number _____ pursuant to the terms and conditions of that certain Rural Center Commitment Letter dated _____ (*the "Commitment Letter"*). The Loan was made by the Lender on _____ on the terms and conditions described in the Commitment Letter and those contained in the Application for Participation related to the Loan submitted by the Lender to the Rural Center.

- Payments to the Rural Center are subordinate pursuant to Section 6.7 of the Master Agreement.***
- Payments to the Rural Center are not subordinate pursuant to Section 6.7 of the Master Agreement.***

The Lender represents to the Rural Center (a) that the Loan has been made on the terms and conditions described in the related Application for Participation submitted to the Rural Center, (b) that it has provided to the Rural Center copies of the promissory note and all other documentation required by Section 2 of the Master Agreement, and such copies are true and correct as of the date hereof. This Participation shall be governed by all of the terms and conditions contained in the Master Agreement and the Commitment Letter.

Lender Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Dated: _____

Acknowledged:

Rural Economic Development Center, Inc.

Authorized Signature: _____

Dated: _____

**RURAL ECONOMIC DEVELOPMENT CENTER, INC
LOAN PARTICIPATION PROGRAM**

EXHIBIT C

BORROWER'S CERTIFICATION

The undersigned acknowledges that a participation interest (the "Participation") in the loan (the "Loan") for which it has applied from _____ (the "Lender") may be sold to the Rural Economic Development Center, Inc. ("Rural Center") pursuant to the federal State Small Business Credit Initiative ("SSBCI") of the Small Business Jobs Act of 2010 (Title III of Public Law 111-240); the amended and restated Allocation Agreement dated January 23, 2012 between the United States Department of the Treasury and the State of North Carolina. The Lender will continue to handle and service the entire Loan and all payments will be made to the Lender. In order to induce the Rural Center to purchase a Participation in the Loan, the undersigned agrees and certifies to the Lender and the Rural Center as follows:

1. The project of the undersigned for which Loan funds are to be used (the "Project") would not be undertaken unless the Loan is provided or the President of the Rural Center determines that it is in the best interests of the State of North Carolina' economy to provide the Loan.
2. The undersigned is ready to implement the project and has the financial ability to carry out the Project.

The undersigned Borrower (the "Borrower") acknowledges:

- (a) That the loan to be made by (Lender) _____ to the Borrower will be filed for enrollment by the Lender in the North Carolina Loan Participation Program (the "Program"), a program established by the Rural Center;
- (b) That the purpose of the Program is to assist the Lender in making loans that might otherwise not qualify for a loan from the Lender and to provide financing for North Carolina small businesses and promote economic development in the state of North Carolina;

The Borrower represents that:

- (a) The Borrower is an entity with 500 or less employees;
- (b) The loan proceeds must be used for a "business purpose." A business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

Permissible Borrowers include corporations, partnerships, joint ventures, sole proprietorships, state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a "business purpose" as defined above.

- (c) The loan proceeds will not be used to:
 - (1) Repay a delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority; or
 - (2) Repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
 - (3) Reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
 - (4) Purchase any portion of the ownership interest of any owner of the business.
- (d) The Borrower is not:
 - (1) An executive officer, director, or principal shareholder of the Lender; or

BORROWER'S CERTIFICATION CONT.

- (2) A member of the immediate family of an executive officer, director, or principal shareholder of the Lenders; or
- (3) A related interest of such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of these three Borrower restrictions, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to a Lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(e) The Borrower is not:

- (1) A business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or
- (2) A business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a Community Development Financial Institution; or
- (3) A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or
- (4) A business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
- (5) A business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

(f) No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity."

(g) The Borrower authorizes the Lender to report to the Rural Center certain loan information as the Rural Center may reasonably require.

As to the Operating Company:

OWNERSHIP %: _____ Male
 _____ Female

RACE: _____ American Indian or Alaska Native
 _____ Asian
 _____ Black or African-American
 _____ Native Hawaiian or Pacific Islander
 _____ White

ETHNICITY: _____ Hispanic or Latino
 _____ Not Hispanic or Latino

BORROWER'S CERTIFICATION CONT.

