

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 1/29/19 **Approximate Start Time:** 1:00 p.m. **Approximate Length:** 30 min

Presentation Title: Section 108 Loan Guarantee Program update

Department: Health, Housing and Human Services (H3S)

Presenters: Richard Swift, H3S Director, Chuck Robbins, HCD Director

Other Invitees: Kevin Ko, Housing and Community Development Manager
Mark Sirois, Project Coordinator, Andrew Naylor, County Counsel

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

1. Update the Board of Commissioners on the U.S Department of Housing and Urban Development (HUD) Section 108 Loan Guarantee Program.
2. Provide guidance to staff on whether or not to place the agreement (HUD Contract) on the BBC Consent Agenda for January 31, 2019.

EXECUTIVE SUMMARY (why and why now):

The Housing and Community Development Division (HCD) is requesting approval to execute and to submit the Section 108 contract documents to establish the Section 108 Loan Pool accounts through HUD and U.S. Bank. These contract documents do not include a request for any project loans at this time.

Section 108 of the Housing and Community Development Act of 1974 is the loan guarantee component of the Community Development Block Grant (CDBG) Program. The Section 108 Loan Guarantee Program (Section 108) provides communities with a source of financing for large economic development, housing rehabilitation, public facility, and physical development projects.

HUD requires that current and future CDBG allocations be used as security for the individual project loans. Projects requesting loans funds would be required to demonstrate sufficient cash flow to repay the loan without any need for repayment from CDBG dollars.

The BCC approved the Section 108 program application to HUD in a Public Hearing on June 21, 2018, subsequent to BCC approval HCD submitted the program application for Section 108 funds to create a loan pool that would be used to:

- Acquire property for affordable housing
- Rehabilitate publicly owned affordable housing projects
- Develop of public facilities such as health centers, service centers and foodbanks

HUD sent the County an award letter on August 23, 2018 for the \$11,100,000 Section 108 Housing and Community Development Loan Fund.

On October 25, 2018 HUD sent the County Section 108 contract documents including:

- HUD Contract for the Loan Guarantee - contract
- Variable Fixed Rate Note – initial note to be adjusted with each new project loan
- Fiscal Agency Custodial Agreement – U.S. Bank accounts
- Legal Opinion – to be signed by county counsel.
- Signature Card – to be signed by persons approving loans and requesting funds

The HUD contract documents will be submitted to HUD without an individual project loan application. Signing this contract will establish the contract and accounts for loan pool. No funds will be loaned until individual loan applications are reviewed and approved by the Board then submitted to HUD for approval.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? ☐ YES ☒ NO

What is the cost? There would be no direct cost to the County. The County (H3S) may borrow a total of \$11,100,000 for projects. As the County loans these funds to specific projects there will be fees charged by HUD and by US Bank for the administration of the loan and Custodial Accounts.

What is the funding source? HUD Section 108 Loan Guarantee Program.

Project Loans will be funded by the Section 108 Program. Loan repayments, including principle, interest and fees will be made by the borrowing entity.

Each project loan would have a 20-year term with an initial interest rate that is variable based on the London Inter Bank Offered Rate (LIBOR currently at 1.33%) until the loan becomes permanent with a fixed interest rate based on U.S Treasury Yields (currently at 2.56%).

For comparison purposes the current U.S Prime lending Rate is 5.50% (Fed Prime Rate) source: <http://www.fedprimerate.com/>.

In addition to using CDBG funds as collateral to ensure repayment, HUD also requires that the County provide additional collateral. Based upon our Section 108 program funding guidelines, these funds will be primarily for new construction of housing and facilities where the underlying land will be used as collateral for the construction loans.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?

Ensuring Access to Safe, Stable Housing

- Section 108 project loans for affordable housing and infrastructure projects would ensure more access to safe, stable housing for low income and vulnerable populations.

Improving Health Care Access and Integrating Delivery

- Section 108 project loans for construction or renovation of community health facilities would improve access to health care services for low income and vulnerable populations.

How does this item align with the County's Performance Clackamas goals?

Ensure safe, healthy and secure communities

- Section 108 project loans for affordable housing and community health facilities would ensure safe, health and secure communities in Clackamas County.

LEGAL/POLICY REQUIREMENTS:

Section 108 follows the same regulatory and project eligibility requirements of the CDBG Program which can be found at:

24 CFR 570, Subpart M, Loan Guarantees. Section 108 funded projects/activities must comply with all CDBG rules:

- At least 70% of funds directed to projects that can demonstrate benefit to Low/Moderate Income (LMI) populations

Other Federal Requirements:

- Environmental review
- Davis Bacon (prevailing wages)
- Uniform Relocation Act
- Office of Management and Budget circulars, as applicable
- Fair housing/equal opportunity
- Lead Based Paint

PUBLIC/GOVERNMENTAL PARTICIPATION:

The BCC approved the Section 108 program application to HUD in a Public Hearing on June 21, 2018. The Section 108 Loan program application was accepted and approved by HUD.

Approval of the Section 108 project loans will require:

- H3S to bring individual project loan applications to the Board at a public meeting for discussion and approval.
- Submission of the approved project loan applications to HUD for approval.
- Project loan documents to be signed by H3S and applicant (borrowing entity).

OPTIONS:

1. Direct H3S staff to get all HUD Section 108 contract documents executed and submitted to HUD.
2. Direct H3S staff to not to pursue the Section 108 Loans from HUD.

RECOMMENDATION:

Respectfully recommends the Board approve option 1.

ATTACHMENTS:

ATTACHMENT A – HUD Contract and attachments
ATTACHMENT B – Variable Fixed Rate Note
ATTACHMENT C – Fiscal Agency Custodial Agreement
ATTACHMENT D – Legal Opinion
ATTACHMENT E – Signature Card

SUBMITTED BY:

Division Director/Head Approval

Department Director/Head Approval

County Administrator Approval

A handwritten signature in black ink, appearing to be 'Mark Sirois', is written over a horizontal line. The signature is stylized with a large 'M' and 'S'.

For information on this issue or copies of attachments, please contact Mark Sirois @ 503-650-5664

Note No. _____

Attachment 1

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**LETTER AGREEMENT FOR
SECTION 108 LOAN GUARANTEE PROGRAM
DEPOSIT ACCOUNT**

Name of Institution (and Branch)

Street

City, State, Zip Code

☐ This account is established for funds received by the Borrower under Note(s) guaranteed by the United States Department of Housing and Urban Development (HUD) under the Section 108 Loan Guarantee Program (**Guaranteed Loan Funds Account**).

☐ This account is established for repayment of the Note(s) guaranteed by HUD under the Section 108 Loan Guarantee Program (**Loan Repayment Account**).

☐ This account is established as a debt service reserve under the Section 108 Loan Guarantee Program (**Debt Service Reserve Account**).

You are hereby authorized and requested to establish a deposit account to be specifically designated:

"[Name of Borrower] _____, as Trustee of United States Department of Housing and Urban Development." All deposits made into such account shall be subject to withdrawal therefrom by the Borrower named below, unless and until HUD provides you with a notice that it is assuming control over the account. Thereafter withdrawals may not be made by the Borrower. Within a reasonable period of time, not to exceed two business days, after your receipt of such notice from HUD, you shall so prevent such Borrower withdrawals and, if requested by HUD in writing, shall thereafter forward monthly to HUD, to an account it specifies in its notice, the collected and available balance in such account.

You are further authorized, after receipt of the notice from HUD, to refuse to honor any instrument drawn upon or withdrawals from such account by parties other than HUD. In no instance shall the funds in the deposit account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by you. You are permitted,

however, to debit from the account your customary fees and charges for maintaining the account and the amount of any deposits that are made to the account and returned unpaid for any reason.

Such account shall also be subject to your standard agreement and documents relating to the opening and maintenance of bank accounts with you. In the event of any conflict between this Letter Agreement and such agreements and documents, this Letter Agreement shall control.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certificate below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower: _____

By: _____ Date: _____
[Signature]

Name and Title: _____

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under account number: _____, and agrees with the Borrower named above and HUD to promptly comply with HUD's notice in the manner provided in the above letter, but in no event to exceed two business days. The undersigned institution further agrees, after receipt of the HUD notice as set forth above, to refuse to honor any instruments drawn upon or withdrawals from such account by parties other than HUD. In no instance shall the funds in the deposit account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the institution, except as set forth above. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration up to statutory limits.

Name of Institution: _____

By: _____ Date: _____
(Signature)

Name and Title: _____

Note No. _____

Attachment 2

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**LETTER AGREEMENT FOR
SECTION 108 LOAN GUARANTEE PROGRAM
INVESTMENT ACCOUNT**

Name of Institution (and Branch)

Street

City, State, Zip Code

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Guaranteed Loan Funds Account **(Guaranteed Loan Funds Investment Account)**.

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Loan Repayment Account **(Loan Repayment Investment Account)**.

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Debt Service Reserve Account **(Debt Service Reserve Investment Account)**.

You are hereby authorized and requested to hold obligations and assignments of those obligations in trust for the United States Department of Housing and Urban Development (HUD) in an account specifically designated:

"[Name of Borrower] _____, as
Trustee of United States Department of Housing and Urban Development." All
obligations and assignments shall be subject to release to the Borrower named below,
unless and until HUD provides you with a notice that it is assuming control over the
account. Thereafter, releases may not be made by the Borrower. Within a reasonable
period of time, not to exceed two business days, after your receipt of such notice from
HUD, you shall so prevent such Borrower releases and, if requested by HUD in writing,
shall thereafter forward monthly to HUD, to an account it specifies in its notice, the
collected and available balance in such account.

You are further authorized, after receipt of the notice from HUD, to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD. In no instance shall the obligations in this account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by you. . You are permitted, however, to debit from the account your customary fees and charges for maintaining the account and the amount of any deposits that are made to the account and returned unpaid for any reason.

Such account shall also be subject to your standard agreement and documents relating to the opening and maintenance of bank accounts with you. In the event of any conflict between this Letter Agreement and such agreements and documents, this Letter Agreement shall control.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certificate below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower: _____

By: _____ Date: _____
[Signature]

Name and Title: _____

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under account number: _____, and agrees with the Borrower named above and HUD to promptly comply with HUD's notice in the manner provided in the above letter, but in no event to exceed two business days. The undersigned institution further agrees, after receipt of the HUD notice as set forth above, , to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD. In no instance shall the obligations in the account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the financial institution, except as set forth above. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration up to the statutory limits..

Name of Institution: _____

By: _____ Date: _____
(Signature)

Name and Title: _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER
SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT
OF 1974, AS AMENDED, 42 U.S.C. §5308

Date of Contract _____

This Contract for Loan Guarantee Assistance ("Contract") is entered into between the County of Clackamas, Oregon, as Borrower (the "Borrower"), and the Secretary of Housing and Urban Development ("Secretary"), as guarantor for the Guarantee made pursuant to section 108 ("Section 108") of title I of the Housing and Community Development Act of 1974, as amended (the "Act") and 24 CFR Part 570, Subpart M, of the promissory note executed contemporaneously herewith and numbered B-18-UC-41-0001 [Housing and Community Development Loan Fund project], in the Maximum Commitment Amount of \$11,100,000, and any amended note or note issued in substitution for such note and having the same note number (the "Note"). This is the first Contract under the Funding Approval ("Commitment") of the same number, which was approved by the Secretary on August 23, 2018. The funds paid or credited to the account of the Borrower pursuant to the Note are referred to herein as the "Guaranteed Loan Funds." The Note (including the Fiscal Agency Agreement and the Trust Agreement as defined in Section I.A. of the Note and incorporated therein) is hereby incorporated into the Contract. Terms used in the Contract with initial capital letters and not otherwise defined in the text hereof shall have the respective meanings given thereto in the Note. The Fiscal Agency Agreement and the Trust Agreement are sometimes collectively referred to herein as the "Fiscal Agency/Trust Agreements," and the Fiscal Agent and the Trustee respectively are sometimes collectively referred to as the "Fiscal Agent/Trustee."

