



GUIDELINES ILLINOIS STATE GUARANTEE PROGRAMS

Preliminary Statement

- A. These Guidelines for the Illinois State Guarantee Programs (as further defined herein, the “Programs”) are promulgated by the Illinois Finance Authority (the “Authority”) under powers granted to it to implement the Programs pursuant to the Illinois Finance Authority Act, 20 ILCS 3501/801-5 *et seq.*, as may be amended from time to time (the “Act”), in particularly Sections 830-5 through 830-50 of the Act, inclusive. They apply to each Program administered by the Authority pursuant to the Act in conjunction with a qualified Lender, as defined herein. Each Lender qualifying for one or more Guarantees, as defined herein, under one of the Programs must have entered into a Lender’s Agreement, as defined herein, by which the Lender expressly agrees that these Guidelines, and any future changes to them, apply to and supplement the terms of the Lender’s Agreement.
- B. The State of Illinois, through the Authority, is authorized, in accordance with the provisions of the Act, to issue Guarantees of qualifying loans in the amounts and under the conditions set forth in the Act, the Authority’s regulations implementing the Act, as may be amended from time to time, (currently codified as 8 Ill. Admin Code 1400) (the “Regulations”) and these Guidelines to certain farmers and farm businesses residing and operating in Illinois and meeting any relevant criteria set forth in the Act or the Regulations (each, a “Borrower”) which loans shall be utilized for the purpose of consolidating existing farm indebtedness, assisting farmers with capital purchases, fostering agri-businesses or financing specialized livestock facilities (each a “Loan” and together “Loans”).
- C. Borrower agrees to the terms of these Guidelines by signing and delivering to the Lender or Authority its application for a Guarantee and by the terms of the Borrower’s Certificate delivered at the closing of the Loan. Lender has agreed to the terms of these Guidelines by its application for a Guarantee, pursuant to its Lender’s Agreement with the Authority, and by its and Borrower’s Closing Statement and Certificate delivered to the Authority upon closing each Loan. These Guidelines apply to all Guarantees of Loans entered into, increased or renewed by the Authority from and after the effective date of these Guidelines or if these Guidelines are otherwise made applicable by agreement or acknowledgment of Borrower and Lender to or with the Authority.

ARTICLE I DEFINITIONS, SCOPE AND TRANSITION

1.01 Definitions.

Act – as defined in the Preliminary Statement.

Additional Guarantee – any guarantee of Borrower’s obligations from any party other than the State under the Guarantee.

Additional Guarantor – any party who provides an Additional Guarantee.

Anniversary Date – the date which occurs at one year intervals as determined by the Lender.

Application – an Application for a Guarantee for a Debt Restructuring Loan, a Young Farmer Loan, a Specialized Livestock Loan or an Agri-Business Loan, in a form and containing information prescribed by the Authority from Borrower and Lender to the Authority.

Application Fee – as defined in Section 3.01 hereof.

Asset – includes without limitation cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, net cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate, including life estates and personal residence, value of beneficial interests in trusts, government payments or grants, and all any other assets.

Authority – as defined in the Preliminary Statement.

Borrower – as defined in the Preliminary Statement.

Certificates – as defined in Section 5.01.

Chapter Proceeding – a bankruptcy proceeding of Borrower under Chapter 11, 12 or 13 of the Federal Bankruptcy Code or any successor or other bankruptcy statute or provision which provides for the rearrangement, reorganization or restructuring of the Borrower's debts, whether such proceeding was filed by or against Borrower or converted to such a proceeding from a Straight Bankruptcy.

Closing – as defined in Section 2.01(1).

Closing Costs – as defined in Section 3.02.

Closing Fee – as defined in Section 3.02.

Collateral – the property described in the Collateral Documents plus any other property pledged from time to time by Borrower, any Additional Guarantor or any other party to secure repayment of the Loan.

Collateral Documents – any mortgage, assignment of rents, security agreements, Additional Guarantees, or any other documents securing repayment of the Note.

Confirmation Date – the date on which the order approving the Borrower's Plan in the Chapter Proceeding becomes final and nonappealable.

Cure Period – as defined in Section 8.02.

Debt to Asset Ratio – the current outstanding Liabilities of Borrower divided by the current outstanding Assets of Borrower, determined as of the Application date.

Default – as defined in Section 8.01.

Default Notice – as defined in Section 8.02.

Default Rate – as defined in Section 4.02.

Determination Date – the date on which the Guaranteed Amount is determined, which date is 120 days after the occurrence of a Default which is not cured or waived.

Effective Date – December 1, 2004.

Farming Business – as defined in Section 2.01(b).

Gross Annual Income – income as defined in Section 61 of the Internal Revenue Code, as may be amended (26 U.S.C. 61).

Guarantee -- the guarantee of the State issued pursuant to the terms of the Act and Rules.

Guaranteed Amount – the sum of the Guaranteed Principal Amount and Guaranteed Interest Amount, as each are reduced from time to time by the application of payments in respect of the Loan as provided under these Guidelines. The Guaranteed Amount shall be calculated exclusive of any fees, expenses, costs, advances subsequent to the initial Loan and Interest in excess of the Interest Rate.

Guaranteed Principal Amount – an amount equal to 85% of the principal amount of the Loan outstanding on the Determination Date, reduced from time to time by the application of payments in respect of the Loan as provided under these Guidelines and exclusive of any fees, expenses, costs, Interest and advances subsequent to the initial Loan.

Guaranteed Interest Amount – an amount equal to 85% of the unpaid accrued Interest on the Loan outstanding on the Determination Date, calculated at the Interest Rate and reduced from time to time by the application of payments in respect of the Loan as provided under these Guidelines.

Impairment of Security – any event, act or failure to act by the Borrower or any Additional Guarantor that threatens or materially impairs all or any part of the Collateral or the value thereof or the ability of Lender to realize thereon to satisfy the Loan, including without limitation, an impending tax sale or failure or refusal of Borrower to pay taxes relating to the Collateral or maintain insurance on the Collateral in accordance with the provisions of the Loan Documents.

Interest Rate – the non-default rate of interest determined in accordance with Section 4.02.

Lender – any federal or State chartered bank, Federal Land Bank, Production Credit Association, Bank for Cooperatives, federal or State chartered savings and loan association or building and loan association, Small Business Investment Company or any other institution qualified within this State to originate and service loans, including, but without limitation to, insurance companies, credit unions, mortgage loan companies, and a wholly owned subsidiary of a manufacturer, seller or distributor of goods or services that makes loans to businesses or individuals, commonly known as a “captive finance company”.

Lender’s Agreement – an agreement in the form prescribed by the Authority signed by each Lender setting forth rights, standards and duties in regard to origination, servicing and payment or collection of Loans and issuance of Guarantees.

Liabilities – includes without limitation accounts payable, notes or other indebtedness owed to any source, taxes, rents amounts owed on real estate contracts or real estate mortgages, judgments, accrued interest payable, and any other liability.

Loan – as defined in the Preliminary Statement.

Loan Documents – a collective term meaning the Lender’s Agreement, the Note, the Collateral Documents, the Certificates, the Application, and all other documents evidencing or securing the Loan.

Loan Year – a 365-day period commencing with the date that the loan proceeds are disbursed.

Market Rate of Interest – a commercially reasonable rate of interest, as determined by the Authority at the time the Loan is requested or closed based on the type of Loan, the Borrower’s financial condition, the region or location of the Lender and Borrower, the type and extent of Collateral and other factors the Authority deems relevant.

Note – an installment note from Borrower payable to the order of Lender to evidence Borrower’s indebtedness to Lender for the Loan amount, bearing interest and payable upon such terms and conditions

as are set forth therein and any renewals, extensions, modifications, amendments, replacements or substitutions of it consented to by the Authority.

Obsolete Collateral – personal property no longer useful in connection with the operation of the Farming Business.

Payment Date – the date upon which any payment of principal and interest is due under the terms of the Note.

Payment Request – a request by Lender for payment under a Guarantee, when authorized by these Guidelines, after Default, identifying the Loan, Borrower, Default, justification for the payment, Loan balance, and calculation of the payment due and such other information as the Authority may specify or request.

Plan – the plan of reorganization confirmed in the Borrower’s Chapter Proceeding pursuant to a final, nonappealable order, as may be amended from time to time.

Plan Default – a failure to consummate the Plan or a default in payment of the Secured Debt under the Plan after the Confirmation Date which is not cured or waived by the Lender and which results in the acceleration of the Secured Debt and the right of Lender to realize on any Collateral securing it.

Prior Loan – a Debt Restructuring Loan to any Borrower which was guaranteed by a prior Guarantee pursuant to a Program and which is being repaid with borrowings under the Loan.

Prior Guarantee – a Guarantee issued pursuant to a Program which guaranteed a Prior Loan.

Program or Programs – one or more of the Guarantee programs established by the Act – pursuant to Sections 830-30, entitled “State Guarantees for Existing Debt”, 830-35, entitled “State Guarantees for Loans to Farmers and Agribusiness”, 830-45, entitled “Young Farmer Loan Guarantee Program”, and 830-50, entitled “Specialized Livestock Guarantee Program” – intended to assist and/or enable Illinois farmers to restructure and consolidate existing indebtedness, to enhance credit availability to beginning or new farmers, to finance or refinance debts for specialized livestock operations or to promote development of new enterprises.

Prohibited Transfer – any assumption or agreement to assume Borrower’s obligations under the Loan Documents by any person or entity (other than pursuant to the terms of any Additional Guarantee accepted by the Authority) or any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties, rights or interests which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of the Lender and Authority, which may be withheld in their sole and absolute discretion:

- (i) any property described in the Loan Documents, plus any other property pledged from time to time by Borrower or any other party to secure repayment of the indebtedness evidenced by the Note, or any part thereof or interest therein, excepting only sales or other dispositions of Obsolete Collateral; provided that, prior to the sale or other disposition thereof, and subject to the prior written approval of Lender, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the mortgage, lien, or security interest granted under the applicable Loan Documents with the same priority as with respect to the Obsolete Collateral; or
- (ii) all or any portion of the beneficial interest or power of direction in or to any trust if the trustee is the Borrower or is the owner of all or any portion of the Collateral; or

- (iii) any shares of capital stock of a corporate Borrower, a corporation which is a beneficiary of a trust if the trustee is the Borrower or is the owner of all or any portion of the Collateral, a corporation which is a general partner of a partnership Borrower, a corporation which is a general partner of a partnership beneficiary of any trust if the trustee is the Borrower or is the owner of all or any portion of the Collateral, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subsection (iii) (other than the shares of capital stock of a corporate trustee which is the Borrower or owns all or any portion of the Collateral); or
- (iv) all or any portion of the partnership or joint venture interest, as the case may be, of any Borrower or any direct or indirect beneficiary of a trust if the trustee is the Borrower or the owner of all or any portion of the Collateral if Borrower or such beneficiary is a partnership or a joint venture in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this definition shall not apply to (a) the lien of the Note, or (b) liens of current taxes and assessments not in default on any real property included in the Collateral.

