

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT

LOAN NOTE GUARANTEE

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| Borrower Name: Excel Energy, LLC                     |  |
| Lender Name: ABC Bank                                | Lender's Tax ID Number:<br>12-3456789                            |
| Lender's Address: 123 Main Street Any City, TX 77000 | USDA's Borrower and Loan Identification Number: 12-345-678912345 |
| Principal Amount of Loan ("Loan") \$ 10,000,000.00   | Date of Note(s): 8-3-2023  |

Type of Loan:  Community Programs  Water and Waste Disposal  Business and Industry  Rural Energy for America Program

The guaranteed portion of the loan is \$ 8,000,000.00, which is 80 percent of total loan principal. The principal amount of the loan is evidenced by One notes (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below.

| Add/<br>Remove  | <u>Lender's Identifying<br/>Loan Number</u> | <u>Lender's<br/>Promissory<br/>Note<br/>Number</u> | <u>Face Amount of Note</u> | <u>Percent of<br/>Guarantee</u> | <u>Amount Guaranteed</u> |
|---|---|--|----------------------------|---------------------------------|--------------------------|
| <input type="checkbox"/> + <input type="checkbox"/> - | 1234567                                     | One  | \$10,000,000.00            | 80                              | \$8,000,000.00           |
| Total:  |   |  | \$10,000,000.00            |                                 | \$8,000,000.00           |

All terms not otherwise defined have the definitions given to them in the 7 CFR part 5001.3.

In consideration of the making of the subject Loan by the above named Lender, the United States of America, acting through the United States Department of Agriculture (USDA), does hereby agree that in accordance with, and subject to the conditions and requirements herein, it will pay any loss on the above referenced Loan in accordance with this agreement and 7 CFR part 5001 to the below parties as follows:

A. To any Holder holding a valid Assignment Guarantee Agreement, 100 percent of any loss sustained by such Holder on the guaranteed portion of the guaranteed Loan it owns and on interest due on such portion less any servicing fee. The Lender or the Agency will issue an interest termination letter to the Holder(s) establishing the termination date for interest accrual. This Guarantee will not cover interest to any Holder accruing after 90 days from the date of the interest termination letter.

*A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 0572 - 0155. Public reporting for this collection of information is estimated to be approximately 3.42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information.*

*All responses to this collection of information are voluntary, however in order to obtain or retain a benefit the information in this form is required (citing authority). Rural Development has no plans to publish information collected under the provisions of this program. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Rural Development Innovation Center, Regulations Management Division at [ICRMTRRequests@usda.gov](mailto:ICRMTRRequests@usda.gov).*

B. To the Lender, the lesser of paragraph 1 or 2 below:

1. Any loss sustained by the Lender on the guaranteed portion of the guaranteed Loan, including principal and interest, evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization. The guarantee will not cover note interest to the Lender accruing after 90 days from the most recent delinquency effective date except as provided in 7 CFR 5001.450(c)(1); or

2. The guaranteed principal advanced to or assumed by the Borrower and any interest due thereon. The guarantee will not cover note interest to the Lender accruing after 90 days from the most recent delinquency effective date, except as provided in 7 CFR 5001.450(c)(1).

## CONDITIONS OF GUARANTEE

### 1. Loan Servicing.

The Lender is responsible for servicing the entire Loan, and the Lender will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the Loan. When multiple notes are used to evidence a Loan, the Lender will structure repayments as provided in the Loan Agreement.

### 2. Priorities.

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 will receive all payments on account of principal of, or interest on, the entire Loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the Loan, less only the Lender's servicing fee.

### 3. 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 or any Holder has actual knowledge at the time it became such Lender or Holder or which the Lender or any Holder participates in or condones. The Loan Note Guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest or default or penalty interest, violation of usury laws, use of Loan proceeds for unauthorized purposes, negligent Loan origination, negligent Loan servicing, or failure to obtain or maintain the required security regardless of the time at which USDA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that Loan funds are used for purposes other than those specifically approved by USDA in its Conditional Commitment or amendment thereof. Negligent Loan origination or negligent Loan servicing is the failure to perform those services which a reasonably prudent lender would perform in processing or servicing (including liquidation) 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.

### 4. Rights and Liabilities.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender except for fraud or misrepresentation of which the Holder had actual knowledge at the time it became the Holder or in which the Holder participates or condones. Nothing contained herein or any payment made to the Holder by USDA will constitute any waiver by USDA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to USDA any payment made by USDA to Holder which, if Lender had held the guaranteed portion of the Loan, USDA would not be required to make.