VETERAN STATUS: _____ Veteran
_____ Non-Veteran

Name of Borrower(s): _____

As to the Operating Company:

Name of Operating Company: _____

Primary Business Activity: _____

Annual Sales of Business in Last Fiscal Year: \$ _____

Year Business Established: _____

Total Full Time Employees (2 half-time employees equals 1 full-time employee): _____

Estimated Jobs Created by this Loan: _____

Estimated Jobs Retained by this Loan: _____

Signature: _____

Dated: _____

Printed Name: _____

Title: _____ of _____

Signature: _____

Dated: _____

Printed Name: _____

Title: _____ of _____

PLEASE NOTE: The Borrower's Certification **must** be executed by: **A)** the Borrower(s), Individually; (and if applicable) **B)** by a Member(s), Manager(s), Owner(s) and/or President of the **Real Estate Holding Company** and **C)** by a Member(s), Manager(s), Owner(s) and/or President of the **Operating Company**. The reporting data is as to the Business/Operating Company only. Please attach separate signatures pages if needed.

**RURAL ECONOMIC DEVELOPMENT CENTER, INC
LOAN PARTICIPATION PROGRAM**

EXHIBIT D

APPLICATION FOR PARTICIPATION

Lender Name: _____ FEIN: _____
Lender Contact Name: _____ Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Email: _____

Borrower(s) Name: _____
Borrower(s) Address: _____
City: _____ State: _____ Zip: _____ County: _____

If Borrower is a Real Estate Holding Company:

Operating Company Name: _____
Operating Company Address: _____
City: _____ State: _____ Zip: _____ County: _____
Primary Activity of Business: _____
NAICS: _____

We request approval for participation in the following loan:

Total Loan Amount: \$ _____
Lender Portion: \$ _____ Lender Percent: _____ %
Rural Center Portion: \$ _____ Rural Center Percent _____ %
Interest Rate _____ % Fixed/Adjustable Loan Term _____ Amortization _____
Combined Loan Payment: \$ _____ Beginning: _____ Anticipated Loan Closing Date: _____

Copies of the following documents are required for each participation:

- Lender's Application for Participation*
- Borrower's Certification*
- Lender's Commitment Letter to Borrower
- Borrower's Project Proposal
- Lender's Internal Loan Report to include:
 - Financial, Profitability and Repayment Analysis, including ratios, trends, and Industry Standards (e.g.: RMA Comparables)
 - Assessment of Borrower's Management Skill and Business Plan
 - Collateral Analysis, including lien position and adequacy
 - Lender's experience with the Borrower, including Strengths and Weaknesses
 - Guarantor and/or Co-Borrower information
 - Copy of all Lease Agreements
- Borrower's Historical Balance Sheets, Income Statements, and tax returns for two years, a Current Interim Statement, and Projected Income Statements for the first two years
- Borrower's/Co-Borrower/Guarantor Credit Report(s)
- All existing or proposed Lease Agreements
- Real Estate Purchase Contract
- Copy of Maturing Note, Loan Purpose Statement and HUD 1 *(if Loan is being made to refinance any of the Lender's existing debt)*

* Originals must be submitted with the Participation Certificate prior to funding.

LENDER'S CERTIFICATION

I certify to the Rural Center that the loan represented by this Application for Participation is approved subject to terms specified. Without the Rural Center's participation, as requested, we would not be willing to make this loan, and in our opinion the financial assistance requested is not otherwise available on reasonable terms. I have reviewed and verified the information in the Borrower's Project Proposal, Borrower's Certification and the documentation supporting this Application for Participation. I certify, to the extent of my knowledge that the borrower is eligible (for the purposes of this program), the proceeds will be used for an eligible purpose in North Carolina and the owners and managers of the borrower business are of good character.

In addition, I certify that the loan is not being made in order to place under the protection of the N.C. Loan Participation Program prior debt that is not covered under the N.C. Loan Participation Program and that is or was owed by the borrower to the lender or to an affiliate of the lender; that the loan is not a refinancing of a loan previously made to that borrower by the lender or an affiliate of the lender; and that the lender is not attempting to enroll the unguaranteed portions of SBA-guaranteed loans.

Certifying Lender Signature Date _____
Printed Name: _____ Title _____

**RURAL ECONOMIC DEVELOPMENT CENTER, INC
LOAN PARTICIPATION PROGRAM**

EXHIBIT E

Lender Name

NON-SEX OFFENDER RECERTIFICATION

As required by the US Treasury under Section 3011(c)(2) of the Small Business Jobs Act of 2010, this annual recertification must be provided from any private entity receiving financial assistance using funds received by a participating State under the State Small Business Credit Initiative. This recertification will become part of the Master Participation Agreement between the Lender and the NC Rural Center.

Sex Offense Against Minor. The Lender certifies that no principal of the Lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, “principal” is defined as “if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.”

Certifying Lender Signature: _____ Date: _____

Printed Name: _____ Title: _____