Regulations – as defined in the Preliminary Statement.

Renewal Guarantee – the Guarantee of a Debt Restructuring Loan if it guarantees a Renewal Loan.

Renewal Loan – a Debt Restructuring Loan if used in whole or in part to renew, repay or refinance a Prior Loan.

Rules – all rules, regulations and guidelines adopted and in effect from time to time by the Authority pursuant to the powers granted it by the Act, including the Regulations and these Guidelines, all as may be amended from time to time.

Secured Debt – Loan debt which is reaffirmed by the Borrower or treated as debt secured by the Collateral or substitute collateral in a Straight Bankruptcy or in a Chapter Proceeding of the Borrower.

State – the State of Illinois.

Straight Bankruptcy – a bankruptcy under Chapter 7 of the Federal Bankruptcy Code (or any provisions under any successor or other bankruptcy statute which provides for liquidation of the debtor's estate), filed by or against the Borrower either initially or as a result of the conversion of a Chapter Proceeding.

Straight Bankruptcy Claim Event – as defined in Section 9.06.

Tri-Party Agreement – the tri-party agreement among the Authority, Lender and Borrower applicable to each Loan guaranteed by a Guarantee prior to the Effective Date.

Unguaranteed Principal Amount – 15% of the principal amount of the Loan remaining unpaid on the Determination Date, exclusive of any interest, costs, fees, expenses or advances subsequent to the initial Loan, and reduced from time to time by the application of payments in respect of the Loan as provided under these Guidelines.

Unsecured Debt – Loan debt which is treated as unsecured debt in a Straight Bankruptcy of the Borrower or under the Borrower's Plan in a Chapter Proceeding.

1.02 Scope and Transition.

- (a) These Guidelines apply to all Loans subject to a Guarantee entered into, increased or renewed after the Effective Date. They also apply to Loans subject to a Guarantee entered into prior to the Effective Date

- if applicable pursuant to the terms of an existing Lender's Agreement or any Collateral Documents or if Borrower and Lender acknowledge or agree with the Authority to the applicability of these Guidelines to those Loans, in the absence of such applicability or acknowledgement, Loans entered into prior to the Effective Date shall be subject to the Guidelines that existed at the time such Loan was made.
- (b) Borrower and Lender shall be deemed to have agreed to the applicability of these Guidelines to a Loan guaranteed by a Guarantee by any one or more of the following methods: (i) by signing and delivering a Lender Agreement, any Collateral Document or a Closing Statement and Certificate of Lender and Borrower acknowledging the applicability of these Guidelines; (ii) by signing and delivering an Application which acknowledges the applicability of these Guidelines to the Borrower's Loan; (iii) by requesting an increase or renewal of a Loan subject to a Guarantee after the Effective Date for any Loan issued prior to the Effective Date on any form which acknowledges the applicability of these Guidelines; or (iv) by any other written agreement to be bound by these Guidelines.
- (c) If these Guidelines are made applicable to a Loan guaranteed by a Guarantee issued prior to the Effective Date, then wherever the term "Tri-Party Agreement" is used in the Loan Documents, such term shall be deemed amended to refer instead to these Guidelines, as amended and in effect from time to time. From and after the date these Guidelines become applicable to a Loan guaranteed by a Guarantee that was issued prior to the Effective Date, these Guidelines shall replace the terms and conditions of the Tri-Party Agreement.

1.03 Incorporation of Preliminary Statement. The Preliminary Statement set forth above is hereby incorporated into and made a part of these Guidelines as if set forth at length herein.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF BORROWER

- 2.01 Representations and Warranties of Borrower.** To induce Lender to make the Loan and the Authority, on behalf of the State, to execute and deliver the Guarantee, each Application must show, and by incorporation of these Guidelines into the Loan Documents, the Borrower represents, covenants, and warrants to Lender and the Authority:
- (a) Borrower, if a natural person, as of the date of the Application, was not less than eighteen (18) years of age and was (and during the term of the Guarantee, shall remain) a resident of the State, and Borrower, if an agribusiness pursuant to an Agri-Business Loan, is located in the State and will use agricultural products grown or raised in the State.
- (b) Borrower is (and during the term of the Guarantee, shall remain) the principal person or entity that is entitled to and does operate, manage and control the farming business described in the Application ("Farming Business").
- (c) Except if the Loan is a Specialized Livestock Loan, not less than fifty percent (50%) of Borrower's Gross Annual Income was derived from the Farming Business.
- (d) Unless the Loan is a Renewal Loan, Borrower's Debt to Asset Ratio:
- (i) If the Loan is a Debt Restructuring Loan, is not less than forty percent (40%) and not greater than sixty-five percent (65%);
- (ii) If the Loan is a Young Farmer Loan, is not less than forty percent (40%) and not greater than seventy percent (70%); and

- (iii) If the Loan is a Specialized Livestock Loan, is not greater than seventy percent (70%), unless market and/or production risk measures have been undertaken.
- (e) Borrower's net worth:
 - (i) If the Loan is a Young Farmer Loan, is not less than \$10,000, and
 - (ii) If the Loan is an Agri-Business Loan to a farmer, is not greater than \$500,000.
- (f) If the Loan is an Agri-Business Loan, Borrower's total sales of agricultural products, commodities or livestock exceeds \$20,000.
- (g) The proceeds of the Loan shall be used solely for the purposes designated in Section 4.01 below. No portion of the Loan shall be used for any other purpose (other than payment of the Closing Fee and the Closing Costs as set forth in Section 3.02) even if such use is for the purpose of acquiring other real or personal property or for the future operation of Borrower's Farming Business.
- (h) Unless the Loan is a Renewal Loan or an Agri-Business Loan, all existing debts of the Farming Business that are not being paid in full by use of the Loan proceeds shall, as of the date of disbursement of the Loan proceeds, be brought current, either through use of the Loan proceeds or otherwise.
- (i) The maximum amount of the Loan:
 - (i) If a Debt Restructuring Loan, a Young Farmer Loan or an Agri-Business Loan to a farmer, shall not exceed \$500,000; and
 - (ii) If a Specialized Livestock Loan, shall not exceed \$1,000,000.
- (j) Borrower and Borrower's Farming Business shall have only one Debt Restructuring Loan or Agri-Business Loan outstanding at any given time that is guaranteed under a Program (except for additional Agri-Business Loans made for purposes of expansion of projects financed in part by a previously issued Guarantee as approved by the Authority). For purposes of the foregoing representation and warranty, if Borrower and any other applicant for a Loan guaranteed by a Program have filed separate Schedule F's for federal income tax purposes, Borrower and such other applicant will be deemed to operate separate farming operations.
- (k) Borrower will not, in any material respect, encumber, dispose of, or make any changes to the Collateral prior to obtaining the consent of the Authority which may be withheld in its sole and absolute discretion. For purposes of this section, a "material" respect is any act of the Borrower concerning the Collateral outside the Borrower's ordinary course of business.
- (l) As of and after the closing date of the Loan Documents (the "Closing"), there are no outstanding judgments, liens, deficiencies, suits, causes of action, or claims against Borrower.

ARTICLE III FEES

- 3.01 Application Fee.** Borrowers must pay a nonrefundable Application Fee of \$300 (the "Application Fee") to the Authority. The Authority shall receive the Application Fee as reimbursement for its administrative expenses. The Application Fee is payable at the time of the Application's submission.
- 3.02 Closing Fee and Closing Costs.** Upon disbursement of the Loan or demand, Borrower shall pay a nonrefundable closing fee (the "Closing Fee") of:

- (a) For a Debt Restructuring Loan or an Agri-Business Loan, up to three-fourths of one percent (3/4 of 1%) of the principal amount of the Loan to Lender which shall be disbursed as follows: (a) an amount equal to one-half of one percent (1/2 of 1%) of the principal amount of the Loan shall be paid to the Authority in payment of administrative expenses and legal fees, and (b) one-fourth of one percent (1/4 of 1%) of the principal amount of the Loan, if not waived or reduced by Lender, shall be retained by Lender in payment of administrative expenses; and
- (b) For a Young Farmer Loan or a Specialized Livestock Loan, up to one percent (1%) of the principal amount of the Loan to Lender which shall be disbursed as follows: (a) an amount equal to three-fourths of one percent (3/4 of 1%) of the principal amount of the Loan shall be paid to the Authority in payment of administrative expenses and legal fees, and (b) one-fourth of one percent (1/4 of 1%) of the principal amount of the Loan, if not waived or reduced by Lender, shall be retained by Lender in payment of administrative expenses; provided, however, that the respective portions of the Application Fee paid to the Authority shall be deducted from and credited against the Closing Fee due to the parties. Notwithstanding any other provision of these Guidelines or the Loan Documents, in addition to the Closing Fee, the Borrower shall be responsible for and shall pay the closing costs relating to the Loan, including without limitation the costs of any survey and any credit report, any abstract and attorney's fees, any recording, filing, or release charges, any appraisal fees incurred at or before the Closing, and the costs of title insurance, if obtained (the "Closing Costs"). Anything to the contrary contained in these Guidelines notwithstanding, the Closing Fee and the Closing Costs are payable upon demand or may be deducted and paid from the proceeds of the Loan. Lender agrees that it shall charge no fees or points in connection with processing the Application and disbursing the Loan other than those set forth in this Article III, or expressly provided elsewhere in these Guidelines.

3.03 Annual and Additional Fees. Lender agrees to pay to the Authority on each Payment Date an annual fee equal to one fourth of one percent (1/4 of 1%) of the outstanding principal amount of the Loan (determined after deducting principal amounts paid in reduction of the principal amount of the Loan on such Payment Date). Lender further agrees to pay to the Authority any other necessary and ordinary administrative fees as expressly provided by the Act and the Rules. Lender shall pay these fees regardless of whether the Borrower is in default. Lender further agrees not to charge the Borrower to cover the cost to Lender of these fees.

3.04 Loan Documents. Lender assumes all responsibility for payment of all costs and expenses incurred in connection with exercising all rights afforded to it under the Loan Documents in connection with any delinquency or Default thereunder; provided, however, that Lender may require Borrower to reimburse it for such amounts under the terms of the Loan Documents. Lender shall take all action necessary or desirable to properly obtain and perfect a mortgage and/or security interest in the Collateral pursuant to the Note and the Collateral Documents, including without limitation filing or recording any mortgage and/or Uniform Commercial Code financing statements or obtaining physical possession of certificates of title with the Lender's lien properly noted thereon. Lender's security interest and mortgage lien on the Collateral shall be obtained and perfected so as to avoid set aside of the lien or security interest in any subsequent bankruptcy of the Borrower or other grantor of the lien or security interest.