PART I

- A. **The Note: Advances and Records.** The Note provides that Advances and Conversion Date Advances shall be made thereunder upon the written request of the Borrower and the approval of the Secretary, pursuant to this Contract and the Fiscal Agency Agreement. The Commitment Schedule attached to the Note represents the principal repayment

schedule for the Maximum Commitment Amount of the Note. At all times, the total amount of all Advances and Conversion Date Advances under the Note for all Principal Due Dates shall not exceed the Maximum Commitment Amount of the Note. Prior to the Conversion Date (as defined in the Note, Section I.A.), the total amount of Advances made by the Holder for each Principal Due Date under the Note shall not exceed the applicable Commitment Amount for such Principal Due Date set forth in the Commitment Schedule of the Note. Prior to the Conversion Date, the Borrower agrees that the Fiscal Agent pursuant to the Fiscal Agency Agreement shall record the date and amount of each payment and Advance under the Note and shall maintain the books and records of all Advances and Conversion Date Advances for each Principal Due Date, interest rates on Advances, payments, and Principal Amounts outstanding for each Principal Due Date. On and after the Conversion Date, the Borrower agrees that the Trustee pursuant to the Trust Agreement will maintain the books and records of all payments on the Note and all Principal Amounts and interest rates on such Principal Amounts (each as to be set forth on Schedule P&I to the Note). No advances of any kind may be made on the Note after its Conversion Date.

- B. **Borrower's Requests for Advances.** All requests for Advances or Conversion Date Advances by the Borrower under the Note shall: be in writing; specify the amount of the Advance requested; identify the Note by Borrower, number and Maximum Commitment Amount; be addressed to the Secretary at the address for notices specified in paragraph 12(f) of this Contract; be signed by an authorized official of the Borrower; and otherwise be in the form prescribed by the Secretary. Advances and Conversion Date Advances shall be requested and will only be approved and made in increments of not less than \$1,000 for any Principal Due Date. A request for an initial Advance under a Note, or a request for a Conversion Date Advance, shall be received by the Secretary at least ten Business Days prior to the Borrower's proposed Funding Date or Conversion Date, as applicable. All other requests for Advances shall be received by the Secretary not less than five Business Days prior to the proposed Funding Date. The Borrower may not deliver a Note or a request for an Advance or Conversion Date Advance to the Secretary more than two calendar months prior to the Borrower's proposed Funding Date. At least two Business

Days prior to the proposed Funding Date or Conversion Date if the Borrower's request was timely received, or the next available Funding Date for which the request was timely received, the Secretary shall, except as otherwise provided in paragraph 11(c) or 12 hereof, deliver a corresponding Authorization Order or Advance Order (as applicable) to the Fiscal Agent in accordance with Section 2.03 or 2.04 of the Fiscal Agency Agreement for the applicable Funding Date or Conversion Date. If the Borrower requests an Advance or Conversion Date Advance of less than the outstanding Maximum Commitment Amount under the Note, the Borrower may also specify in its written request the amount of the Advance or Conversion Date Advance to be allocated to each Commitment Amount or Principal Amount per Principal Due Date under the Note. If the Borrower does not specify how the Advance or Conversion Date Advance should be allocated among Commitment Amounts/Principal Due Dates, the Borrower hereby authorizes the Secretary to direct the Fiscal Agent to allocate the Advance to the respective Commitment Amounts or Principal Amounts in order of the earliest Principal Due Date(s).

- C. **Guarantee Fee.** The Borrower shall pay to the Secretary a fee equal to 2.365% of each Advance to offset the credit subsidy cost of the guaranteed loan. This fee which was announced on September 25, 2017, 82 Fed. Reg. 44649, for Section 108 loan guarantee disbursements under loan guarantee commitments awarded in FY 2018 is due to the Secretary no later than the time of the disbursement of each Advance to the Borrower. The fee is payable from allocations or grants which have been made to Borrower under Section 106 of the Act (including program income derived therefrom) or from other sources, but is only payable from Guaranteed Loan Funds if the fee is deducted from the Advance.
- D. **Conversion; Public Offering.** On the Conversion Date (if any), trust certificates backed by the Note (and similar notes issued by other Section 108 borrowers) will be purchased for a purchase price of the full principal amount thereof by underwriters selected by the Secretary (the "Underwriters") pursuant to an Underwriting Agreement between the Underwriters and the Secretary, at a closing on such Conversion Date as determined by the Secretary and the Underwriters. The Borrower agrees that the interest rate at which the trust certificate of a specified

maturity is sold to the Underwriters shall govern the interest rate inserted on the Conversion Date in Schedule P&I of the Note for the Principal Amount of corresponding maturity.

- E. **Consents.** By execution of this Contract, the Borrower ratifies and consents to the Secretary's selection of the Underwriters and authorizes the Secretary to negotiate with the Underwriters the terms of the Underwriting Agreement and of the public offering of interests in the trust certificates to investors (including the applicable interest rates). In addition, by execution hereof the Borrower ratifies and consents to the Secretary's selection of the Fiscal Agent/Trustee and agrees to the respective terms of the Fiscal Agency/Trust Agreements. If Advances have been made in the Maximum Commitment Amount of the Note not less than ten Business Days prior to the proposed Conversion Date, or if the Borrower requests a Conversion Date Advance, the Borrower authorizes the Secretary to deliver Schedule P&I to the Note completed in accordance herewith to the Fiscal Agent/Trustee on the Conversion Date in accordance with the Fiscal Agency/Trust Agreements, concurrent with delivery of the Secretary's Guarantee of the trust certificates at the closing on the Conversion Date, and thereafter the Note shall be enforceable in accordance with its terms including Schedule P&I. In addition, the Secretary reserves the right to notify the Borrower not less than one calendar month in advance of a specified Conversion Date that the Note will be sold to the Underwriters on such date, if the Secretary in his sole discretion determines that market conditions or program needs require the participation in the proposed public offering of all or substantially all Borrowers with outstanding Advances.

PART II

1. Receipt, Deposit and Use of Guaranteed Loan Funds.

(a) Except for funds deducted on the Conversion Date pursuant to paragraph 4(b) and fees and charges deducted by the Fiscal Agent/Trustee pursuant to paragraph 4(a), the Guaranteed Loan Funds shall be electronically transferred in accordance with the Borrower's instructions for deposit in a separate, identifiable account (the "Guaranteed Loan Funds Account") with a financial institution whose deposits or accounts are Federally insured. The Guaranteed Loan Funds Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Deposit Account" (**Attachment 1**) and shall be continuously maintained for the Guaranteed Loan Funds. Such Letter Agreement must be executed when the Guaranteed Loan Funds Account is established.

The Borrower shall make withdrawals from said account only for payment of the costs of approved Section 108 activities, for transfer to the Loan Repayment Account or for the temporary investment of funds pursuant to this paragraph 1(a). Such temporary investment of funds into the Guaranteed Loan Funds Investment Account shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Guaranteed Loan Funds Account. At that time, any balance of funds in the Guaranteed Loan Funds Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof, held in the Guaranteed Loan Funds Investment Account.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with the cash requirements of the approved activities. In no event shall the investments mature on or after March 31, 2019, or have maturities which exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Guaranteed Loan Funds Investment Account") established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Investment Account" (**Attachment 2**), which account

shall be maintained for all Government Obligations purchased with funds from the Guaranteed Loan Funds Account. The Guaranteed Loan Funds Investment Account need only be established if and when the Borrower is required to invest, or otherwise invests, the Guaranteed Loan Funds in Government Obligations. Such Letter Agreement must be executed when the Guaranteed Loan Funds Investment Account is established. All proceeds and income derived from such investments shall be returned to the Guaranteed Loan Funds Account.

All funds in the Guaranteed Loan Funds Account or the Guaranteed Loan Funds Investment Account must be withdrawn and disbursed by the Borrower for approved activities by March 31, 2019. Any funds remaining in either Account after this date shall be immediately transferred to the Loan Repayment Account established pursuant to paragraph 6 of this Contract.

(b) The Borrower shall by the fifteenth day of each month provide the Secretary with a written statement showing the balance of funds in the Guaranteed Loan Funds Account and the withdrawals from such account during the preceding calendar month, and a statement identifying the obligations and their assignments in the Guaranteed Loan Funds Investment Account.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Note, all right, title, and interest of the Borrower in and to the Guaranteed Loan Funds and Guaranteed Loan Funds Investment Accounts shall immediately vest in the Secretary for use in making payment on the Note, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligations of the Borrower under this Contract or the Fiscal Agency/Trust Agreements.

2. **Payments Due on Note; Final Payment and Discharge.** The Borrower shall pay to the Fiscal Agent/Trustee, as collection agent for the Note, all amounts due pursuant to the terms of the Note. In accordance with the Note and the Fiscal Agency/Trust Agreements, payment shall be made by 3:00 P.M. (New York City time) on the seventh Business Day (the "Note Payment Date") preceding the relevant Interest Due Date or Principal Due Date (each as defined in the Note). If any Note Payment Date falls on a day that is not a Business Day, then the required payment

shall be made on the next Business Day. Payment may be made by check or wire transfer.

Upon final payment of all amounts due to Holders under the Note, including any payment made by the Secretary pursuant to the Guarantee, the Fiscal Agent/Trustee is required by the Fiscal Agency/Trust Agreements to return the Note to the Secretary. Upon final payment to the Secretary of any amounts due as a result of Guarantee Payments or otherwise due under this Contract, the Secretary will cancel and return the Note to the Borrower in discharge of the Borrower's obligations under the Note.

3. **Selection of New Fiscal Agent or Trustee.** The Secretary shall select a new Fiscal Agent or Trustee if the Fiscal Agent or Trustee resigns or is removed by the Secretary. The Borrower hereby consents in advance to any such selection and to any changes in the Fiscal Agency/Trust Agreements agreed to by any Fiscal Agent or Trustee and the Secretary, subject to paragraph 4(e) of this Contract.
4. **Payments Due Fiscal Agent or Trustee; Documents to the Secretary.**

(a) The Borrower agrees to pay the fees of the Fiscal Agent as required by Exhibit G to the Fiscal Agency Agreement, and any additional amounts that may be due pursuant to Section 6.01 of the Fiscal Agency Agreement. If not paid by the Borrower by any other means prior thereto, the Borrower agrees that any such fees or additional amounts that have been incurred prior to an Advance or a Conversion Date Advance may be deducted by the Fiscal Agent/Trustee from the proceeds of the Advance or Conversion Date Advance, as applicable.