#### 5. Payments.

Lender will receive all payments of principal or interest on account of the entire Loan and will promptly remit to Holder its pro rata share thereof determined according to its respective interest in the Loan, less only Lender's servicing fee.

#### 6. Protective Advances.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee.

#### 7. Repurchase by Lender.

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 Monetary Default 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 principal and accrued interest in accordance with 7 CFR .5001.450(c) less the Lender's servicing fee.

The Holder will concurrently send a copy of the demand to USDA. The Lender will accept a re-assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the Loan to facilitate the accounting for funds, resolve the Loan problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder and USDA of its decision.

#### 8. USDA Purchase.

If Lender does not repurchase as provided by paragraph 7, USDA will purchase from the Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase less any Lender's servicing fee, within 30 days after written demand to USDA from the Holder.

The Lender or the Agency will issue an interest termination letter to the Holder(s) establishing the termination date for interest accrual. The guarantee will not cover interest to any Holder accruing after 90 days from the date of the interest termination letter. Any demand will include a copy of the written demand made upon the Lender. The Holder, or its duly authorized agent, will also include evidence of its right to require payment from USDA. Such evidence will consist of the original of the Assignment Guarantee Agreement properly assigned to USDA without recourse including all rights, title, and interest in the Loan. USDA will be subrogated to all rights of the Holder. The Holder will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. The USDA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide USDA with the information necessary for USDA's determination of the appropriate amount due to the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved. USDA will notify both parties who must resolve the conflict before payment will be approved. Upon receipt of the appropriate information, USDA will review the demand for verification and remit the appropriate payment to the Holder. USDA will issue payment no later than 30 calendar days from the date of the demand. If there is a discrepancy between the amount claimed by the Holder and the information submitted by the Lender, such discrepancy will suspend the running of the 30-day payment requirement.

#### 9. Lender's Obligations.

Lender consents to any required purchase by USDA and agrees to furnish on request by USDA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the Loan and the amount then owed to any Holder. Lender agrees that any purchase by USDA does not change, alter or modify any of the Lender's obligations to USDA arising from this Loan Note Guarantee and applicable program regulations nor does it waive any of USDA's rights against Lender, and that USDA will have the right to set-off against Lender all rights inuring to USDA as the Holder of this instrument against USDA's obligation to Lender under the Loan Note Guarantee.

10. Repurchase by Lender for Servicing.

If the Lender, Borrower, and Holder are unable to agree to restructuring of Loan repayment, interest rate, or Loan terms to resolve any Loan problem or resolve any default, and, in the opinion of the Lender, repurchase of the guaranteed portion of the Loan is necessary to adequately service the Loan, the Holder will reassign the guaranteed portion of the loan to the Lender. The reassignment must be for an amount not less than the Holder's portion of the unpaid principal and interest less the Lender's servicing fee.

- a. The Lender will not repurchase from the Holder for arbitrage purposes or other purposes to further its own financial gain.
- b. Any repurchase will only be made after the Lender obtains USDA written approval.
- c. If the Lender does not repurchase the portion from the Holder, USDA at its option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion.

Subject to Lender's required retention pursuant to 7 CFR 5001.408, the Lender may retain or sell the unguaranteed portion of the Loan, but only through participation. Participation, as used in this instrument, means the 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.

12. When Guarantee Terminates.

This Loan Note Guarantee will terminate automatically upon (a) full payment of the guaranteed Loan; (b) full payment of any loss obligation hereunder; or (c) written notice from the Lender to USDA that the guarantee will terminate upon USDA's receipt of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to be canceled by USDA.

13. Settlement.

The amount due under this instrument will be determined and paid as provided in the applicable USDA regulations in effect on the date of settlement unless such regulations are in direct conflict with this agreement.

14. Notices.

All notices will be initiated through the USDA RURAL DEVELOPMENT \_\_\_\_\_ for \_\_\_\_\_ (State of USDA Office) \_\_\_\_\_ (State) with mailing address at the day of this instrument:

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|------------------------|
| Address of USDA Office |
|------------------------|

UNITED STATES OF AMERICA  
Department of Agriculture

By: Agency official

Agency Official

(Name: Typed or Printed)

Title: Business & Cooperative Programs Director

Date: 8-10-2023

Assumption Agreement by: \_\_\_\_\_ Dated: \_\_\_\_\_

Assumption Agreement by: \_\_\_\_\_ Dated: \_\_\_\_\_