ARTICLE IV AGREEMENTS OF LENDER

4.01 Use of Loan Proceeds.

- (a) **Guarantee For Debt Restructuring Loan.** If the Guarantee is for a Debt Restructuring Loan, Lender shall disburse all proceeds of the Loan (after payment of the Closing Fee and the Closing Costs pursuant to Section 3.02) as follows: (a) to pay in full those existing debts of the Farming Business which are to be consolidated and restructured as indicated in the Application, and (b) the balance shall be utilized to bring all other existing debts of the Farming Business current. If the proceeds of the Loan

- are insufficient to make all of the payments set forth in this subsection (a) of Section 4.01 and/or if all of the remaining existing debts of the Farming Business cannot be brought current either by payment from any available remaining Loan proceeds or payment from other funds of Borrower, or if any Loan proceeds will remain after payment of the amounts described in subsections (a) and (b) of this Section, then Lender shall not disburse any portion of the Loan proceeds and shall immediately advise the Authority that the Loan does not qualify for the Program, in which event the Application therefore shall be deemed withdrawn. If the Application is so withdrawn, Lender shall be responsible for payment to the Authority on demand of the Closing Fee and any other expenses incurred by the Authority in connection with the Loan, and Lender may require reimbursement therefore from Borrower.
- (b) **Renewal Guarantee.** If the Loan is a Renewal Loan, the Loan shall be a renewal of the Prior Loan and the proceeds of the Loan shall be used to replace or refinance the Prior Loan, except to the extent the Borrower pays accrued but unpaid interest on the Prior Loan. Any additional funds lent in excess of the unpaid balance of the Prior Loan shall be used to pay Closing Costs and Loan Fees and, to the extent additional proceeds are available, to refinance other existing debts of the Farming Operation.
 - (c) **Young Farmer Loan.** If the Loan is a Young Farmer Loan, the Lender shall disburse all proceeds of the Loan (after payment of the Closing Fee and the Closing Costs pursuant to Section 3.02) to purchase new capital assets such as land, buildings, machinery and equipment (used equipment is permissible to the extent authorized by law), breeding livestock, and soil and water conservation projects, and, subject to the approval of the Authority, to refinance existing debt as needed to improve lien positions or financial structure. Proceeds of the Loan may be used for purchases of new capital assets made not more than six (6) months prior to the Authority's approval of the Loan.
 - (d) **Specialized Livestock Loan.** If the Loan is a Specialized Livestock Loan, the Lender shall disburse all proceeds of the Loan (after payment of the Closing Fee and the Closing Costs pursuant to Section 3.02) for the construction, purchase, and/or remodeling of facilities related to specialized livestock operations and the purchases of equipment and breeding livestock, and, subject to the approval of the Authority, to refinance existing debt as needed to improve collateral, lien positions or financial structure.
 - (e) **Agri-Business Loan.** If the Loan is an Agri-Business Loan, the Lender shall disburse all proceeds of the Loan (after payment of the Closing Fee and the Closing Costs pursuant to Section 3.02) for the purchase of new or used equipment, facilities or property(ies) designed to promote the growth and development of new crops or livestock not customarily grown or produced in the State, or which emphasize vertical integration of grain or livestock produced or raised in the State which results in a finished agricultural product for consumption or use, and, subject to the approval of the Authority, to refinance existing debt as needed to improve collateral, lien positions or financial structure. Proceeds of the Loan may be used to restructure debt that has been incurred by a farmer/agri-business any time not more than six (6) months prior to the Authority's approval of the Loan.

Except for Renewal Loans, within three (3) business days after disbursement of the Loan proceeds, Lender shall forward to the Authority copies of all checks and transmittal letters used to effectuate such disbursement and, as soon as possible thereafter, Lender shall obtain and, where applicable, record or file appropriate receipts and releases respecting the indebtedness paid from such disbursement, including, without limitation, cancelled notes, releases of mortgages and security agreements, and Uniform Commercial Code termination statements, all as applicable, and forward copies of the same to the Authority.

- 4.02 Interest Rate.** At the time the Loan is applied for or entered into, the Interest Rate on the Loan must be determined by the Authority to be below the Market Rate of Interest generally available to Borrower. Such determination shall be deemed made by the Authority's execution of the Note. Once the Interest Rate is so determined, if it is variable it may be adjusted at intervals as agreed upon between the Lender and the

Borrower at the time the Loan is entered into based on changes in the index or base rate. If the Loan is repriced, the new rate of interest cannot exceed the rate that would have applied at that time had the Loan not been repriced, i.e., the new rate of interest on the Loan cannot increase the margin over the index or base rate set forth in the Loan Documents.

The Interest Rate can be converted to a fixed rate at any time during the life of the Loan by mutual written agreement of the Borrower, Lender and Authority, either by pre-agreement at the outset of the Loan or thereafter.

If not fixed for the life of the Loan, Lender's rate shall be based on some objectively identifiable and published base rate or index, such as those published in the Wall Street Journal or the Lender's publicly available or announced prime rate.

Notwithstanding the foregoing, Lender may, to the extent permitted by law, charge a default rate of interest, commencing on the date that Lender gives a Default Notice, above the Interest Rate in effect from time to time as determined by Lender as its standard default rate (the "Default Rate"). Upon the Authority's written consent, all or a portion of Lender's rights under the Loan may be assigned by Lender to a third party, or a third party may obtain an interest in the Loan through a participation agreement or similar arrangement. Borrower shall have the right to prepay all or a portion of the indebtedness evidenced by the Note at any time.

- 4.03 Lender's Remedies.** Lender agrees to exercise and diligently pursue all of its legally enforceable rights and remedies as provided in the Loan Documents in the event of a Default thereunder, all as more fully set forth in Articles VIII and IX hereof and in the Lender's Agreement, all subject to the prior approval of the Authority and the cure or reinstatement rights of the Borrower; provided, however, that no such approval shall be required for service of a Default Notice which shall be promptly sent by Lender to Borrower in accordance with Sections 8.02 and 11.03 hereof.
- 4.04 Impairment of Security.** Lender shall not permit or allow an Impairment of Security and shall advise the Authority immediately as soon as it has knowledge of the existence of an Impairment of Security. Without limiting the Authority's rights under Section 6.10, if such Impairment of Security (which is not cured by Borrower or Lender within the applicable periods of time set forth in the Loan Documents) occurs prior to any payments made by the Authority under the Guarantee, the Impairment of Security shall be deemed a failure to maintain sufficient Collateral and the Authority shall be entitled to revoke the Guarantee pursuant to Section 7.01. If the Impairment of Security occurs after the Authority has paid amounts under the Guarantee, and Lender fails to cure such Default in accordance with the terms of the Loan Documents, it shall immediately so notify the Authority which shall have the right, but not the obligation, to advance amounts to Lender or other parties, including without limitation governmental authorities, insurers, and attorneys, as may be necessary or desirable to protect and preserve the Collateral. Any action by the Lender or Authority to protect and preserve the Collateral shall not waive any rights of Lender to declare a Default under the Loan Documents, and if Lender has not theretofore declared a Default, Lender shall, unless otherwise directed by the Authority in writing, proceed to declare a Default and exercise and diligently pursue all of its rights and remedies under the Loan Documents with respect thereto as required under these Guidelines. In the event that the Authority shall have already paid amounts under the Guarantee, if requested by the Authority, the Lender shall refund to the Authority the amount of the Authority's losses caused by Lender's failure to prevent Impairment of Security, together with interest thereon at the Default Rate from the date of payment by the Authority until the date of reimbursement in full by the Lender.
- 4.05 Subordination.** Lender agrees that all principal, interest, fees, charges, or premiums payable under documents or instruments evidencing or pertaining to indebtedness for money borrowed by Borrower from Lender, other than indebtedness evidenced by the Loan (the "Subordinated Indebtedness") shall be subordinated in right of payment to the prior payment in full of the Loan and all other payments due or to become due under these Guidelines, the Loan Documents, or the Collateral Documents. Lender agrees that it will obtain the consent of the Authority, which consent may be withheld in its sole and absolute

discretion, prior to using the Collateral for any Subordinated Indebtedness. In addition, to the extent all or any portion of the Collateral also secures any Subordinated Indebtedness, Lender agrees that its interest therein shall be subordinate and junior to the interest of Lender and the Authority in Collateral arising under these Guidelines, the Loan Documents, or the Collateral Documents.

- 4.06 Loan Duration.** Each Debt Restructuring Loan shall be set up on a payment schedule not to exceed thirty (30) years, and shall be no longer than thirty (30) years in duration. Each Young Farmer Loan shall be set up on a payment schedule not to exceed thirty (30) years, but shall be no longer than fifteen (15) years in duration. Each Specialized Livestock Loan and Agri-Business Loan shall be no longer than fifteen (15) years in duration. Lender will tailor the payment schedule for the Loan to Borrower's Collateral and cash flow.

ARTICLE V ISSUANCE OF GUARANTEE

- 5.01 Issuance of Guarantee.** The Authority, on behalf of the State, shall execute and deliver the Guarantee upon its receipt of the Loan Documents or Lender's certification pertaining to them, all of which shall be in form and substance satisfactory to the Authority and shall include: (a) the Lender's Agreement, (b) the Note, (c) certifications from Borrower and Lender substantially prescribed by, and available from, the Authority (the "Certificates"), and (d) such other certifications, documents, evidence of title to and perfection of Lender's security interests in the Collateral, and evidence of insurance thereon as the Authority may require. Borrower acknowledges and agrees that any payment by the Authority pursuant to the Guarantee shall not (i) discharge or release the Borrower in any manner from the obligation to make payment in full under the Note and Collateral Documents and to comply with all the provisions hereof, (ii) reduce any of the Borrower's obligations hereunder or thereunder, or (iii) be deemed to be a cure of any default hereunder or thereunder. If the Loan is a Renewal Loan and the Guarantee is a Renewal Guarantee, then effective upon the issuance of the Guarantee pursuant to these Guidelines (i) the Prior Guarantee shall be deemed cancelled and (ii) Lender shall promptly return to the Authority the original of the Prior Guarantee marked cancelled. Lender and Borrower acknowledge that so long as any Guarantee for a Debt Restructuring Loan or an Agri-Business Loan is outstanding, no other guarantees of any Debt Restructuring Loans or Agri-Business Loans to Borrower under the Program are or can be outstanding or effective (except where additional Guarantees for Agri-Business Loans are made for purposes of expansion of projects financed in part by a previously issued Guarantee).
- 5.02 Renewals, Increases or Amendments of Pre-Effective Date Guarantees or Loans.** If the Loan is a renewal of, an increase of, or an amendment to a Loan guaranteed by a Guarantee issued prior to the Effective Date, Lender shall, if the Authority so requests, be required to execute a Lender's Agreement (if Lender has not already done so) and execute and deliver with Borrower a Closing Statement and Certificate of Lender and Borrower or such other form as the Authority may specify which acknowledges, among other matters, the applicability of these Guidelines to the Loan. Thereafter, all references to the Tri-Party Agreement in the Loan Documents used by Lender prior to the Effective Date shall be amended to instead reference these Guidelines, as in effect and amended from time to time, whereupon these Guidelines shall be deemed to have replaced the Tri-Party Agreement.
- 5.03 Deficiencies in the Documents.** If, after review by the Authority, any of the Loan Documents including (a) the Lender's Agreement, (b) the Certificates, (c) the Note or (d) any other certifications, documents, evidence of title to the Collateral delivered to the Authority in respect to the Loan are found to contain any deficiencies or are in a form unsatisfactory to the Authority, the Authority may require correction of the deficiencies before issuance of the Guarantee. Issuance of a Guarantee by the Authority is not evidence that the Loan Documents complied with the requirements applicable to them contained in the Lender's Agreement and these Guidelines. There is no duty of the Authority to review any of the Loan Documents submitted by Lender, and the Authority's failure to review any of the Loan Documents will not prejudice the Authority's right to raise, in appropriate cases, the failure of the Loan Documents to comply with the

material requirements of the Lender's Agreement or these Guidelines as a defense to payment of the Guarantee.