(b) The Borrower agrees to pay the Borrower's share, as determined by the Secretary, of the customary and usual issuance, underwriting, and other costs related to the public offering and future administration of the Note and the trust certificates, as approved by the Secretary, including the cost of reimbursement and/or compensation of the Trustee pursuant to the Trust Agreement, including Sections 3.11 and 7.01 thereof. In connection with the public offering on the Conversion Date, such payment shall either be made by wire transfer to the Trustee on the day prior to the Conversion Date or shall be deducted from the Guaranteed Loan Funds on the Conversion Date.

(c) The Borrower shall submit to the Secretary not later than ten Business Days prior to the Funding Date for the initial Advance hereunder, or if not submitted earlier, prior to any Conversion Date or Public Offering Date applicable to the Note, this executed Contract, the executed Note, a request for an Advance or a Conversion Date Advance (as applicable) in proper form, and an opinion acceptable to the Secretary from the Borrower's counsel to the effect that: (i) the governing body of the Borrower has authorized by resolution or ordinance, in accordance with applicable State [commonwealth] and local law, the issuance of the Note and the execution of this Contract; (ii) the Note and this Contract are valid, binding, and enforceable obligations of the Borrower; (iii) the pledge of funds pursuant to 24 CFR 570.705(b)(2) and paragraph 5(a) of this Contract is valid and binding; and (iv) there is no outstanding litigation that will affect the validity of the Note or this Contract. In addition, the Borrower shall submit any other additional documents or opinions specifically required by this Contract (e.g., paragraph 5(c), or paragraph 15, et seq.), at the time required thereby.

(d) The Borrower agrees to reimburse the Underwriters upon demand by the Secretary for the Borrower's share, as determined by the Secretary, of all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) incurred in connection with a proposed public offering, if the Underwriters incur such additional costs for the public offering because of any refusal, inability, or failure on the part of the Borrower timely to submit in acceptable form any document required by this Contract (including paragraph 4(c)), or because of any withdrawal by the Borrower from the public offering, after the Borrower has submitted a request for a Conversion Date Advance hereunder. By execution and delivery of this Contract to the Secretary, the Borrower hereby expressly authorizes the Secretary to pay amounts due under this paragraph from funds pledged under paragraph 5(a) of this Contract.

(e) The undertakings in paragraphs 3 and 4 of this Contract are expressly subject to the requirement that the Fiscal Agency/Trust Agreements shall in no event require payment of fees or charges, reimbursement of expenses, or any indemnification by the Borrower from any source other

than funds pledged pursuant to paragraphs 5 or 15 et seq. of this Contract.

5. **Security.** The Borrower hereby pledges as security for repayment of the Note, and such other charges as may be authorized in this Contract, the following:

- (a) All allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q).
- (b) Program income, as defined at 24 CFR 570.500(a) (or any successor regulation), directly generated from the use of the Guaranteed Loan Funds.
- (c) Other security as described in paragraph 15, et seq.
- (d) All proceeds (including insurance and condemnation proceeds) from any of the foregoing.
- (e) All funds or investments in the accounts established pursuant to paragraphs 1 and 6 of this Contract.

6. **Loan Repayment Account.**

(a) All amounts pledged pursuant to paragraphs 5(b), 5(c), and 5(d) of this Contract shall be deposited immediately on receipt in a separate identifiable account (the "Loan Repayment Account") with a financial institution whose deposits or accounts are Federally insured. The Loan Repayment Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Deposit Account" (**Attachment 1**) and shall be maintained for such pledged funds. The Loan Repayment Account need only be established if and when the Borrower receives amounts pledged pursuant to paragraph 5(b), 5(c) or 5(d). Such Letter Agreement must be executed when the Loan Repayment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) Borrower shall make withdrawals from said account only for the purpose of paying interest and principal due on the Note (including the purchase of Government Obligations in accordance with paragraph 10 hereof), for payment of any

other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or for the temporary investment of funds pursuant to this paragraph, until final payment and discharge of the indebtedness evidenced by the Note, unless otherwise expressly authorized by the Secretary in writing. Such temporary investment of funds shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Loan Repayment Account. At that time, the balance of funds in the Loan Repayment Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with cash requirements for payment of principal and interest as required under the Note. In no event shall the maturities of such investments exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Loan Repayment Investment Account") established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Investment Account" (**Attachment 2**), which account shall be maintained for all Government Obligations purchased with funds from the Loan Repayment Account. Such Letter Agreement must be executed when the Loan Repayment Investment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) All proceeds and income derived from such investments shall be returned to the Loan Repayment Account.

(b) Borrower shall by the fifteenth day of each month, provide the Secretary with a written statement showing the balance of funds in the Loan Repayment Account and the deposits and withdrawals of all funds in such account during the preceding calendar month and a statement identifying the obligations and their assignments in the Loan Repayment Investment Account.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Note, all right, title, and interest of the Borrower in and to the Loan Repayment and Loan Repayment Investment Accounts shall

immediately vest in the Secretary for use in making payment on the Note, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements.

7. **Use of CDBG, EDI or BEDI Funds for Repayment.** Any funds available to the Borrower under Section 106 of the Act (including program income derived therefrom) are authorized to be used by the Borrower for payments due on the Note, Optional Redemption (as defined in the Note), payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or the purchase of Government Obligations in accordance with paragraph 10. Any funds specifically available to the Borrower for such payments or as a debt service reserve under an EDI or BEDI Grant Agreement pursuant to Section 108(q) of the Act which supports the eligible project(s) and activities financed by the Note may also be used therefor; any other use of Section 108(q) funds for such purposes shall require the prior written approval of the Secretary. Unless otherwise specifically provided herein or unless otherwise expressly authorized by the Secretary in writing, the Borrower shall substantially disburse funds available in the Loan Repayment or the Loan Repayment Investment Accounts before funds from grants under Section 106 of the Act are withdrawn from the U.S. Treasury for such purposes.
8. **Secretary's Right to Restrict Use of CDBG Funds to Repayment.** Upon a determination by the Secretary that payments required by paragraph 2 and/or paragraph 4 of this Contract are unlikely to be made as specified, the Secretary may give the Borrower notice that the availability to the Borrower of funds pledged under paragraph 5(a) of this Contract for purposes other than satisfaction of the pledge is being restricted. This restriction shall be in an amount estimated by the Secretary to be sufficient to ensure that the payments referred to in paragraph 2 and/or paragraph 4 hereof are made when due. This restriction may be given effect by conditioning the restricted amounts to prohibit disbursement for purposes other than satisfaction of the pledge at the time such restricted funds are approved as grants, by limiting the Borrower's ability to draw down or expend the restricted funds for other purposes, and by disapproving payment requests submitted with respect to

such grants for purposes other than satisfaction of the pledge.

9. **Secretary's Right to Use Pledged Funds for Repayment.** The Secretary may use funds pledged under paragraph 5(a) of this Contract or funds restricted under grants pursuant to paragraph 8 of this Contract to make any payment required of the Borrower under paragraph 2 and/or paragraph 4, if such payment has not been timely made by the Borrower.

10. **Defeasance.** For purposes of this Contract, after the Conversion Date the Note shall be deemed to have been paid (defeased) if there shall have been deposited with the Trustee either moneys or Government Obligations (as defined below), which in the sole determination of the Secretary, mature and bear interest at times and in amounts sufficient, together with any other moneys on deposit with the Trustee for such purpose, to pay when due the principal and interest to become due on the Note. The Aggregate Principal Amount of the Note or any unpaid Principal Amount may be so defeased, in whole or in part, as of any Interest Due Date, or any other Business Day acceptable to both HUD and the Borrower. In accordance with the Note and the Trust Agreement, the Borrower shall give timely notice and written instructions to the Secretary and the Trustee concerning any principal amounts proposed to be defeased, including any Optional Redemptions proposed, which instructions shall be approved by the Secretary. If the unpaid Aggregate Principal Amount of the Note guaranteed pursuant to this Contract shall be defeased and deemed to have been paid in full, then the Borrower shall be released from all agreements, covenants, and further obligations under the Note.

"Government Obligation" means a direct obligation of, or any obligation for which the full and timely payment of principal and interest is guaranteed by, the United States of America, including but not limited to, United States Treasury Certificates of Indebtedness, Notes and Bonds - State and Local Government Series or certificates of ownership of the principal of or interest on direct obligations of, or obligations unconditionally guaranteed by, the United States of America, which obligations are held in trust by a commercial bank which is a member of the Federal Reserve System and has capital and surplus

(exclusive of undivided profits) in excess of \$100,000,000.

11. **Default.** (a) A Default under the Note and this Contract shall occur upon failure by the Borrower to:

(i) pay when due an installment of principal or interest on the Note; or (ii) punctually and properly perform, observe, and comply with any covenant, agreement, or condition contained in: A) this Contract, (B) any security agreement, deed of trust, mortgage, assignment, guarantee, or other contract securing payment of indebtedness evidenced by the Note, or (C) any future amendments, modifications, restatements, renewals, or extensions of any such documents.

(b) The Borrower waives notice of Default and opportunity for hearing with respect to a Default under paragraph 11(a).

(c) In addition to Defaults under paragraph 11(a), the Secretary may declare the Note in Default if the Secretary makes a final decision in accordance with the provisions of section 111 of the Act and 24 CFR 570.913 (or any successor provisions), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with title I of the Act. Notwithstanding any other provision, following the giving of such reasonable notice, the Secretary may, in the Secretary's sole discretion pending the Secretary's final decision, withhold the guarantee of any or all obligations not yet guaranteed on behalf of the Borrower under outstanding commitments, suspend approval of any further Advances or Conversion Date Advances under the Note, and/or direct the Borrower's financial institution to: refuse to honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account initiated by the Borrower, and/or refuse to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account.

12. **Remedial Actions.** Upon a Default or declaration of Default under this Contract, the Secretary may, in the Secretary's sole discretion, take any or all of the

following remedial actions:

(a) With any funds or security pledged under this Contract, the Secretary may: (i) continue to make payments due on the Note, (ii) make a prepayment under Section I.D. of the Note or make an acceleration payment with respect to the principal amount of the Note subject to Optional Redemption as provided in Section III of the Note, (iii) purchase Government Obligations in accordance with paragraph 10 of this Contract, (iv) pay any interest due for late payment as provided in the Note, this Contract, or the Fiscal Agency/Trust Agreements, (v) pay any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, and/or (vi) pay any reasonable expenses incurred by the Secretary or the Fiscal Agent/Trustee as result of the Borrower's Default.

(b) The Secretary may withhold the guarantee of any or all obligations not yet guaranteed or the disbursement of any or all grants not yet disbursed in full under outstanding guarantee commitments or grant approvals for the Borrower under Sections 108 and/or 106 of the Act.

(c) The Secretary may withhold approval of any or all further Advances or Conversion Date Advances under the Note (if applicable); direct the Borrower's financial institution to refuse to: honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account by the Borrower, and/or to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account; and/or direct the Borrower and/or the Borrower's financial institution to transfer remaining balances from the Guaranteed Loan Funds Account to the Loan Repayment Account.

(d) Until the Conversion Date, or with respect to amounts subject to Optional Redemption, the Secretary may accelerate the Note.