ARTICLE VI LIMITATIONS ON GUARANTEE

- 6.01 General.** Lender expressly acknowledges and agrees that the obligations of the Authority under the Guarantee are limited as set forth in the Act and the Rules, including the following provisions of this Article VI as well as other provisions of these Guidelines.
- 6.02 Maximum Percentage Guaranteed Respecting the Loan.** Subject to the Act and the Rules including the limits, terms, conditions and limitations of these Guidelines, the Guarantee is to assure Lender that if a Default occurs, the Lender will collect the Guaranteed Amount – 85% of the principal and Interest (calculated at the Interest Rate) outstanding on the Loan as of the Determination Date. Under no circumstances is either the State or Authority liable to the Lender under the Guarantee or otherwise for any greater percentage of the principal of and Interest (calculated at the Interest Rate) on the Loan outstanding on the Determination Date.
- 6.03 Amounts Not Covered by Guarantee.** Lender agrees that it shall be responsible for losses incurred respecting (a) any Loan principal other than the Guaranteed Principal Amount, (b) any Interest, whether accruing before or after the Determination Date, other than the Guaranteed Interest Amount, and (c) any and all other amounts, including costs and expenses of Loan administration, disbursements to protect and preserve Collateral, costs of foreclosure on the Collateral, attorney's fees and costs, any costs advanced by Lender in accordance with the terms of the Loan Documents and all Interest calculated in excess of the Interest Rate.
- 6.04 Maximum Amount Payable Under Guarantee.** IN NO EVENT SHALL THE INTEREST AMOUNT GUARANTEED BY THE AUTHORITY INCLUDE INTEREST ACCRUING BEYOND THE DETERMINATION DATE. IN NO EVENT SHALL THE GUARANTEED AMOUNT OR THE LIABILITY OF THE AUTHORITY UNDER THE GUARANTEE EXCEED AMOUNTS IN THE AGGREGATE TOTALING THE LESSER OF THE FACE VALUE OF THE NOTE OR 85% OF THE MAXIMUM LOAN AMOUNT AS INDICATED IN SECTION 2.01(i).
- 6.05 Time Limit.** ALL CLAIMS BY LENDER UNDER THE GUARANTEE SHALL BE MADE BY LENDER WITHIN ONE (1) YEAR FROM THE DATE OF DEFAULT. LENDER'S FAILURE TO SUBMIT ITS CLAIM WITHIN THE ONE (1) YEAR PERIOD SHALL RENDER THE GUARANTEE NULL AND VOID AND NEITHER THE STATE NOR AUTHORITY SHALL HAVE ANY FURTHER LIABILITY OR OBLIGATION THEREUNDER. FOR A CHAPTER PROCEEDING, THIS ONE (1) YEAR PERIOD SHALL BE EXTENDED BY THIRTY (30) DAYS AFTER THE CONFIRMATION DATE FOR AMOUNTS PAYABLE UNDER THE GUARANTEE PURSUANT TO SECTION 9.07(b)(iv) BELOW AND BY THIRTY (30) DAYS AFTER ANY PLAN DEFAULT FOR AMOUNTS PAYABLE UNDER GUARANTEE PURSUANT TO SECTION 9.07(b)(iv) BELOW. FOR A STRAIGHT BANKRUPTCY, THIS ONE (1) YEAR PERIOD SHALL BE EXTENDED BY THIRTY (30) DAYS AFTER THE OCCURRENCE OF THE FIRST STRAIGHT BANKRUPTCY CLAIM EVENT AS PROVIDED FOR IN SECTION 9.06 BELOW.
- 6.06 MAXIMUM AMOUNTS GUARANTEED AND PAID RESPECTING ALL STATE GUARANTEES FOR DEBT RESTRUCTURING LOANS.** THE AGGREGATE TOTAL PRINCIPAL AMOUNT OF ALL DEBT RESTRUCTURING LOANS GUARANTEED WHICH ARE OUTSTANDING UNDER THE STATE GUARANTEE PROGRAM SHALL NOT EXCEED \$160,000,000, EIGHTY-FIVE PERCENT (85%) OF WHICH OBLIGATIONS SHALL BE GUARANTEED BY THE AUTHORITY AS PROVIDED IN THE ACT.

- 6.07 MAXIMUM AMOUNTS GUARANTEED AND PAID RESPECTING ALL STATE GUARANTEES FOR YOUNG FARMER LOANS, SPECIALIZED LIVESTOCK LOANS, AND AGRI-BUSINESS LOANS.** THE AGGREGATE TOTAL PRINCIPAL AMOUNT OF ALL YOUNG FARMER LOANS, SPECIALIZED LIVESTOCK LOANS AND AGRI-BUSINESS LOANS GUARANTEED WHICH ARE OUTSTANDING UNDER THE STATE GUARANTEE PROGRAM SHALL NOT EXCEED \$75,000,000, EIGHTY-FIVE PERCENT (85%) OF WHICH OBLIGATIONS SHALL BE GUARANTEED BY THE AUTHORITY AS PROVIDED IN THE ACT.
- 6.08 Maximum Amount Payable under Guarantee Reduced by Borrower Payments.** The Guaranteed Amount, which is the maximum amount payable under the Guarantee, shall be reduced by the application of payments made in respect of the Loan as provided under these Guidelines, whether such payments are made before or after the commencement of a bankruptcy proceeding of the Borrower. Once the Guaranteed Amount remaining unpaid under the Guarantee is reduced by application of payments on the Guaranteed Amount as provided in these Guidelines, the Guaranteed Amount may not be reborrowed on by Borrower without the written consent of the Authority, and the Authority and State shall have no liability under the Guarantee for any amounts other than the reduced Guaranteed Amount. Once the Guaranteed Amount is reduced to zero by application of payments to the Guaranteed Amount, whether before or after the commencement of bankruptcy proceedings by or against the Borrower, the Authority and State shall have no further liability in respect of the Guarantee or Loan, the Guarantee shall be deemed discharged and terminated, and Lender shall promptly return the original of the Guarantee to the Authority. Lender's obligations and duties under the terms of these Guidelines to continue to collect the Loan, realize on any Collateral and remit amounts collected to repay the Authority for payments under the Guarantee shall continue and survive termination of the Guarantee.
- 6.09 Bankruptcy Delays Claim on Guarantee.** As provided in Article IX below, the filing of a bankruptcy petition by or against Borrower will delay the obligation of the Authority to honor a Payment Request on the Guarantee (a) with respect to a Straight Bankruptcy, until the occurrence of a Straight Bankruptcy Claim Event, (b) with respect to Unsecured Debt in a Chapter Proceeding, until the Confirmation Date, and (c) with respect to Secured Debt in a Chapter Proceeding, until the occurrence of a Plan Default.
- 6.10 Offsets and Claim Backs.** As described herein, any and all payments on the Guarantee are subject to reductions and offsets due to Lender's failure to abide by the terms and conditions of these Guidelines or other Lender conduct which results in a larger claim on the Guarantee than would otherwise have been the case or a loss to the Authority in respect of repayment of the Guarantee.
- (a) **Lender's Failure to Comply with Its Duties.** To the extent any act or omission by the Lender results in, or gives rise to, any valid defense, set-off, or counterclaim by the Borrower or any Additional Guarantor against the Lender, State or Authority, or results in or fails to remedy any Impairment of Security, or results in or causes a commercially unreasonable disposition of Collateral, or if Lender shall fail to properly obtain and perfect a mortgage and/or security interest in the Collateral, the liability of the Authority under the Guarantee shall be reduced by (i) the amount of loss resulting from the Lender's act or omission, and (ii) all amounts expended by the Authority in protecting and preserving the Collateral, including without limitation reasonable attorneys' fees. It shall be a defense to payment to Lender under the Guarantee and a ground for recovery from the Lender of any amounts paid by the State or Authority under the Guarantee with Interest at the Default Rate, if the Lender has (i) permitted an Impairment of Security, (ii) impaired rights of collection against the Borrower or any Additional Guarantor by errors, omissions or failure to discharge its obligations under these Guidelines, (iii) made any misrepresentations or material omissions of information to the Authority or (iv) submitted information to the Authority from or concerning the Borrower or the Collateral which the Lender knew or had reason to believe was untrue, incorrect or misleading in any material respect. In the event that the Authority shall have already paid amounts under the Guarantee, if requested by the Authority, the Lender shall refund to the Authority the amount of the Authority's losses caused by Lender's failure to comply with its duties under the Guidelines or the Lender's Agreement, together

- with interest thereon at the Default Rate from the date of payment by the Authority until the date of reimbursement in full by the Lender.
- (b) **Lender's Failure to Collect Loans after Default.** After Default, if Lender does not proceed to exercise remedies, realize on Collateral and collect the Loans as required by the provisions of these Guidelines or otherwise fails to act in a commercially reasonable manner, unless Lender is prevented from proceeding against the Borrower solely as a result of a bankruptcy proceeding by or against the Borrower, the Authority shall have no obligation to pay any amounts under the Guarantee. In the event that the Authority shall have already paid amounts under the Guarantee, if requested by the Authority, the Lender shall refund to the Authority the amount of the Authority's losses caused by Lender's failures, together with interest thereon at the Default Rate from the date of payment by the Authority until the date of reimbursement in full by the Lender.
 - (c) **Reduction of Guarantee Payment after Bankruptcy Due to Lender's Conduct.** No portion of the Loan which is treated as Unsecured Debt, subordinated to other creditors of the Borrower or not allowed as a claim in the bankruptcy proceedings of the Borrower is payable or reimbursable to Lender by the Authority or State under the Guarantee nor shall it be included within the Unguaranteed Principal Amount or the Loan for purposes of calculating the Guaranteed Amount, if it is treated as Unsecured Debt, is subordinated or is disallowed as a result of: (a) Lender's failure to properly perfect liens on the Collateral, (b) the set aside or avoidance of liens or claims relating to the Loan or the Collateral as a preference, fraudulent transfer or other defense which arose due to the Lender's omissions, negligence, misconduct, or failure to timely perfect liens, (c) Lender's failure to diligently file, pursue and protect its claim in respect of the Loan as a secured creditor in the bankruptcy proceedings, or (d) any other failure, omission, breach or misrepresentation committed by Lender under these Guidelines or the Loan Documents or in respect of the Loan.
 - (d) **Authority's Other Rights and Defenses Not Impaired.** The failure or waiver of the Authority's rights under this Section on any given occasion or at any given time shall not constitute a waiver of its right to assert claims, offsets or defenses in respect of the Guarantee on any future occasion or time for the same or for any other event, nor shall it preclude the Authority's rights under any other provision of these Guidelines, including its right to revoke the Guarantee.