(e) The Secretary may exercise any other appropriate remedies or sanctions available by law or regulation applicable to the assistance provided under this Contract, or may institute any other action available under law to recover Guaranteed Loan Funds or to reimburse the Secretary for any payment under the Secretary's Guarantee or any reasonable expenses incurred by the Secretary as a

result of the Default.

(f) All notices and submissions provided for hereunder shall be in writing (including by telex, telecopier or any other form of facsimile communication) and mailed or sent or delivered, as to each party hereto, at its address set forth below or at such other address as shall be designated by such party in a written notice to the other party hereto. All such notices and other communications shall be effective when received as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or five Business Days after deposit in the mail, postage prepaid; (iii) if sent by telex, upon receipt by the sender of an answer back; and (iv) if sent by telecopier, upon receipt.

The Secretary:

U.S. Dept. of Housing and Urban Development
Attention: Paul Webster, Director
Financial Management Division
451 7th Street SW, Room 7180
Washington, DC 20410

Borrower:

County of Clackamas, Oregon
Attn: Kevin Ko, Housing and Community Dev. Manager
2051 Kaen Road
Oregon City, OR 97045

13. **Limited Liability.** Notwithstanding any other provision of this Contract, the Fiscal Agency/Trust Agreements or the Note, any recovery against the Borrower for any liability for amounts due pursuant to the Note, the Fiscal Agency/Trust Agreements or this Contract shall be limited to the sources of security pledged in paragraph 5 or any Special Conditions of this Contract. Neither the general credit nor the taxing power of the Borrower, or of the State in which the Borrower is located, is pledged for any payment due under the Note, the Contract, or the Fiscal Agency/Trust Agreements.
14. **Incorporated Grant Agreement.** The Contract and the Note are hereby incorporated in and made a part of the Grant Agreement authorized by the Secretary on August 1, 2018 under the Funding Approval for grant number B-18-UC-41-0001 to the Borrower. In carrying out activities with the

Guaranteed Loan Funds hereunder, the Borrower agrees to comply with the Act and 24 CFR Part 570, as provided in Subpart M thereof.

15. Special Conditions and Modifications:

- (a) Paragraph 5(c) of the contract is amended by deleting the paragraph as written in its entirety and substituting therefor the following:

"(c) Other security described generally in paragraph 15, including but not limited to, all rights in and to the Security Documents defined in paragraph 15(d) and to the Collateral described therein, and all rights in and to any other collateral approved by the Secretary and described in **Attachment 3.**"

- (b) Guaranteed Loan Funds shall be used by the Borrower for one or more of the activities described in subparagraphs (i) through (ii) below, subject to the requirements in subparagraph (iii):

- (i) Borrower may use Guaranteed Loan Funds to carry out the following activities directly:

- (A) Acquisition of improved or unimproved real property in fee or by long-term lease, pursuant to 24 CFR 570.703(a);

- (B) Rehabilitation of real property owned or acquired by the public entity or its designed public agency pursuant to 24 CFR 570.703(b);

- (C) Relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations, and farm operations who must relocate permanently or temporarily as a result of an activity financed with guaranteed loan funds, where the assistance is: (1) required under the provisions of § 570.606(b) or (c); or (2) determined by the public entity to be appropriate under the provisions of § 570.606(d).

- (D) Clearance, demolition, and removal related

to real property acquired or rehabilitated pursuant to 24 CFR 570.703(e);

- (E) Site preparation or remediation pursuant to 24 CFR 570.703(f);
- (F) Housing rehabilitation eligible under 24 CFR 570.202, pursuant to 24 CFR 570.703(h);
- (G) Special economic development activities eligible under 24 CFR 570.203, pursuant to 24 CFR 570.703(i); and
- (H) Public facilities and improvements to the extent eligible under 24 CFR 570.201(c) pursuant to 24 CFR 570.703(l).

(ii) Borrower also may use Guaranteed Loan Funds to:

- (A) Pay issuance, underwriting, servicing, trust administration and other costs associated with private sector financing of debt obligations under 24 CFR part 570 subpart M, pursuant to 24 CFR 570.703(g); and
- (B) Payment of fees charged by HUD pursuant to § 570.712, pursuant to 24 CFR 570.703(n).

(iii) Requirements on the use of Guaranteed Loan Funds:

(A) **Transfer of Guaranteed Loan Funds and Use of Subrecipients:**

Transfer of Guaranteed Loan Funds. Except to directly pay costs incurred by the Borrower for eligible activities identified in subparagraph (i) or (ii), the Borrower shall not grant, loan, or otherwise transfer Guaranteed Loan Funds to any entity other than: 1) an entity through which the Borrower will carry out activity in accordance with 24 CFR 570.200(f); 2) a for-profit business that will receive assistance where the assistance is appropriate to carry out an economic development project under 24 CFR 570.203(b); or 4) a private individual or entity authorized to receive assistance

for housing rehabilitation eligible under 24 CFR 570.202(b)(1).

Any transfer of Guaranteed Loan Funds to a for-profit business, subrecipient, or other individual or entity authorized to receive assistance for housing rehabilitation shall be subject to an agreement that includes any provisions necessary and appropriate to ensure that the for-profit business, subrecipient, or other individual or entity authorized to receive assistance for housing rehabilitation shall comply with all requirements associated with the use of the Guaranteed Loan Funds contained in this Contract and 24 CFR part 570 subpart M, and that in the event that these requirements conflict with any other agreement governing the use of the funds, HUD's requirements on the use of Guaranteed Loan Funds shall control.

Use of Subrecipients. Any transfer of Guaranteed Loan Funds to the Subrecipient or another subrecipient shall be subject to an agreement that includes any provisions necessary or appropriate to ensure compliance with all requirements associated with the use of the Guaranteed Loan Funds contained in this Contract and 24 CFR part 570 subpart M, and to ensure that in the event that HUD's requirements conflict with any other agreement governing the use of the funds, HUD's requirements on the use of Guaranteed Loan Funds shall control.

The definition of subrecipient in 24 CFR 570.500(c), the requirements in 24 CFR 570.503, and other provisions of 24 CFR part 570 related to subrecipients apply to the use of Guaranteed Loan Funds.

- (B) **Business Loan Terms.** Each loan the Borrower makes as an eligible activity under 24 CFR 570.703(i)(1), pursuant to 570.203, or 24 CFR 570.703(i)(2), pursuant to 570.204, to a subrecipient, for-profit business, or CBDO

(individually, a "Business Borrower") shall be a "Business Loan" evidenced by a promissory note (individually, the "Business Note" and, collectively, the "Business Notes") and a loan agreement (individually, the "Business Loan Agreement" and collectively, the "Business Loan Agreements").

Each Business Note and Business Loan Agreement shall be in a form acceptable to the Secretary and shall contain the following terms and any other provisions the Secretary deems necessary.

For each Note governed by this Contract, the aggregate amount of principal and/or interest under the Business Notes financed with that Note that is payable during the twelve-month period beginning July 1 of each year and ending on June 30 of the next succeeding year shall be equal to or greater than the amount of principal and/or interest payable under that Note.

No Business Note shall be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the corresponding Note from which the Business Loan was financed. However, the Borrower may permit a Business Borrower to defease a Business Note, meaning that the Business Borrower shall deposit, in the Loan Repayment Investment Account, either moneys or Government Obligations, which mature and bear interest at times and in amounts sufficient to pay when due the principal and interest to become due on the Business Note.

- (C) **Subrecipient Loan Terms:** The Subrecipient Loan shall be evidenced by a promissory note (the "Subrecipient Note") and a loan agreement (the "Subrecipient Loan Agreement").

The Subrecipient Note and Subrecipient Loan Agreement shall be in a form acceptable to

the Secretary and contain the following terms and any other provisions the Secretary deems necessary.

The amount of principal and/or interest payable under the Subrecipient Note during the twelve-month period beginning July 1 of each year and ending on June 30 of the next succeeding year shall be equal to or greater than the amount of principal and/or interest payable under the Note for the corresponding period.

The Subrecipient Note shall not be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the Note. However, the Borrower may permit the Subrecipient to defease the Subrecipient Note, meaning that the Subrecipient shall deposit, in the Loan Repayment Investment Account, either moneys or Government Obligations, which mature and bear interest at times and in amounts sufficient to pay when due the principal and interest to become due on the Subrecipient Note.

- (D) **Intercreditor and Other Agreements.** If HUD requirements made applicable by this Contract conflict with any other agreement governing the use of the Guaranteed Loan Funds, HUD's requirements on the use of Guaranteed Loan Funds shall control.

Without written approval by the Secretary, neither the Subrecipient or the Borrower shall enter or amend an intercreditor agreement, subordination agreement, or similar agreement that affects the Borrower's rights under the Collateral pledged to secure the Subrecipient Note or the rights assigned to HUD under the Security Documents pledged to secure the Note (each individually, an "Intercreditor Agreement"). Intercreditor Agreements approved by the Secretary, including amendments, must be in a form acceptable to the Secretary.

(E) **New Markets Tax Credits.** Without prior written approval by HUD, the Borrower shall not use Guaranteed Loan Funds for an activity that is part of a project in which New Markets Tax Credits are part of the financing structure or in which Guaranteed Loan Funds will be used to leverage or generate New Markets Tax Credits pursuant to Section 45(D) of the Internal Revenue Code. At the discretion of the Secretary, HUD's approval and any related conditions may be provided in **Attachment 3**, as discussed below.

(F) **Alternative Collateral and Security Arrangements.** The Borrower shall not incur any obligations to be paid with Guaranteed Loan Funds which will be subject to the alternative collateral or security arrangements described in paragraph 15(c)(iv) prior to the approval and memorialization of the alternative collateral or security arrangements in **Attachment 3**.

(G) **Limitation on Tax-Exempt Bond Financing.** Without prior written approval by HUD, the Borrower shall not use Guaranteed Loan Funds for an activity or project that is financed in whole or in part with tax-exempt bonds. HUD will not unreasonably withhold approval if the use of Guaranteed Loan Funds complies with the requirements of 26 U.S.C. 149 and Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables, published by the White House Office of Management and Budget.

(c) The Borrower agrees that it will take the steps necessary to fulfill the pledge of security in paragraph 5(c), as modified by paragraph 15(a), including:

For Business Loans: To secure the payment and performance of the obligations of each Business Borrower to the Borrower, the Borrower shall obtain the collateral in subparagraphs (i)-(ii) below sufficient to fully secure (100 percent of the principal amount) each Business Loan, and additionally may require the Business Borrower to

obtain a personal guaranty or establish a debt service reserve to ensure timely payment, as described in subparagraph (iii) below; OR the Borrower may seek approval from HUD for alternative collateral or security arrangements as described in subparagraph (iv) below.

To fully secure the repayment of the Note and such other charges authorized in this Contract, the Borrower will collaterally assign to the Secretary all of its rights and interests in the Business Loans and the collateral securing the Business Loans as described in paragraphs 15(d) and (e), or take alternative steps approved by the Secretary in accordance with subparagraph (iv) below.

In the event of default by the Business Borrower, the Borrower shall take all necessary steps to ensure that if its enforcement of any interest in collateral securing a Business Loan would void the Secretary's interest in collateral the Borrower pledged to secure the Note and other charges authorized by the Contract, the Borrower will pledge substitute collateral of at least equal value that is acceptable to the Secretary.

For activities other than Business Loans: To fully secure repayment of the Note and such other charges authorized in this Contract, the Borrower shall pledge alternative collateral or security arrangements for approval by HUD as described in subparagraph (iv).

Collectively, the collateral described or identified in (i) - (iv) shall be referred to as the "Collateral", and shall be subject to the requirements in (v):

- (i) Real Property and Fixtures: A sole first-priority lien on real property together with any fixtures located on and any personal property affixed to, installed in, or attached to the real property, whether now owned or hereafter acquired (the "Real Property"), established through an appropriate and properly recorded mortgage or deed of trust signed by the Business Borrower as mortgagor of a fee simple ownership interest and securing

repayment of the indebtedness evidenced by the Business Note, which shall contain such provisions as the Secretary deems necessary.

The lien on Real Property shall be accompanied by a lien of equal priority on any and all rights, titles, and interests of the Business Borrower in and to any leases covering the Real Property and any rents derived from the Real Property. Such rights, titles, and interests shall be the subject of an appropriate and properly recorded collateral assignment of leases and rents, which shall be in a form acceptable to the Secretary.

The lien on Real Property also shall be accompanied by a lien of equal priority on any and all rights, titles, and interests of the Business Borrower in and to any permits, licenses, agreements, and other intangible personal property rights covering the Real Property, including but not limited to water rights, air rights, utility connection rights, or insurance policies held by the Business Borrower with respect to the Real Property, whether now owned or hereafter acquired, and which are used in connection with the maintenance, use, occupancy or enjoyment of the Real Property. Such rights, titles, and interests shall be the subject of a collateral assignment of interest in licenses, permits, and other agreements, which shall be in a form acceptable to the Secretary.

The pledges and assignments required by this subparagraph (i) and related Security Agreements required by subparagraph (v) may be made in the instruments identified therein, or in a single instrument (individually or collectively, the "Business Borrower Mortgage, Assignment, Security Agreement, and Fixture Filing"), which shall be signed by the Business Borrower and shall contain any provisions the Secretary deems necessary.

- (ii) Machinery and Equipment or Other Personal Property: One or more security interests in

machinery and equipment ("M&E"), accounts receivable, inventory, or other items of personal property (collectively, the "Security Interests in Personal Property"). The principal amount of the Business Loan secured by the Personal Property shall not exceed an amount determined as follows:

- (A) in the case of used M&E, not more than 90 percent of the appraised net liquidation value, less the outstanding balance of other indebtedness secured by a senior security interest in such M&E; and
 - (B) in the case of new M&E, not more than 80 percent of the cost thereof (including installation), less the outstanding balance of other indebtedness secured by a senior security interest in such M&E; and
 - (C) in the case of accounts receivable, not more than 80 percent of the average of the ending balances of the last three years of accounts receivable, less the outstanding balance of other indebtedness secured by a senior security interest in said accounts receivable; and
 - (D) in the case of inventory, not more than 50 percent of the average of the ending inventory balances of the last three years, less the outstanding balance of other indebtedness secured by a senior security interest in said inventory.
- (iii) "Personal Guaranty" (which term may include any guaranty issued by a party other than the Business Borrower) or Loan Loss/Debt Service Reserve: In addition to Collateral described in subparagraphs (i) or (ii), the Borrower may require the Business Borrower to ensure timely payment by obtaining a personal guaranty or establishing a loan loss/debt service reserve account in connection with the Business Loan. Any rights, titles, and interests of the Business Borrower in a personal guaranty or loan loss/debt service reserve account shall be

the subject of a collateral assignment of interest to the Borrower (the "Collateral Assignment of Interest in Personal Guaranty or Loan Loss/Debt Service Reserve Accounts"), and if necessary to attach and perfect the Borrower's security interest, a deposit account control agreement. The Collateral Assignment of Interest in Personal Guaranty or Loan Loss/Debt Service Reserve Accounts and the deposit account control agreement shall be in a form acceptable to the Secretary.

- (iv) Alternative Collateral: Such other alternative collateral or security arrangements as may be requested by the Borrower and approved by the Secretary in writing, which may include Collateral pledged by the Business Borrower or by the Borrower directly. The alternative Collateral shall be described in **Attachment 3** to this Contract, which may be updated from time to time to include all alternative Collateral approved by the Secretary as security for the Business Loan or the Note. The last dated **Attachment 3** that is agreed to and acknowledged by the signature of the parties identified in paragraph 12, their successors, or other authorized agents of the parties, is incorporated into this Contract and shall represent the agreement of the parties.
- (v) The Borrower shall take all steps necessary to attach, perfect, and maintain the perfection and priority of its security interests, and security interests granted to the Secretary, in the Collateral described in subparagraphs (i)-(iv) above, unless otherwise required by this paragraph or **Attachment 3**. Real Property interests must be properly recorded. Personal property and fixtures pledged as Collateral shall be included in valid agreements necessary for attachment and perfection, for example, a security agreement that reasonably identifies the property, or in the case of a deposit account, a deposit account control agreement (together, the "Security Agreement or Other Security Documents"). As needed for attachment and perfection, the Security Agreement or Other

Security Documents shall be referenced in appropriate Uniform Commercial Code ("UCC") Financing Statements filed in accordance with applicable law and the UCC. The Security Agreement and Other Security Documents and related UCC Financing Statements shall contain such provisions as the Secretary deems necessary. UCC Financing Statements shall be re-filed by the Borrower as necessary to remain current and effective.

- (d) Unless otherwise agreed to by the Secretary, the Borrower shall select a financial institution acceptable to the Secretary (the "Custodian") to act as custodian for the documents specified in 15(e) below (the "Security Documents"). The Borrower and the Custodian shall enter into a written agreement containing such provisions as the Secretary deems necessary. A fully signed original agreement shall be delivered to the Secretary contemporaneously with the delivery of this Contract and the Note. At the request of the Secretary, Borrower shall deliver electronic copies of all Security Documents to the office identified in paragraph 12, or upon the request of the Secretary, electronic copies to an address to be identified by the Secretary.
- (e) Not later than five business days after receipt by the Borrower of the Guaranteed Loan Funds, or at such other time as may be required by the Secretary, the Borrower shall deliver to the Custodian the following:
 - (i) If the activity is a Business Loan, the original Business Note, endorsed in blank and without recourse.
 - (ii) If the activity is a Business Loan, the original Business Loan Agreement, and a collateral assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
 - (iii) In the case of a Business Loan secured by Real Property, the original recorded Business Borrower Mortgage, Assignment, Security Agreement, and Fixture Filing (which may consist of one or more instruments that contain the mortgage and assignments from the Business Borrower to the Borrower required by paragraph 15(c)(i) and the

related Security Agreement or Other Security Documents required by paragraph 15(c)(v)), together with assignments thereof from the Borrower to the Secretary, in a recordable form but unrecorded, which assignments shall be in a form acceptable to the Secretary.

The Business Borrower Mortgage, Assignment, Security Agreement, and Fixture Filing shall be accompanied by copies of all UCC Financing Statement filings and re-filings made by the Borrower pursuant to paragraph 15(c)(v).

The Business Borrower Mortgage, Assignment, Security Agreement, and Fixture Filing may be delivered to the Custodian within five business days after receipt from local recordation office, but not longer than 45 days after disbursement of Guaranteed Loan Funds.

- (iv) In the case of a Business Loan secured by M&E or other Personal Property, the original Security Agreement and Other Security Documents and related UCC Financing Statements filed and re-filed from time to time covering any Security Interests in Personal Property, and a collateral assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
- (v) If a personal guaranty or loan loss/debt service reserve account is established to secure a Business Loan, the original Collateral Assignment of Interest in Personal Guaranty or Loan Loss/Debt Service Reserve Accounts and original deposit account control agreement (if required by paragraphs 15(c)(iii) or (v)), and an assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
- (vi) For Business Loans secured by Real Property:
 - (A) An appraisal of the fee simple ownership interest in the Real Property that is the subject of the Business Borrower Mortgage, Assignment, Security Agreement, and Fixture Filing securing the Business Loan. The appraisal shall specify an estimate of the "as

completed" fair market value that is not less than 125 percent (125%) of the principal balance of the Business Note plus 125 percent (125%) of any outstanding balance on other indebtedness secured by a mortgage lien of senior or equal priority on the Real Property, if agreed to by the Secretary.

The appraisal shall be completed by an appraiser who is certified by the state and has a professional designation (such as "SRA" or "MAI") and shall conform to the standards of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").

- (B) A mortgagee title policy, issued by a company acceptable to the Secretary and in a form acceptable to the Secretary, naming the Borrower as the insured party. The policy must either include in the definition of the "insured" each successor in ownership of the indebtedness secured by the Business Borrower Mortgage, Assignment, Security Agreement, and Fixture Filing or be accompanied by an endorsement of the policy to the Secretary.
 - (C) A certified survey with a legal description conforming to the title policy and the Business Borrower Mortgage, Assignment, Security Agreement.
- (vii) For Business Notes secured by M&E or other Personal Property:
- (A) For a security interest in used M&E, an appraisal of the net liquidation value of the used M&E; or
 - (B) For new M&E, accounts receivable, inventory, or other items of personal property, documentation that the value meets the criteria specified in paragraph 15(c)(ii).
- (viii) An opinion of Borrower's counsel on its letterhead, addressed and satisfactory to the Secretary, that:
- (A) the Business Borrower is duly organized and validly existing as a **[corporation,**

partnership, etc.] under the laws of the State of _____ and is *[existing, qualified to do business, in good standing, as applicable]* in and under the laws of the State of _____ (opinion shall fill in blanks as applicable);

- (B) the Business Note has been duly executed and delivered by an authorized party and is a valid and binding obligation of the Business Borrower, enforceable in accordance with its terms, except as limited by bankruptcy and similar laws affecting creditors generally; and
- (C) the instruments specified in subparagraphs (ii) through (v) above are valid and legally binding obligations, enforceable in accordance with their respective terms.

To the extent that the foregoing opinion deals with matters customarily within the due diligence of counsel to the Business Borrower, Borrower's counsel may attach and expressly rely on an opinion of Business Borrower's counsel satisfactory to the Secretary.

- (ix) Any instruments, documents, agreements, and legal opinions required pursuant to paragraph 15(c)(iv), 15(c)(v), or **Attachment 3**, including an opinion of the Borrower's counsel that the instruments, documents, and agreements are valid and legally binding obligations, enforceable in accordance with their respective terms. These instruments shall include any Security Agreement or Other Security Documents required by paragraph 15(c)(v), and an assignment thereof to the Secretary, which shall be in a form acceptable to the Secretary. The Security Agreement or Other Security Documents shall be accompanied by copies of all UCC Financing Statement filings and re-filings required by paragraph 15(c)(v).