6.11 Limits on Guarantee Claims. Except as otherwise provided in these Guidelines, claims under the Guarantee are barred unless made on or before the earlier to occur of the following events: (i) repayment of the Loan in full; (ii) revocation of the State Guarantee; (iii) ninety (90) days after expiration of the duration of the Loan as permitted by Section 4.06; or (iv) one (1) year after acceleration of the Loan from a Default or otherwise as provided in Section 6.05. The Guarantee does not cover amounts repaid to Lender which are reborrowed, amounts advanced by Lender not part of the Loan, or, unless later disbursements specifically pre-approved by the Authority, advances not made at or within 30 days of the Loan's Closing unless the Loan is a construction loan and the advances are made in accordance with the Loan Documents and Closing Statement and Certificate of Lender and Borrower.

ARTICLE VII REVOCATION OF GUARANTEE

- 7.01 Revocation By Authority.** Subject to limits imposed by the Act or applicable Rules, the Guarantee may be revoked by the Authority at any time by giving ninety (90) days written notice to Borrower and Lender upon the occurrence or existence of any one or more of the following circumstances (for purposes of this Article VII only, each of which shall be considered an Default):
- (a) any representation, warranty, certification, statement or report made by Borrower or Lender in the Application (including all attachments thereto and supplementary information submitted in connection therewith), these Guidelines, any of the Loan Documents, or any other documents delivered in

- connection with the Loan, including the Closing Statement and Certificate of Lender and Borrower, is or becomes false or materially misleading or contains a material omission; or
- (b) Borrower and/or Lender modify, amend, cancel or waive any of the terms and provisions of the Note or the Loan Documents without the Authority's prior written consent, which consent may be withheld in its sole and absolute discretion; or
 - (c) Borrower fails to provide and maintain sufficient Collateral to secure all amounts guaranteed by the Guarantee in accordance with the terms of these Guidelines, the Note or the Loan Documents; or
 - (d) Borrower fails to notify, and receive the written approval of, the Authority prior to any material change in the Collateral, or Lender fails to notify, and receive the written approval of, the Authority prior to using the Collateral for any Subordinated Debt; or
 - (e) any failure to make due and punctual payment of any monies required to be paid under these Guidelines, the Note or the Loan Documents, as and when the same are due and payable.

Upon the occurrence of any of the foregoing events, Lender shall notify the Authority in writing of such event. If the Authority notifies Lender and the Borrower that it is revoking the Guarantee, Lender shall be obligated to exercise all of the rights and remedies granted to it in the Loan Documents including acceleration of the Loan, unless the Authority otherwise agrees in writing.

7.02 Effect of Revocation Due to Fault of Borrower. If the Authority elects to revoke the Guarantee for any Default listed under Section 7.01 hereof by giving the Lender and Borrower ninety (90) days advance written notice of its intent to revoke the Guarantee, except as provided in Section 7.03 below, revocation shall be with recourse by the Lender under and to the Guarantee to the extent and subject to the terms and conditions provided in the Act, the Regulations, these Guidelines, the Lender's Agreement and the Guarantee. Upon receipt of a notice of revocation of the Guarantee, the Lender shall give a Default Notice (as hereinafter defined) to the Borrower. If the Default sets forth in the Default Notice shall not have been cured within any applicable cure period, then either (i) the Authority shall make payment to the Lender under the Guarantee as provided herein but subject to the other provisions of these Guidelines, the Lender's Agreement, the Act and the Guarantee, or (ii) Lender may elect to continue the Loan without the Guarantee by so notifying the Authority in writing, in which event the Guarantee shall be of no further force and effect. In the event that the Borrower cures the Default within any applicable cure period, the Guarantee shall continue in existence as provided in these Guidelines.

7.03 Effect of Revocation Due to Fault of Lender. In the event of Lender's intentional act causing, knowing participation or acquiescence in, or gross negligence resulting in, the occurrence or existence of a Default specified in Section 7.01 or a breach under the Lender's Agreement, the Authority may revoke the Guarantee without recourse or claim under it. The revocation of the Guarantee shall be effective without any further action or notice upon the expiration of ninety (90) days from the date the notice of revocation without recourse (with a statement of reasons for the revocation) is served upon the Lender, unless within such ninety (90) day period the Default or breach of the Lender's Agreement is cured or the Authority otherwise determines that the recourse under the Guarantee should be permitted. After revocation of the Guarantee under this Section 7.03 without recourse, the Guarantee shall be null and void and the Authority shall have no obligation whatsoever to pay any amount that would otherwise have been payable hereunder or thereunder or under any of the Loan Documents or any other Document, including amounts payable respecting Defaults that may have occurred prior to such revocation. From and after revocation of the Guarantee under this Section 7.03 without recourse, all provisions contained in the Loan Documents granting the Authority the right to consent to any act or transaction shall be deemed null and void without further action of the parties hereto; provided, however, that nothing herein contained shall terminate any liability of Borrower or Lender to the Authority accruing under these Guidelines or the Loan Documents prior to the date of such revocation. Revocation of the Guarantee under this Section 7.03 shall be effective

notwithstanding (i) any acceleration by Lender of Borrower's obligations under the Loan, or (ii) any demand for payment made by Lender upon the Authority under the Guarantee.

7.04 Withdrawal From The Program By Lender.

- (a) **Debt Restructuring Loan.** After the first three (3) Loan Years, Lender may review the Debt Restructuring Loan from time to time and withdraw from the Program for any reason whatsoever on an annual basis. If Lender elects to undertake such a review, it must provide the Borrower and Authority with written notification of its decision whether to withdraw from or continue with the Program. A notice of withdrawal shall be given not less than ninety (90) days prior to the effective date of withdrawal set forth therein and must specify the reasons therefor.
- (b) **Renewal Loan, Young Farmer Loan and Specialized Livestock Loan.** To the extent permitted by the Act and applicable Regulations, at any time for Renewal Loans, Young Farmer Loans, and Specialized Livestock Loans, Lender may review the Loan from time to time and withdraw from the Program for any reason whatsoever. If Lender elects to undertake such a review, it must provide the Borrower and Authority with written notification of its decision whether to withdraw from or continue with the Program. A notice of withdrawal shall be given not less than ninety (90) days prior to the effective date of withdrawal set forth therein and must specify the reasons therefor.
- (c) **Agri-Business Loan.** After the first five (5) Loan Years and if the Interest Rate is fixed, Lender may review the Agri-Business Loan from time to time and withdraw from the Program for any reason whatsoever on an annual basis. However, if the Interest Rate is variable, Lender may not withdraw from the Program for any reason except lack of performance by Borrower, insufficient Collateral, revocation of the Guarantee or maturity of the Loan. If Lender elects to undertake such a review, it must provide the Borrower and Authority with written notification of its decision whether to withdraw from or continue with the Program. A notice of withdrawal shall be given not less than ninety (90) days prior to the effective date of withdrawal set forth therein and must specify the reasons therefor.

7.05 Effect of Withdrawal by Lender. Withdrawal of the Lender from the Program shall be effective upon the expiration of ninety (90) days from the date the notice of withdrawal is served without any further action or notice. After withdrawal from the Program by the Lender, the Guarantee shall be null and void and the Authority shall have no obligation whatsoever to pay any amount that would otherwise have been payable hereunder or thereunder or under any of the Loan Documents or any other Document, including amounts payable respecting Defaults that may have occurred prior to such revocation. From and after withdrawal from the Program by the Lender, all provisions contained in the Loan Documents granting the Authority the right to consent to any act or transaction shall be deemed null and void without further action of the parties hereto; provided, however, that nothing herein contained shall terminate any liability of Borrower or Lender to the Authority accruing under these Guidelines or the Loan Documents prior to the date of such withdrawal. From and after the date of withdrawal, the Loan shall be administered by Lender in accordance with the terms of the Loan Documents and applicable law, without regard to terms referring to these Guidelines, the Lender's Agreement, or the Guarantee.

ARTICLE VIII DEFAULT; REMEDIES

8.01 Defaults. The occurrence of one or more of the following events shall constitute a default (a "Default" or "Defaults") under these Guidelines:

- (a) any occurrence which entitles the Authority to revoke the Guarantee pursuant to Section 7.01 and/or Section 7.03; or
- (b) any failure to make due and punctual payment of any monies required to be paid under these Guidelines, the Note or the Collateral Documents as and when the same are due and payable; or

- (c) any default under or failure to comply with any term, provision, or condition under any other document or instrument regulating, evidencing, securing or guaranteeing the Loan, including without limitation the Loan Documents or any Additional Guarantee; or
- (d) the occurrence of a Prohibited Transfer; or
- (e) failure in the due and punctual performance or observance of any other agreement or condition herein contained; or
- (f) any representation, warranty, certification statement, or report made now or hereafter by Borrower or any Additional Guarantor in these Guidelines, or any of the Loan Documents, or any other documents delivered in connection with the Loan is false or materially misleading or contains a material omission; or
- (g) all or a substantial part of the assets of any Borrower, or any Additional Guarantor, are attached, seized, subjected to a writ or distress warrant, or are levied upon; or
- (h) there occurs a material adverse change in the financial condition of any Borrower or any Additional Guarantor as determined at the sole discretion of the Lender or Authority; or
- (i) Any Borrower or any Additional Guarantor:
 - (i) files a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect; or
 - (ii) files an answer or other pleading in any proceedings admitting insolvency, bankruptcy, or inability to pay its debts as they mature; or
 - (iii) has filed against it any involuntary proceedings under the federal Bankruptcy Code or similar law, state or federal, now or hereafter in effect; or
 - (iv) has filed against it or all or a major part of its property, including any of the Collateral, any order appointing a receiver, trustee or liquidator; or
 - (v) is adjudicated a bankrupt, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or any of the Collateral; or
 - (vi) dies.

8.02 Notice, Cure and Acceleration. Upon learning of the occurrence of a Default, if the Default is by any party other than Lender, Lender shall give written notice (“Borrower Default Notice”) to Borrower, with a copy to the Authority, specifying the nature of such default, provided, however, that no such notice shall be necessary to be given to the Borrower in the event of a bankruptcy of any Borrower (but such notice shall be given to the Authority). In the event of a Default by the Lender, the Authority shall give notice to the Lender as provided for in the Lender Agreement (“Lender Default Notice”, and together with the Borrower Default Notice, the “Default Notice”). Except to the extent prohibited by or in connection with any bankruptcy proceeding of the Borrower, Interest at the Default Rate set forth in the Note shall, from the date of service of the Default Notice, commence to accrue on all amounts then due and payable. If such Default is not cured within (i) any applicable cure period or (ii) such additional cure period or waiver period that the Lender, in the exercise of its prudent lending judgment, determines appropriate (collectively,

the “Cure Period”) from the date of receipt of the Default Notice or the filing of a bankruptcy petition by or against the Borrower, then Lender may declare, without further notice, the Loan and all other outstanding indebtedness under the Loan Documents to be immediately due and payable with interest thereon payable at the Default Rate, except that in the event of an uncured bankruptcy filing by or against the Borrower, the Loan and all other outstanding indebtedness under the Loan Documents shall be deemed automatically accelerated and become immediately due and payable without notice. Lender shall not extend any waiver or Cure Period for payment Defaults or Impairment of Security beyond ninety (90) days from the first occurrence thereof without the Authority’s prior written consent. Lender may not require the Loan to be evidenced by a demand note and may not declare a Default or accelerate the Loan solely on demand at Lender’s discretion.

- 8.03 Collection of Loan.** Except to the extent prohibited by or in connection with a bankruptcy proceeding of the Borrower, upon acceleration of the Loan, Lender shall immediately and in no event more than twenty (20) days following its Payment Request to the Authority, faithfully and diligently proceed to foreclose, obtain a deed in lieu of foreclosure or otherwise realize on any mortgage, lien, or security interest granted under any or all of the Loan Documents and to faithfully and diligently exercise all rights, powers and remedies provided by the Loan Documents and any other document or instrument regulating, evidencing, securing or guaranteeing repayment of the Loan or provided at law or in equity.
- 8.04 Liquidation of Collateral.** Lender shall, in accordance with the provisions of these Guidelines, the Loan Documents, and Illinois law, and in a commercially reasonable manner, sell or otherwise realize upon and convert the Collateral to cash and exercise and diligently pursue its rights against the Borrowers and any Additional Guarantors. Lender shall give the Authority reasonable notification in writing of the disposition of the Collateral, or any part thereof, and the Authority or its agent shall have the right, but not the obligation, to attend such sale or disposition and approve all terms relating thereto, unless Lender, in the exercise of its reasonable judgment, determines that, due to an emergency (such as the nature of the Collateral is such that it is perishable or threatens to decline speedily in value), the Collateral must be disposed of before such advance notification can be given and approval of the Authority obtained. Lender shall sell the Collateral for immediately available funds. Lender shall give the Authority a written report and accounting of such sale or disposition (including the time, place, number of bidders, amount of the successful bid, the date when funds will be received with respect to such sale and such additional information requested by the Authority as may be necessary or desirable for the Authority to determine the propriety and reasonableness of the sale) and shall apprise the Authority, from time to time of the status of collection of amounts due under any Additional Guarantees.
- 8.05 Fourteen Month Limit.** Except to the extent Lender is limited or restricted by or in connection with a bankruptcy of the Borrower or Additional Guarantor or the exercise of a statutory right by the Borrower or an Additional Guarantor, in the event that Lender fails to obtain payment of the Loan or dispose of or otherwise realize on all of the Collateral and exercise and diligently pursue all legally enforceable rights and remedies against the Borrowers and any Additional Guarantors within fourteen (14) months from the date of any Default which is not cured within any applicable cure period for any reason whatsoever, Lender shall pay to Authority, on behalf of the State, interest from and after the earlier of (i) the date that Lender failed or ceased to diligently pursue collection efforts and foreclosure or other liquidation of the Collateral, and (ii) the end of such fourteen (14) month period. Interest shall be payable on all unrepaid amounts paid by the State under the Guarantee pursuant to Section 9.02, at the Default Rate and shall be paid monthly or on demand by the Authority regardless of whether monies are collected from the Borrower or realization on Collateral to fund such payments, i.e., payment of such interest shall be from Lender’s own funds and not collections or payments on the Loan. Such interest shall continue to be paid by Lender monthly until (a) Lender has disposed of or otherwise realized on all Collateral and received all amounts collectable from the Borrowers and any Additional Guarantors and has paid the Authority on behalf of the State the proceeds thereof to which it is entitled under the terms of Section 9.04, (b) Lender has demonstrated to the reasonable satisfaction of the Authority that all of the Collateral has been sold or otherwise realized upon to the extent practicable and all collection efforts to collect the Loan from the Borrower and any additional Guarantors have been exercised and exhausted to the extent commercially reasonable, or (c) the Loan has

been repaid and Lender has remitted all amounts due the Authority. If proceeds from the sale of the Collateral, from enforcement of obligations of the Borrowers, from any Additional Guarantors or from other sources of payment in respect of the Loan are received at different times, Lender shall transmit partial payment of amounts due to the Authority as and within three (3) business days when received by Lender until all amounts due the Authority are repaid. Any amounts received by Lender which are due the Authority and are not paid over to the Authority within three (3) business days after received shall bear interest at the Default Rate, and such amounts and the interest thereon shall be payable to the Authority upon demand. If amounts are received and paid to the Authority after interest has begun to accrue on amounts unrepaid to the State as provided above, Lender's obligation to pay interest shall be reduced to give effect to such reduction in the amounts owed to the Authority. If Lender fails to pay interest as provided in this Section, the Authority may refer the matter to the State Attorney General's Office for appropriate legal action or may proceed to collect such interest from Lender by any lawful means, including offset against amounts otherwise payable to Lender in respect of the Guarantee on the Loan or under any other Guarantee or obligation, whether or not related to the Loan.

- 8.06 Lender's Duties in Bankruptcy Proceedings.** So long as the Loan is unrepaid and the Guarantee is outstanding or amounts paid under it have not been repaid to the Authority, whenever a Borrower or Additional Guarantor is the subject of bankruptcy proceedings, Lender shall diligently take and pursue all commercially reasonable and advisable steps in such proceedings to file and preserve its claims relating to the Loan and the Loan Documents as a perfected secured claim, to obtain adequate protection for Collateral, to preserve cash Collateral, to obtain relief from the automatic stay, and to investigate, oppose, support or initiate any Plan, motion or action with a view to maximizing the repayment of the Loan and the early receipt of payments thereon and protecting and realizing on Collateral. To the extent not stayed by the bankruptcy proceedings, Lender shall also pursue any Additional Guarantor, other Borrower, Collateral or other source to better secure or obtain payment of the Loan. Lender shall report regularly to and keep the Authority advised of the progress of such proceedings and the Lender's efforts to realize on Collateral and obtain payment of the Loan in connection therewith, and shall obtain the Authority's approval for all material decisions regarding its participation in such proceedings.

ARTICLE IX DETERMINATION AND PAYMENT OF GUARANTEE: APPLICATION OF PAYMENTS AND COLLECTIONS

- 9.01 Application of Payments Before Guarantee Payment.** From and after the Determination Date and whether before or after the filing of a bankruptcy proceeding by or against Borrower and before any payment on the Guarantee, all payments received in respect of the Loan, whether from the Borrower, any Additional Guarantor, from Collateral, as adequate protection payments or otherwise and whether for principal, Interest, fees or expenses, shall be retained by Lender but applied as follows to reduce the Guaranteed Amount: (i) First, the Guaranteed Principal Amount shall be reduced dollar for dollar until it becomes zero; (ii) Second, the Unguaranteed Principal Amount shall be reduced dollar for dollar until it becomes zero; and (iii) Third, both the Guaranteed Interest Amount and the Unguaranteed Interest Amount accrued up to 120 days after Default shall be reduced dollar for dollar on a pro rata basis between the Authority and Lender with 85% of the payments to the Authority and 15% of the payments to Lender until they are reduced to zero.
- 9.02 Payment Request (Nonbankruptcy).** Provided no bankruptcy proceeding has been filed by or against the Borrower, if any Default (other than a Default giving rise to revocation of the Guarantee pursuant to Section 7.03 hereof) of Borrower or any Additional Guarantor remains uncured following the end of the applicable Cure Period and the Loan is accelerated, Lender may, within ten (10) days following the end of the Cure Period, submit a Payment Request of amounts due from the Authority under the Guarantee. The Payment Request shall identify the Loan and the Borrower, include a certification that Borrower is in Default specifying the nature of such Default, that Lender has delivered a Default Notice to Borrower, that the Default has not been cured within the applicable Cure Period, and that no bankruptcy proceeding is pending against the Borrower. If the Payment Request is in order, the certifications continue to be correct

prior to payment of the Guarantee, the Lender has complied with the terms and conditions of the Act and the Rules including these Guidelines, and no defense or right of offset exists to payment of the Guarantee, the Authority shall forward to Lender a single payment equal to the lesser of the Guaranteed Amount then outstanding or the maximum amount payable on the Guarantee permitted under Article VI of these Guidelines. Payments made by the Authority hereunder shall be made within thirty (30) days after receipt of Lender's Payment Request.

9.03 Reinstatement of Loan. In the event after payment of the Guarantee, Borrower shall reinstate the Loan, the Note and the Collateral Documents, as provided under applicable Illinois statutory law, then the Lender shall upon demand immediately reimburse the Authority for a sum equal to any and all amounts paid by the Authority to the Lender under the Guarantee, together with (i) interest thereon at the Interest Rate or Default Rate, whichever rate and to the extent such rate was charged to the Borrower, from the date of payment by the Authority to the Lender until reimbursement in full to the Authority by the Lender, and (ii) any amounts paid by the Authority to any entity under these Guidelines or other expenses incurred by the Authority. Upon reimbursement of the Authority as provided herein, the Guarantee shall continue in existence as provided in these Guidelines.

9.04 Application of Payments after Payment of Guarantee (Nonbankruptcy). After payment on the Guarantee pursuant to Section 9.02 above, Lender shall transmit to the Authority all collections and payments in respect of the Loan due it as provided below, including proceeds of the Collateral and amounts received under Additional Guarantees, within three (3) business days of receipt thereof by Lender. All payments due the Authority shall be without deduction of Lender's expenses of collection or costs of realization on any Collateral. All payments in respect of the Loan from whatever source, including proceeds of Collateral and amounts received under Additional Guarantees, shall be distributed in the following order of priority:

- (a) First, the Authority, on behalf of the State, shall receive reimbursement for any and all amounts, fees and expenses (including legal fees and expenses) advanced or incurred by the Authority to protect and preserve the Collateral or its rights under these Guidelines or in respect of the Loan Documents;
- (b) Second, the Authority, on behalf of the State, shall receive reimbursement for the Guaranteed Principal Amount that it paid under the Guarantee;
- (c) Third, Lender shall retain an amount equal to the Unguaranteed Principal Amount;
- (d) Fourth, the Authority and Lender shall be repaid on a prorated basis, with eighty-five percent (85%) of the payments being paid to the Authority until it is repaid an amount equal to the Guaranteed Interest Amount that it paid under the Guarantee to the Lender, and until the Guaranteed Interest Amount is repaid in full to the Authority, fifteen percent (15%) of such payments to Lender;
- (e) Fifth, Lender shall retain an amount equal to any additional amounts due Lender under these Guidelines or the Loan Documents, including amounts expended to collect the Loan or realize on any Collateral; and
- (f) Sixth, if excess funds remain after the payments set forth in the preceding subparagraphs, they shall promptly be paid by Lender to Borrower or otherwise as required by law.