(f) The Borrower covenants that it shall:

- (i) ensure the diligent performance of the usual and customary functions related to the servicing of the Business Notes; and

- (ii) promptly perfect and maintain its security interests, and security interests granted to the Secretary, in the Collateral described in subparagraphs (c)(i) through (iv), by filing and re-filing a financing statement in accordance with the requirements of the Uniform Commercial Code or taking other measures described in subparagraph (c)(v), and provide verification to the Secretary upon request that the security interests have been perfected and maintained in the manner described above; and
 - (iii) that it shall not take any action that would affect the Secretary's rights under any of the Security Documents, or sell, dispose of, or otherwise take any action that would affect the Collateral underlying any of the Security Documents following their delivery to the Custodian, without the prior written consent of the Secretary.
- (g) The Borrower shall promptly notify the Secretary in writing whenever an event which constitutes a default (an "Event of Default") under (and as defined in) any of the Security Documents pertaining to a Business Loan has occurred and has continued unremedied for a period of 90 days after such occurrence. Such Business Loan shall be hereinafter referred to as the "Nonperforming Business Loan." However, if a Loan Loss/Debt Service Reserve Fund has been established by the Borrower in an amount sufficient to satisfy at least one year's debt service to HUD on the Nonperforming Business Loan(s) at the date that the loan(s) become nonperforming, the Borrower shall have an additional year prior to the required notification to remedy the default. Notification of a Nonperforming Business Loan shall be delivered to the Secretary as directed in paragraph 12(f) above.

The Borrower shall within 60 days of such notification take one of the following actions:

- (i) The Borrower may replace the Nonperforming Business Loan with another, performing loan (the "Replacement Loan") which meets the requirements associated with Business Loans in paragraph 15(b) and the security requirements specified in paragraph 15(c). Such replacement shall be affected by delivery to the Custodian of the Security Documents that would be

delivered if the Replacement Loan were made from Guaranteed Loan Funds. If the payments of principal and interest on the Replacement Loan are insufficient to satisfy the payments that are due on the Nonperforming Business Loan, the Borrower shall purchase Government Obligations that mature and bear interest at times and in amounts sufficient, together with payments due on the Replacement Loan, to pay when due the principal and interest to become due on the Nonperforming Business Loan. Such Government Obligations shall be deposited in the Loan Repayment Investment Account.

- (ii) If the Borrower elects not to replace a Nonperforming Business Loan, the Borrower shall purchase Government Obligations that mature and bear interest at times and in amounts sufficient to pay when due the principal and interest to become due on the Nonperforming Business Loan, or provide alternative Collateral approved by the Secretary in accordance with paragraph 15(c)(iv). (This action shall be required only with respect to Nonperforming Business Loans that have not been replaced as provided under subparagraph (i) above.) Required Government Obligations shall be deposited in the Loan Repayment Investment Account.
- (h) Paragraph 12 is amended by adding at the end thereof the following language:
 - "(g) The Secretary may complete the endorsement of the Business Notes and record the assignments referred to in paragraph 15(e), or take any other measures to effectuate the transfer of Security Documents referenced and underlying indebtedness from the Borrower to the Secretary or the Secretary's assignee.
 - (h) The Secretary may exercise or enforce any and all other rights or remedies (including any and all rights and remedies available to a secured party under the UCC) available by law or agreement (including any of the Security Documents, as defined in paragraph 15(d)) against the Borrower, against a Business Borrower, against the personal guarantor, or against any other person or property (including the Real Property)."

(i) Additional Grounds for Default. Notice of Default.
Restriction of Pledged Grants. Availability of Other
Remedial Actions.

- (i) The Borrower acknowledges and agrees that the Secretary's guarantee of the Note is made in reliance upon the availability of grants pledged pursuant to paragraph 5(a) (individually, a "Pledged Grant" and, collectively, the "Pledged Grants") in any Federal fiscal year subsequent to the Federal fiscal year ending September 30, 2018 to: (A) pay when due the payments to become due on the Note, or (B) defease (or, if permitted, prepay) the full amount outstanding on the Note. The Borrower further acknowledges and agrees that if the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are unlikely to be available for either of such purposes, such determination shall be a permissible basis for any of the actions specified in paragraphs (ii) and (iii) below (without notice or hearing, which the Borrower expressly waives).
- (ii) Upon written notice from the Secretary to the Borrower at the address specified in paragraph 12(f) above that the Secretary (in the Secretary's sole discretion) has determined that Pledged Grants are unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above (such notice being hereinafter referred to as the "Notice of Impaired Security"), the Secretary may limit the availability of Pledged Grants by withholding amounts at the time a Pledged Grant is approved or by disapproving payment requests (drawdowns) submitted with respect to Pledged Grants.
- (iii) If after 60 days from the Notice of Impaired Security the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are still unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above, the Secretary may declare the Note in Default and exercise any and all remedies available under paragraph 12. This paragraph (iii) shall not affect the right of the Secretary to declare the Note

and/or this Contract in Default pursuant to paragraph 11 and to exercise in connection therewith any and all remedies available under paragraph 12.

- (iv) All notices and submissions provided for hereunder above shall be submitted as directed in paragraph 12(f).
- (j) If any one or more of the covenants, agreements, provisions, or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract or of the Note or the rights of the Holder thereof.

[Remainder of Page Intentionally Left Blank]

THE UNDERSIGNED, as authorized officials on behalf of the Borrower or the Secretary, have executed this Contract for Loan Guarantee Assistance, which shall be effective as of the date of execution hereof on behalf of the Secretary.

County of Clackamas, Oregon
BORROWER

BY:

(Signature)

(Name)

(Title)

(Date)

**SECRETARY OF HOUSING AND URBAN
DEVELOPMENT**

BY:

(Signature)

Stanley Gimont
(Name)

**Deputy Assistant Secretary
for Grant Programs**
(Title)

(Date)

ATTACHMENT 3

Description of Alternative Collateral

[If approved by the Secretary, this attachment may be updated from time to time in accordance with paragraph 15(c)(iv) of this Contract.

Any update to this attachment shall be incorporated into this Contract once agreed to and acknowledged by the signature of the parties identified in paragraph 12, their successors, or other authorized agents of the parties.]

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 108 LOAN GUARANTEE PROGRAM**

VARIABLE/FIXED RATE NOTE

NOTE NUMBER: **B-18-UC-41-0001**

BORROWER: **County of Clackamas,
Oregon**

**[Housing and Community Development
Loan Fund Project]**

MAXIMUM COMMITMENT
AMOUNT: **\$11,100,000**

COMMITMENT AMOUNTS: See
Commitment Schedule attached hereto.

VARIABLE INTEREST RATE: As set forth below.

REGISTERED HOLDER: Daedalus & Co
 As Nominee for
 Money Market Obligations Trust
 on behalf of its Government Obligations Fund

DATE OF NOTE: _____

PRINCIPAL DUE DATES AND PRINCIPAL
AMOUNT: Before the Conversion Date, the
aggregate of Advances made for each
applicable Principal Due Date specified in the
Commitment Schedule to this Note; on or after
the Conversion Date, the Principal Amount (if
any) listed for each Principal Due Date in
Schedule P & I hereto.

I. Terms Applicable Before the Conversion Date

A. Advances

For value received, the undersigned, the County of Clackamas (the "Borrower"), which term includes any successors and assigns, a public entity organized and existing under the laws of the State (or Commonwealth as applicable) of Oregon, promises to pay to the Registered Holder (the

"Holder," which term includes any successors or assigns), at the time, in the manner, and with interest at the rate or rates hereinafter provided, such amounts as may be advanced under this Note from time to time by the Holder for disbursement to, or on behalf of, the Borrower (individually, an "Advance", and collectively, "Advances"). The Holder shall make Advances upon the written request of the Borrower and the approval of the Secretary of Housing and Urban Development or his designee (the "Secretary"), pursuant to the Contract for Loan Guarantee Assistance (as further defined in Section IV.A. of this Note, the "Contract"), and the Amended and Restated Master Fiscal Agency Agreement (the "Fiscal Agency Agreement") dated as of May 17, 2000, between The Bank of New York Mellon (successor to The Chase Manhattan Bank and JPMorgan Chase Bank, N.A.), as Fiscal Agent (the "Fiscal Agent"), and the Secretary. The total amount of Advances made for each Principal Due Date under this Note shall not exceed the applicable Commitment Amount for such Principal Due Date set forth on the Commitment Schedule attached hereto. The aggregate of all Advances under this Note for all Principal Due Dates shall not exceed the Maximum Commitment Amount specified on the attached Commitment Schedule. The Fiscal Agent shall record the date and amount of all payments and Advances on this Note and maintain the books and records of all such Advances and Commitment Amounts for each corresponding Principal Due Date, and all payments. No Advances shall be made on this Note after its Conversion Date.

As used herein, "Conversion Date" means the date (if any) upon which this Note is (i) delivered by the Holder to the Fiscal Agent against payment therefore by the purchasers selected by the Secretary to make such payment; and (ii) assigned to Bank of New York Mellon (or any successor thereto) acting in its capacity as Trustee (the "Trustee") pursuant to a Trust Agreement between the Secretary and the Trustee, dated as of January 1, 1995, as such agreement may be amended or supplemented (the "Trust Agreement"). Upon the occurrence of both (i) and (ii) in the previous sentence, Section III of this Note applies, thereby converting this Note to a fixed rate obligation.

B. Variable Rate of Interest

From and including the date of each Advance to but excluding the earlier of (i) the Conversion Date, and (ii) the date of redemption or prepayment of such Advance pursuant to Section I.D. below (each such date of redemption or prepayment, a "Prepayment Date") interest shall be paid quarterly at a variable interest rate (as set forth below) on the unpaid principal balance of each Advance on the first day of each February, May, August and November (each, an "Interim Payment Date"), commencing on the first Interim Payment Date after the initial Advance is made under this Note. Interest also shall be paid on each applicable Conversion Date, Prepayment Date or Principal Due Date. The amount of interest payable on each Interim Payment Date will represent interest accrued during the three-month period ending immediately prior to such Interim Payment Date, or in the case of the first Interim Payment Date following each Advance that is not made on an Interim Payment Date, the period from and including the date of such Advance to but excluding the first Interim Payment Date following such Advance. The amount of interest payable on this Note's Conversion Date, Prepayment Date, or on any Principal Due Date that precedes such Conversion Date will represent interest accrued during the

period from the last Interim Payment Date to such Conversion Date, Prepayment Date, or Principal Due Date, respectively.

The initial variable interest rate for each Advance will be set on the date of such Advance and will be equal to 20 basis points (0.2%) above the Applicable LIBO Rate (as hereinafter defined) and thereafter will be adjusted monthly on the first day of each month (each, a "Reset Date") to a variable interest rate equal to 20 basis points (0.2%) above the Applicable LIBO Rate (such interest rate, as reset from time to time, the "Standard Note Rate"). If the Conversion Date for this Note has not occurred by the March 1 following the initial Advance under this Note, then the terms of Appendix A shall be used to set the variable interest rate. If the Fiscal Agent does not receive notice of either a Negotiated Special Interest Rate or Holder Determined Special Interest Rate (as defined in Appendix A attached hereto) from the Secretary or Holder, respectively, by the times specified in Appendix A to this Note, then the Standard Note Rate shall apply for the period to which such Negotiated Special Interest Rate or Holder Determined Special Interest Rate would otherwise apply. The Fiscal Agent may conclusively rely on any such notice as to the correctness of any matters set forth therein. Appendix A shall be inapplicable to this Note on or after the Conversion Date.