9.05 Bankruptcy After Payment of Guarantee. If payment on the Guarantee has been made before the commencement of a bankruptcy proceeding by or against the Borrower, no further amounts shall be payable under the Guarantee. In such event, the Lender shall pursue collection of the Loan and preservation of and realization on Collateral in the bankruptcy proceeding as set forth in Section 8.06 above and shall also pursue, in the manner contemplated by Sections 8.03 -8.06 above but without granting any Cure Period, any Borrower, Collateral or Additional Guarantor not the subject of any bankruptcy proceeding until all commercially reasonable efforts to collect the Loan are exhausted. If the bankruptcy proceedings

filed after payment on the Guarantee result in reaffirmation of the Loan or a Plan in a Chapter Proceeding, payments thereafter received on the Loan shall be applied as provided under Section 9.04 above. If a default occurs under the terms of the reaffirmed Loan or a Plan Default occurs with respect to the terms of the Loan under the Borrower's Plan, the Lender shall promptly notify the Authority thereof, and unless the Authority otherwise directs, the Lender shall also give notice of the default or Plan Default to the Borrower and all other parties entitled to notice, accelerate the Loan without granting any Cure Period, and proceed to collect the Loan and realize on any Collateral in the manner and as contemplated by Sections 8.03 - 8.06 above and 9.07(b)(vi) of these Guidelines. Payments and collections thereafter received in respect of the Loan shall be applied and transmitted to the Authority as set forth in Section 9.04 above.

9.06 Straight Bankruptcy. If any Borrower files or has filed against it, or converts or has converted a Chapter Proceeding to, a Straight Bankruptcy, then no payments shall be made on the Guarantee unless and until (i) the Borrower's estate, including the Collateral, is liquidated and distributed pursuant to the bankruptcy proceedings, (ii) all Collateral (including proceeds of Collateral sold by or from the Borrower's bankruptcy estate) of the Borrower is turned over to Lender, abandoned or otherwise subject to Lender's remedies as a result of the lifting of the automatic stay, in each case pursuant to a final nonappealable order in the bankruptcy proceedings of the Borrower, or (iii) the bankruptcy proceedings are dismissed pursuant to a final nonappealable order entered in the bankruptcy proceedings (each such event, a "Straight Bankruptcy Claim Event"). Upon the earliest to occur of any Straight Bankruptcy Claim Event, the Lender may submit a Payment Request for payment on the State Guarantee for the then remaining unpaid Guaranteed Amount. If the Payment Request is in order and the Lender is otherwise entitled to payment under the Guarantee, the Authority shall pay to the Lender within thirty (30) days of receipt of the Payment Request, the then-remaining unpaid Guaranteed Amount. After such payment, the Guarantee shall be deemed canceled and Lender shall return it to the Authority, but the Authority's rights and the Lender's duties under these Guidelines to collect the Loan and realize on any Collateral shall continue. If Collateral has been abandoned or turned over to Lender or the proceedings dismissed or the automatic stay lifted as to the Collateral, the Lender shall proceed to realize on the Collateral pursuant to Article VIII of these Guidelines but without granting any Cure Period. If the Borrower reaffirms the Loan then no payment shall be payable under the Guarantee unless and until the Borrower commits an uncured default under the reaffirmed Loan entitling Lender to realize on the Collateral securing it, at which time Lender shall diligently pursue collection of the Loan as contemplated by Article VIII, but without granting any Cure Period.

9.07 Reorganization. If the Borrower files, converts to or has filed against it a Chapter Proceeding, no payment shall be made on the Guarantee except in accordance with the following:

- (a) No payment shall be made on the Guarantee unless and until: (i) a Plan is confirmed pursuant to the applicable Chapter Proceeding confirmation process by a final nonappealable order entered in the Chapter Proceeding of the Borrower, in which event payment under the Guarantee shall be made in accordance with subparagraph (b) below; or (ii) the Chapter Proceeding is dismissed, converted to a Straight Bankruptcy or the Collateral (or proceeds of Collateral previously sold by or from the Borrower's bankruptcy estate) is abandoned, is turned over to Lender or is no longer protected by the automatic stay;
- (b) If the Borrower's Chapter Proceeding is converted to a Straight Bankruptcy, or is dismissed or the Collateral abandoned or turned over to the Lender or the automatic stay lifted, in each case before any payment on the Guarantee, the right to apply for payment under the Guarantee, the application of payments in respect of the Loan and the calculation and payment of the Guaranteed Amount shall be determined and made in accordance with the applicable provisions of these Guidelines above. If the Borrower's bankruptcy proceeds as a Chapter Proceeding, and any portion of the Guaranteed Amount remains on the Confirmation Date after application of payments to the Guaranteed Amount as provided above, payment on the Guarantee to Lender shall be subject to the following payment conditions, terms, calculations and limits:

- (i) The remaining Guaranteed Amount shall be allocated first to Secured Debt then to Unsecured Debt.
- (ii) All Loan indebtedness treated under the Plan other than the Guaranteed Amount shall be allocated first to Unsecured Debt.
- (iii) If the Guaranteed Amount is equal to or less than the Secured Debt, no payment shall be made under the Guarantee unless and until after a Plan Default occurs.
- (iv) If the Guaranteed Amount exceeds Secured Debt, the excess will be treated as Unsecured Debt. The Interest Amount Guaranteed shall first be allocated to Unsecured Debt before any portion of the Principal Amount Guaranteed is so allocated. The Lender may submit a Payment Request to the Authority for payment under the Guarantee for that portion of the Guaranteed Amount after the Confirmation Date which is treated as Unsecured Debt under the Plan. If the Payment Request is in order and the Lender is otherwise entitled to payment under the Guarantee, the Authority shall, within thirty days after receipt of the Payment Request, pay to Lender the Guaranteed Amount treated as Unsecured Debt under the Plan.
- (v) From and after the Confirmation Date and before any further payment under the Guarantee following a Plan Default, payments in respect of the Loan from any source and whether for principal, Interest, costs, fees or subsequent advances shall be paid and applied as follows:
 - (a) First, to the Authority, for reimbursement for any and all amounts, fees and expenses (including legal fees and expenses) advanced or incurred by the Authority to protect and preserve the Collateral or its rights under these Guidelines or in respect of the Loan Documents;
 - (b) Second, to the Lender until the Guaranteed Principal Amount allocated to Secured Debt is reduced to zero by applying all such payments first to reduce the Guaranteed Principal Amount so allocated;
 - (c) Third, to the Authority, until any Guaranteed Principal Amount which was treated as Unsecured Debt and previously paid to Lender under the Guarantee is repaid in full to the Authority;
 - (d) Fourth, to Lender until the remaining Unguaranteed Principal Amount is reduced to zero by applying such payments to the Unguaranteed Principal Amount;
 - (e) Fifth, to Lender until the remaining balance of the Guaranteed Interest Amount, if any, allocated to Secured Debt is paid in full; and
 - (f) Sixth, 85% to the Authority and 15% to Lender until the Guaranteed Interest Amount, if any, allocated to Unsecured Debt and previously paid by the Authority to the Lender under the State Guarantee has been repaid to the Authority in full; and
 - (g) Seventh, to the Lender.
- (vi) From and after the occurrence of a Plan Default, Lender shall give the Authority written notice thereof and may submit a Payment Request to the Authority for payment of the remaining Guaranteed Amount on the Guarantee. If the Payment Request is in order, the Lender is otherwise entitled to payment on the Guarantee, and the Borrower has not filed or had filed against it, another bankruptcy proceeding subsequent to the Confirmation Date, the Authority shall, within thirty days after receipt of the Payment Request, pay the remaining unpaid Guaranteed Amount to Lender. Upon such payment, the Guarantee shall be deemed canceled and Lender shall return the

original of the Guarantee to the Authority. The Authority's rights and the Lender's duties under these Guidelines to collect the Loan, realize on Collateral and remit payments to the Authority shall continue, including those efforts to collect described in Sections 8.03 -8.06 of these Guidelines. Lender shall also promptly proceed to collect the remaining unpaid balance of the Loan by exercising its remedies under the Loan Documents, under the Plan and otherwise available to it against the Borrower, the Collateral and, to the extent not previously exhausted, any Additional Guarantor. Except to the extent required by the terms of the Plan as it relates to the Loan, no Cure Period shall be granted to the Borrower unless the Authority approves in writing the granting of a cure period to the Borrower. After the Authority's payment under the Guarantee after a Plan Default of any remaining Guaranteed Amount, any amounts collected in respect of the Loan from whatever source, and whether for principal, Interest, fees, costs, disbursements or otherwise, shall be paid and applied as provided in Section 9.04 above. If the Borrower becomes the subject of a second bankruptcy proceeding after the Confirmation Date, the Lender's rights and obligations under the Guarantee with respect to the remaining Guaranteed Amount shall be treated, limited and deferred as provided above with respect to a Straight Bankruptcy or a Chapter Proceeding, as the case may be.

- 9.08 Borrower's Legal Obligations Not Impaired.** The determination of the Guaranteed Amount based on application of payments as provided above is solely for the purpose of calculating payments between Lender and the Authority, on behalf of the State, in respect of the Guarantee. It is not intended to and shall not alter the Borrower's legal obligations to Lender under the Loan Documents.
- 9.09 Assignment of Lender's Interest in Loan Documents.** In the event the Authority shall make any payments to the Lender under the Guarantee, the Lender shall be deemed to have assigned to the Authority an interest in the Loan, the Note, the other Loan Documents and the Collateral equal in amount to the sum of the amounts paid by the Authority to the Lender under the Guarantee plus any amounts paid by the Authority to any other entity under these Guidelines or the Loan Documents. Such assignment shall be noted in Lender's books and records and shall be attached as an allonge to the Note in form and substance satisfactory to the Authority. The assignment shall not relieve the Lender of its obligations under other provisions of these Guidelines to collect the Loan, realize on the Collateral, pursue the Additional Guarantors, and apply and remit payments or proceeds of collections as required by these Guidelines. Upon demand by the Authority, the Lender shall transmit physical possession of the Note and the other original Loan Documents to the Authority or to an agent or attorney for the Authority.
- 9.10 Voluntary Assignment.** At any time after the occurrence of a Default, the Lender and the Authority may agree on assignment of the Loan, the Loan Documents and the Collateral to the Authority in its entirety, on such terms as the Authority and the Lender agree upon, provided, however, the maximum amount payable for such assignment by the Authority shall be the Guaranteed Amount. Unless expressly agreed otherwise in writing by the Authority, any such assignment by Lender to the Authority shall be deemed a full assignment of all of Lender's rights and benefits under the Loan Documents and shall automatically terminate the Guarantee. After assignment, any actions taken by Lender to collect the Loan or realize on the Collateral shall be for the Authority's sole benefit and account. Lender may, if agreed upon in writing by the Authority, receive an annual fee not to exceed 1/4% of the principal amount of the remaining Loan balance for servicing and collecting the Loan after assignment and, if preapproved by the Authority in writing, Lender's reasonable out of pocket costs and expenses incurred in preserving Collateral, retaining counsel and pursuing collection of the Loan. Upon demand after assignment, the Lender shall deliver to the Authority the original of the Guarantee marked canceled, the Note duly endorsed and the other Loan Documents.