"LIBO Rate" for any given Business Day means, except in the case of manifest error, the interest rate per annum published on that day in the Eastern Edition of The Wall Street Journal or any successor publication ("WSJ"), published by Dow Jones & Company, Inc., in the section titled "Money Rates" (or any successor section) and opposite the caption "London Interbank Offered Rates (LIBOR) -- three months" (or any successor caption). If such rate does not appear in WSJ on a given Business Day, for each interest period, the LIBO Rate shall be the interest rate, converted to a bond-equivalent yield basis, for deposits in U.S. dollars for three months which appears on Telerate Page 3750 or such other page as may replace Page 3750 on that service or such other service or services as may be nominated by the British Bankers' Association for the purpose of displaying such rate (together, "Telerate Page 3750") as of 11:00 a.m., London time, on the day (the "Determination Date") that is two London Banking Days preceding the relevant Reset Date or Advance. If such rate does not appear on Telerate Page 3750 on such Determination Date, such rate shall be obtained from the Reuters Screen ISDA Page as of 11:00 a.m., London time, on such Determination Date. If, in turn, such rate does not appear on the Reuters Screen ISDA Page on such Determination Date, the offered quotation from each of four reference banks (expressed as a percentage per annum) as of approximately 11:00 a.m., London time, on such Determination Date for deposits in U.S. dollars to prime banks on the London interbank market for a 3-month period, commencing on the Reset Date or date of such Advance, shall be obtained. If at least two such quotations are provided, the LIBO Rate for such Reset Date or date of such Advance will be the arithmetic mean of the quotations, rounded to five decimal places. If fewer than two such quotations are provided as requested, the LIBO Rate for that Determination Date shall be the rate for the most recent day preceding such Determination Date for which the LIBO Rate shall have been displayed on Telerate Page 3750. The LIBO Rate for any interest period shall be converted to a bond-equivalent yield basis by multiplying such rate by the actual number of days in such interest period and dividing that number by 180.

"Applicable LIBO Rate" means: (1) with respect to the initial interest rate for the first Advance hereunder, the LIBO Rate two London Banking Days before the date of such first Advance; (2) with respect to the initial interest rate for any subsequent Advance made before the first Reset Date, the interest rate borne by the first Advance; (3) with respect to the initial interest rate for any subsequent Advance made after the first Reset Date, the LIBO Rate two London Banking Days before the immediately preceding Reset Date; and (4) with respect to the subsequent interest rate at any Reset Date for any Advance, the LIBO Rate two London Banking Days before such Reset Date.

"London Banking Day" means any day in which dealings in deposits in United States dollars are transacted in the London interbank market. Interest payable on or before the Conversion Date shall be calculated on the basis of a 360-day year and the actual number of days lapsed.

C. Principal Amount

Prior to the Conversion Date, the aggregate amount of Advances under this Note for each specified Principal Due Date shall be the Principal Amount paid by the Borrower on such Principal Due Date (as assigned to such Advances by the Secretary's instructions to the Fiscal Agent in accordance with the Contract and the Fiscal Agency Agreement), except to the extent such Principal Amount shall have been reduced by redemption before such Principal Due Date as provided below.

D. Redemption before Conversion Date

At any time on or before the Conversion Date, the Borrower, with the consent of the Secretary, may redeem this Note, in whole or in part, upon fourteen calendar days notice to the Fiscal Agent and the Secretary, at the purchase price of one hundred percent (100%) of the unpaid Principal Amount to be redeemed, plus accrued interest thereon to the date of redemption. Partial redemptions shall be credited against the applicable Principal Amount(s). The related Commitment Amounts and the Maximum Commitment Amount shall be adjusted concurrently with any such redemptions in accordance with the Secretary's instructions to the Fiscal Agent pursuant to the Contract and the Fiscal Agency Agreement.

II. Conversion

The following events shall occur on the Conversion Date:

A. Schedule P&I

On the Conversion Date all Advances owed by the Borrower under this Note with the same Principal Due Date shall be aggregated into a single Principal Amount which will accrue interest at the fixed rate applicable to such Principal Due Date. Such Principal Amount may be adjusted by the Fiscal Agent in accordance with the following paragraph or paragraph IV.H, as applicable. Whether or not adjusted, each Principal Amount, the fixed rate applicable to each Principal Amount, and the applicable Principal Due Date, shall be listed by the Secretary in Schedule P&I. Schedule P&I will be provided by the Secretary to the Fiscal Agent and attached to this Note by the Fiscal Agent upon the Fiscal Agent's receipt of this Note on the Conversion Date.

B. Conversion Date Advances

If, on or prior to the Conversion Date, the Borrower has not utilized the entire Commitment Amount indicated on the Commitment Schedule attached hereto for a given Principal Due Date, the Borrower may, in accordance with the Fiscal Agency Agreement and the Contract, and with the approval of the Secretary, utilize such Commitment Amount on the Conversion Date to obtain a Conversion Date Advance. A "Conversion Date Advance" shall mean any amount by which the Secretary instructs the Fiscal Agent to increase a Principal Amount on Schedule P&I for a given Principal Due Date, effective as of the Conversion Date of this Note. Conversion Date Advances shall be funded by the sale of this Note to the purchaser selected by the Secretary. The proceeds of a Conversion Date Advance (net of any applicable fees) shall be distributed to or on behalf of the Borrower on the Conversion Date. The total amount of Conversion Date Advances hereunder shall not exceed the sum of any unused Commitment Amounts for all Principal Due Dates.

III. Terms Applicable Upon Conversion

The following terms shall apply to this Note from the Conversion Date (if any) until this Note is canceled, or matured and paid in full:

Commencing on the Conversion Date, the Borrower promises to pay to the Holder on the applicable Principal Due Date each Principal Amount set forth on the attached Schedule P&I, together with interest on each such Principal Amount at the rate applicable thereto specified on the Schedule P&I. Interest shall be calculated and payments shall be made in the manner set forth below.

Interest on each scheduled Principal Amount of this Note due as of a given date specified on Schedule P&I hereto shall accrue at the related per annum rate specified on Schedule P&I from (and including) the Conversion Date to (but excluding) such Principal Due Date or, if applicable, to the applicable Interest Due Date on which an Optional Redemption (as defined below) occurs. Each interest amount accrued on each unpaid Principal Amount of this Note shall be due semiannually as of February 1 and August 1 of each year (each such February 1 and

August 1, an "Interest Due Date") commencing on the first such date after the Conversion Date, until each Principal Amount listed on Schedule P&I to this Note is paid in full. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Certain Principal Amounts that are indicated as being eligible for Optional Redemption on Schedule P&I may be paid, in whole or in part, at the option of the Borrower as of any Interest Due Date on or after the date specified in such schedule (an "Optional Redemption"). In order to elect an Optional Redemption of such a Principal Amount, the Borrower shall give notice of its intention to prepay a Principal Amount to the Trustee and the Secretary not less than 60 days and not more than 90 days prior to the Interest Due Date as of which the Borrower intends to prepay the Principal Amount. The Trustee shall apply any payments received in respect of Optional Redemptions in accordance with written instructions of the Borrower, as approved by the Secretary. Principal Amounts that are not indicated as being eligible for Optional Redemption on Schedule P&I may not be prepaid.

IV. General Terms

A. Additional Definitions

For purposes of this Note, the following terms shall be defined as follows:

"Business Day" shall mean a day on which banking institutions in New York City are not required or authorized to remain closed and on which the Federal Reserve Bank and the New York Stock Exchange are not closed. If any payment (including a payment by the Secretary) is required to be made on a day that is not a Business Day, then payment shall be made on the next Business Day.

"Contract" shall mean the Contract for Loan Guarantee Assistance, and any amendments thereto, among the Secretary and the Borrower, the designated public entity named therein (if applicable), and the State named therein (if applicable), that refers to and incorporates this Note by the number hereof.

"Principal Amount" shall mean: (i) before the Conversion Date for this Note, the aggregate amount of Advances made for each Principal Due Date specified in the Commitment Schedule attached to this Note, less the amount of any redemptions pursuant to Section I.D. hereof, and any principal repayment; and (ii) on or after the Conversion Date, the principal amount (if any) stated for each Principal Due Date in Schedule P&I attached hereto, less the amount of any principal repayment and any Optional Redemptions made pursuant to Section III hereof and the Trust Agreement.

B. Timely Payment to Fiscal Agent or Trustee

Notwithstanding anything contained in Section I, Section II, or Section III, the Borrower, in accordance with the Contract, shall be required to make all payments of interest and principal, including any Optional Redemption payment, directly to the Fiscal Agent or the Trustee (as applicable) on the seventh Business Day prior to the appropriate Interim Payment Date, Interest Due Date, Principal Due Date, Prepayment Date, or date of Optional Redemption, as applicable.

C. Interest on Late Payments

If a payment of principal or interest herein provided for shall not be made by either (i) 2:30 p.m. on an Interest Due Date or Principal Due Date; or (ii) 2:30 p.m. on the second Business Day (as herein defined) next succeeding an Interim Payment Date, then interest shall accrue on the amount of such payment at the then applicable interest rate or rates payable on this Note, from the relevant due date, as the case may be, until the date such payment is made. Nothing in the immediately preceding sentence shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder and the Secretary, modify, extend, alter or affect in any manner whatsoever the right of the Holder timely to receive any and all payments of principal and interest specified in this Note.

D. Applicability of Fiscal Agency Agreement or Trust Agreement

Prior to the Conversion Date, this Note and Advances and payments made hereunder shall be administered pursuant to the terms of the Fiscal Agency Agreement and are subject to such agreement. On or after the Conversion Date, this Note and Advances and payments made hereunder shall be administered pursuant to the Trust Agreement and are subject to such agreement. The terms and provisions of the Fiscal Agency Agreement or the Trust Agreement, insofar as they affect the rights, duties and obligations of the Holder and/or the Borrower, are hereby incorporated herein and form a part of this Note. The Borrower hereby agrees to be bound by all obligations of the Borrower to the Fiscal Agent set forth in the Fiscal Agency Agreement. Capitalized terms not defined in this Note shall have the meanings ascribed to them in the Fiscal Agency Agreement or Trust Agreement, as applicable. The Fiscal Agency Agreement provides for the Fiscal Agent to perform certain duties, including the duties of (i) paying agent and calculation agent for this Note until its Conversion Date, and (ii) registrar for this Note until this Note is canceled or a new registrar appointed, each in accordance with the Fiscal Agency Agreement. The Trust Agreement provides for the Trustee to perform certain duties, including the duties of collection agent for this Note after its Conversion Date until a new Trustee is appointed in accordance with the Trust Agreement. This Note may be surrendered to the Fiscal Agent for registration of transfer or exchange, as provided in the Fiscal Agency Agreement. The Fiscal Agent and Trustee each shall permit reasonable inspection to be made of a copy of the Fiscal Agency Agreement or Trust Agreement kept on file at its respective corporate trust office. Neither the Fiscal Agency Agreement nor the Trust Agreement shall change the Borrower's payment obligations under this Note.

E. Applicability of Contract and Secretary's Guarantee

This Note evidences indebtedness incurred pursuant to and in accordance with the Contract and pursuant to Section 108 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5308) (the "HCD Act"). This Note is subject to the terms and provisions of the Contract, to which Contract reference is hereby made for a statement of said terms and provisions and for a description of the collateral security for this Note. The payment of principal on the applicable Principal Due Dates and interest on the applicable Interim Payment Dates or Interest Due Dates under this Note is unconditionally guaranteed by the Secretary to the Holder through a guarantee (the "Guarantee"). Execution of the Secretary's Guarantee is required before this Note is effective, and such Guarantee shall be issued pursuant to and in accordance with the terms of the Contract and Section 108 of the HCD Act.