ARTICLE X ANNUAL REVIEW OF LOAN

- 10.01 Review.** Lender and the Authority shall, if the Authority, in its sole discretion, so elects, review the Loan on an annual basis after each Anniversary Date to determine the present value of the Collateral, timeliness

of payments made by Borrower, or for any other purpose reasonably calculated to aid in determining Borrower's present and projected repayment capacity. If the Authority determines that the existing Collateral is insufficient to protect the State's liability under the Guarantee, the Authority may require Lender to advise Borrower that additional Collateral is required, in which event Lender shall determine what additional Collateral, if any, is available and will advise the Authority of facts and circumstances relating thereto. If Borrower fails to pledge additional Collateral acceptable to the Authority within ninety (90) days of a request therefor, the Guarantee may be revoked by the Authority as provided in Section 7.01(c) hereof. The value of all Collateral shall be determined by Lender in accordance with generally accepted accounting and appraising practices. The Authority shall have the final authority to determine if the Collateral is sufficient to secure the State's liability under the Guarantee and may appoint an independent, qualified appraiser approved by the Authority to aid in such determination. All appraisals required by the Authority during the first Loan Year shall be paid by Lender (who may require reimbursement from Borrower). All required appraisals after the first Loan Year (other than appraisals for the first Loan Year of a Renewal Loan) shall be performed at the expense of the Authority. Completion of an annual review by the Authority does not preclude the Authority from claiming or finding that the Lender or Borrower failed to comply with the Act, the Rules, including these Guidelines, or the Lender's Agreement. However, in the absence of the Authority's notice that the Loan, Lender and/or the Borrower are not in compliance with the Act, the Rules, including these Guidelines, or the Lender's Agreement, the Guarantee shall be deemed renewed for another one year (but not past its expiration date) until the next Anniversary Date.

- 10.02 Additional Guarantors.** If the Authority determines that the Collateral is insufficient to secure the State's liability under the Guarantee, within the ninety (90) day period set forth in Section 10.01, Borrower may arrange for an Additional Guarantee. The identity of the Additional Guarantor, all financial statements submitted for the Additional Guarantor and any Collateral pledged by the Additional Guarantor as may be required by the Authority to secure the Additional Guarantee shall be subject to the prior approval of the Authority, which approval may be withheld in its sole and absolute discretion.
- 10.03 Audit.** At any time, with or without written notice, the Authority, at its sole discretion, may audit the books and records of Borrower and/or Lender to insure that all information submitted to the Authority in connection with the Loan is accurate and complete and to verify compliance with all provisions of these Guidelines and the Loan Documents.

ARTICLE XI MISCELLANEOUS

- 11.01 Reliance.** Borrower and Lender expressly acknowledge and agree that (a) the Authority may rely conclusively upon the truthfulness, accuracy, and completeness of any certificate, statement, opinion, notice, or other instrument furnished to it by Borrower, any Additional Guarantor or Lender, and (b) by the execution and delivery of the Guarantee, the Authority shall not be deemed to have any responsibility for, or to have rendered any opinion to Lender respecting, the credit-worthiness of Borrower, the adequacy and sufficiency of the Collateral to secure repayment of the Loan, or any other matters of any nature whatsoever related to Borrower, the Collateral or the Loan.
- 11.02 Indemnity.** Borrower and Lender agree to indemnify, defend, save and hold harmless the State, the Authority, and their respective officers, members, employees and agents from and against any and all losses incurred by them, exclusive of amounts required to be paid under the Guarantee in accordance with the terms hereof, while they or the Authority are acting, directly or indirectly, to ascertain, determine or carry out their or its rights and obligations under the Act, the Rules including these Guidelines, the Lender's Agreement, the Loan Documents or any law or document applicable to the Loan.
- 11.03 Binding Effect; Governing Law.** These Guidelines shall be binding upon and inure to the benefit of the Borrower, Lender and Authority and their respective heirs, personal representatives, successors, and assigns, subject to the restrictions on assignment set forth in Section 11.06. These Guidelines shall be

governed and construed in accordance with the laws of the State of Illinois, without reference to the conflicts of law principles of said State. The terms and provisions of the Act and the Rules, to the extent not covered in these Guidelines, are hereby incorporated in these Guidelines by reference. In the event there is any conflict between these Guidelines and the Note, the Guarantee, the Loan Agreement or any of the Loan Documents, the terms and provisions of these Guidelines shall govern. In the event there is any conflict between these Guidelines and the Act or Regulations, the terms and provisions of the Act and Rules shall govern.

- 11.04 Severability.** The parties hereto intend and believe that each provision of these Guidelines comports with applicable law. However, if a court of competent jurisdiction shall determine that any provision of these Guidelines to be illegal, inoperative or unenforceable, the same shall not affect any other provision herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.
- 11.05 Amendments.** No amendment or waiver of any provision of these Guidelines, nor consent to any departure by Borrower or Lender from the terms hereof or herefrom, shall in any event be effective unless the same shall be in writing and signed by the Authority, Borrower and Lender and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Notwithstanding the foregoing, the Authority may, upon thirty (30) days written notice or by posting amendments on its website, amend these Guidelines, provided that such amendment may not decrease the Guaranteed Amount or percentage as provided in Section 6.04 on existing Loans.
- 11.06 Assignments.** The Lender's Agreement and Borrower's rights and obligations under the Loan may not be assigned by Borrower without the prior written consent of Lender and the Authority, which consent may be withheld in their sole and absolute discretion. Lender may not assign or grant a participation in all or any portion of its rights under the Lender's Agreement, the Guarantee, or the Loan Documents to any person or entity (the "Assignee") without the prior written consent of the Authority, which consent may be withheld in its sole and absolute discretion, and payment to the Authority of an appropriate fee to be specified by the Authority. Lender shall provide the Authority with a written notice identifying the proposed Assignee. The terms and conditions of any assignment or participation document or agreement between Lender and the Assignee must be approved in advance by the Authority in writing and shall provide that the Assignee shall be bound by all the terms and provisions of these Guidelines, the Guarantee, and the Loan Documents as fully as the Lender, and the Assignee shall perform all the obligations, responsibilities and covenants of the Lender under these Guidelines, the Guarantee, and the Loan Documents.
- 11.07 No Waiver: Remedies.** A failure on the part of the Authority or Lender to exercise, and any delay in exercising, any right or remedy under these Guidelines shall not operate as a waiver thereof; nor shall any single or partial exercise of any right under these Guidelines preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in these Guidelines are cumulative and not exclusive of any remedies provided by law or in equity.
- 11.08 Construction.** Wherever it is provided in these Guidelines that a party "may" perform an act or do anything, such provision shall be construed that the party may, but shall not be obligated to, so perform or so do. The following words and phrases shall be construed as follows: (a) "at any time" shall be construed as "at any time or from time to time"; (b) "any" shall be construed as "any or all"; (c) "including" shall be construed as "including but not limited to"; (d) "will" and "shall" shall each be construed as mandatory. Except as otherwise specifically indicated, all references to Article, Section and subsection numbers or letters shall refer to Articles, Sections and subsections of these Guidelines. The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to these Guidelines as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require. Captions are used in these Guidelines for convenience of reference only and shall not be used to construe, limit, or expand the meaning of any part of these Guidelines. To the extent of any conflict between these Guidelines and the terms of the Loan Documents, or any other documents delivered in connection herewith, the terms of these Guidelines shall control, provided, however, that, to the extent that any right or remedy granted to Lender hereunder is



mandatory under the terms of these Guidelines and discretionary under the terms of the Loan Documents or any other documents delivered in connection therewith, Lender shall exercise such mandatory remedies.

11.09 Holidays. In the event that any payment is to be made or any act is to be performed under these Guidelines or the Loan Documents on a date which falls on a weekend or on a public holiday for banks under the laws of the State or the United States, such payment or performance shall be deemed due on the next succeeding business day, together with interest on any payment so delayed.

11.10 Term. These Guidelines shall be in full force and effect from the Closing. Subject to the terms hereof respecting revocation and withdrawal of the Guarantee, the Authority's obligations in respect of the Guarantee shall continue in effect until the Guaranteed Amount is paid or reduced to zero. Lender's and the Borrower's obligations under these Guidelines to the Authority shall remain in effect until all amounts paid by the Authority under the Guarantee to Lender are repaid to the Authority with interest as provided in these Guidelines. All of the Lender's and the Borrower's representations, warranties, certifications and indemnities as to all matters affecting the qualifications of Borrower and the Loan for the Guarantee shall survive the termination of the Lender's Agreement and any revocation or withdrawal of the State Guarantee. The Authority's obligations under the Guarantee relating to a Debt Restructuring Loan shall not remain in effect beyond thirty (30) years, and the Authority's obligations under the Guarantee relating to a Young Farmer Loan, Specialized Livestock Loan or Agri-Business Loan shall not remain in effect beyond fifteen (15) years from the date of the Lender's Agreement, provided, however, that (i) the Authority may issue a Renewal Guarantee pursuant to a new Lender's Agreement in accordance with the Act, the Rules and applicable application and approval procedures of Lender and the Authority, and (ii) if a Default occurs by reason of the Borrower's failure to make the final payment due under the Loan, notwithstanding the foregoing time limitations, Lender shall have the additional periods to pursue a claim under the Guarantee pursuant to the procedures for doing so under Article IX of these Guidelines.

Offices of the Illinois Finance Authority

Carbondale | 150 E. Pleasant Hill Rd., #46, Carbondale, IL 62903 | 618.453.5566 | 618.453.4332 fax

Chicago | 180 N. Stetson Ave, #2555, Chicago, IL 60601 | 312.651.1300 | 312.651.1350 fax

Peoria | 124 S. W. Adams St., # 300, Peoria, IL 61602 | 309.495.5959 | 309.676.7534 fax

Springfield | 427 E. Monroe Street, #202, Springfield, IL 62701 | 217.782.5792 | 17.782.3989 fax

TTY: 1.800.0844 | VOICE : 1.800.526.0857

www.il-fa.com