F. Default

A default under this Note shall occur upon failure by the Borrower to pay principal or interest on this Note when due hereunder. If a Borrower defaults on the payment of any interest or Principal Amounts when due, or if the Secretary gives notice of a final decision to declare the Borrower in default pursuant to the following paragraph of this Section IV.F, the Secretary may, but is not obligated to, make on any date on or prior to the Conversion Date with fourteen calendar days prior notice to the Fiscal Agent, or on the seventh Business Day preceding any Interest Due Date on or after the first permissible Optional Redemption date with seven Business Days prior notice to the Trustee, an acceleration payment to the Fiscal Agent or the Trustee, as applicable, equal to the unpaid Aggregate Principal Amount of the Note, together with accrued and unpaid interest thereon to such acceleration payment date or Interest Due Date, as applicable. In the event that any such acceleration payment is made from sources other than funds pledged by the Borrower as security under the Contract (or other Borrower funds), the amounts paid on behalf of the Borrower shall be deemed to be immediately due and payable to the Secretary. Nothing in this paragraph shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder and the Secretary, modify, extend, alter or affect in any manner whatsoever the right of the Holder timely to receive any and all payments of principal and interest specified in this Note.

In addition, the Secretary may declare the Borrower in default under this Note if the Secretary makes a final decision in accordance with the provisions of 24 C.F.R. § 570.913 (or any successor regulation thereof), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with Title I of the HCD Act. Following the giving of such reasonable notice, the Secretary may take the remedial actions specified as available in the relevant provisions of the Contract pending the Secretary's final decision.

G. Holder's Reliance on Guarantee

Following a default by the Borrower under the terms of this Note, the Holder agrees to rely wholly and exclusively for repayment of this Note upon the Guarantee. The enforcement of any instruments or agreements securing or otherwise related to this Note shall be the sole responsibility of the Secretary, and the Holder shall not be responsible for the preparation, contents or administration of such instruments and agreements, or for any actions taken in connection with such instruments and agreement. The Holder, to the extent it is legally able to do so, shall bind or cause to be bound its successors and assigns to all limitations imposed upon the Holder by this Note.

H. Amendment

This Note may only be amended with the prior written consent of the Secretary and the Borrower. No such amendment shall reduce, without the prior written consent of the Holder of this Note, in any manner the amount of, or delay the timing of, payments required to be received on this Note by the Holder, Fiscal Agent or Trustee, including Guarantee Payments; provided that prior to the Conversion Date, the Commitment Amounts on the Commitment Schedule attached hereto, and the Principal Amounts due on the corresponding Principal Due Dates may be rescheduled pursuant to written instructions given to the Fiscal Agent by the Secretary with the written agreement of the Borrower and the Secretary absent the consent of the Holder.

I. Waivers

The Borrower hereby waives any requirement for presentment, protest or other demand or notice with respect to this Note. The Borrower hereby waives notice of default and opportunity for hearing for any failure to make a payment when due.

J. Delivery and Effective Date

This Note is deemed issued, executed, and delivered on behalf of the Borrower by its authorized official as an obligation guaranteed by the Secretary pursuant to Section 108 of the HCD Act, effective as of the date of the Secretary's Guarantee.

V. Borrower-Specific Provisions

This is the first Note under B-18-UC-41-0001 issued pursuant to the Funding Approval ("Commitment") in the amount of \$11,100,000, dated August 23, 2018.

THE UNDERSIGNED, as an authorized official of the Borrower, has executed and delivered this Note.

County of Clackamas, Oregon
BORROWER

By: _____
(Signature)

(Name)

(Title)

ASSIGNMENT AND TRANSFER

For value received, the undersigned assigns and transfers this Note to

(Name and Address of Assignee)

(Social Security or Other Identifying Number of Assignee)

and irrevocably appoints _____
attorney-in-fact to transfer it on the books kept for registration of the Note, with full power of
substitution.

Dated: _____

Note: The signature to this assignment
must correspond with the name as written on
the face of the Note without alteration or
enlargement or other change.

Signature Guaranteed:

Qualified Financial Institution

By: _____
Authorized Signature

[This page to be completed by the Fiscal Agent for transfer of the Note by the Holder as of the
Conversion Date pursuant to the last paragraph of Section I.A. of this Note.]

APPENDIX A

Special Pre-Conversion Interest Rates.

- (a) The Holder and the Secretary contemplate that the majority of the outstanding Variable/Fixed Rate Notes will be purchased by underwriters selected by the Secretary for sale in public offerings to occur each year. If a public offering including this Note has not occurred by each March 1 following the initial Advance under this Note, the Secretary shall, upon request, advise the Holder as to when a public offering including this Note is expected to occur, and the Holder and the Secretary agree to consult with each other as to what the interest rate on this Note will be after May 1 of that year if a public offering has not occurred by such May 1. The Holder shall notify the Secretary if such consultation has not occurred by April 1 of that year. If no public offering including this Note has occurred on or before such May 1, the applicable interest rate on this Note from such May 1 shall be the rate (if any) negotiated and agreed upon by the Secretary and the Holder. Such rate may be the Standard Note Rate or some other rate agreed upon by the Holder and the Secretary at least two Business Days before such May 1 (such other rate, the "Negotiated Special Interest Rate"). The Secretary shall notify the Fiscal Agent and the Holder in writing of any Negotiated Special Interest Rate within two Business Days of the determination thereof.
- (b) If the Secretary and the Holder do not, by the April 15th preceding such May 1, negotiate and agree under Section (a) of this Appendix on an interest rate applicable to this Note, then the Holder may, on or before the April 20th preceding such May 1, give written notice to the Secretary of its intent to change the interest rate on this Note and, if such notice was given during such period, the Holder may, on such May 1, unilaterally determine (subject to the terms of this paragraph) the interest rate that this Note will bear (such rate, the "Holder Determined Interest Rate") from and including such May 1 to but excluding the earliest of: (i) the Conversion Date; (ii) the date that this Note is purchased by a new Holder (as described in Section (c) below) or (iii) a Monthly Special Reset Date (as defined below). Interest from and including such May 1 to but excluding the Public Offering Date shall be paid on the unpaid principal balance of all outstanding Advances under this Note at the rate(s) to be determined by the Holder which, based upon then prevailing market conditions and taking into account all the circumstances, will enable the Holder to sell this Note at one hundred percent (100%) of the aggregate amount of all Advances hereunder prior to the date of such sale. Such interest rate shall be determined as of such May 1 and shall be determined again on the foregoing basis on the first of each month thereafter (the first of each month after such May 1, a "Monthly Special Reset Date"). The Holder shall notify the Fiscal Agent and the Secretary in writing

within two Business Days following such dates of the determination of the Holder Determined Interest Rate and each applicable interest rate determined on a Monthly Special Reset Date.

- (c) If the Secretary and the Holder have failed to agree upon an interest rate pursuant to Section (a) of this Appendix A, the Secretary, upon seven calendar days notice to the Holder, may arrange for the purchase of this Note in full by another entity on the following May 1 or any Business Day thereafter. If such a purchase occurs, the Holder shall sell and assign this Note to the purchaser thereof without recourse to the Holder and deliver this Note and its Guarantee to the Fiscal Agent for registration in the name of the purchaser thereof in accordance with the Secretary's written instructions. The purchase price for this Note shall be 100% of the aggregate amount of all Advances owing hereunder plus accrued interest to the date of purchase. Payment to the Holder of the purchase price for this Note shall be made by the purchaser thereof in Federal funds at the offices of the Holder, or at such other place as shall be agreed upon by the Holder and the Secretary, at 10:00 a.m., New York time, on the date of purchase. After such purchase date this Note shall bear a rate of interest negotiated between the Secretary and the new interim Holder (the "New Purchaser Special Interest Rate"). The Secretary shall notify the Fiscal Agent and the new purchaser in writing of any New Purchaser Special Interest Rate within two Business Days following the date of determination thereof.
- (d) Notwithstanding Sections (a) through (c) (inclusive) of this Appendix, no Borrower is obligated to pay interest at a variable rate exceeding the maximum rate permitted by generally applicable law of the Borrower's state (such rate, the "Maximum Rate"). If the Borrower receives notice of a variable interest payment that exceeds the Maximum Rate, then the Borrower shall timely pay such amount as does not exceed the Maximum Rate, and concurrently shall notify the Secretary and the Fiscal Agent of the reason for any interest non-payment.

COMMITMENT SCHEDULE

Note No. B-18-UC-41-0001

<u>Principal Due Date</u>	<u>Commitment Amount</u>
August 1, 2019	\$250,000
August 1, 2020	350,000
August 1, 2021	450,000
August 1, 2022	500,000
August 1, 2023	550,000
August 1, 2024	550,000
August 1, 2025	550,000
August 1, 2026	550,000
August 1, 2027	575,000
August 1, 2028	575,000
August 1, 2029	575,000
August 1, 2030	575,000
August 1, 2031	575,000
August 1, 2032	575,000
August 1, 2033	575,000
August 1, 2034	600,000
August 1, 2035	650,000
August 1, 2036	650,000
August 1, 2037	675,000
August 1, 2038	750,000
Maximum Commitment Amount =	\$11,100,000

SCHEDULE P&I*Note No. B-18-UC-41-0001

Principal Amount	Principal Due Date	Interest Rate**	Optional Redemption Available	
			YES	NO
	August 1, 2019			X
	August 1, 2020			X
	August 1, 2021			X
	August 1, 2022			X
	August 1, 2023			X
	August 1, 2024			X
	August 1, 2025			X
	August 1, 2026			X
	August 1, 2027			X
	August 1, 2028			X
	August 1, 2029		X	
	August 1, 2030		X	
	August 1, 2031		X	
	August 1, 2032		X	
	August 1, 2033		X	
	August 1, 2034		X	
	August 1, 2035		X	
	August 1, 2036		X	
	August 1, 2037		X	
	August 1, 2038		X	

\$ = Aggregate Principal Amount

Principal Amounts due on or after August 1, 2029, may be redeemed, subject to the terms contained herein and in the Trust Agreement, on any Interest Due Date on or after August 1, 2028.

*This schedule will not be completed when initially executed and delivered by the Borrower for Guarantee for interim, variable-rate financing. It will be completed when assigned by the Holder at the request of the Borrower for conversion to Fixed Rates on the Conversion Date. The first date shown above on which Optional Redemption is available is expected to be the same when this schedule is completed, if the Borrower participates in the initial Section 108 public offering after receiving an interim financing Advance hereunder. If the Borrower participates in a later public offering, the first date on which Optional Redemption is available is expected to be correspondingly later.

** The fixed rate applicable to each Principal Amount shall be listed by the Secretary.

SECTION 108 GUARANTEED LOAN CUSTODIAL AGREEMENT

THIS AGREEMENT dated as of this ____ day of _____, 20__, by and between the _____, a _____ organized and existing under the laws of the State (or Commonwealth as applicable) of _____, and having an office for the conduct of business at _____ ("Borrower"), and _____, a _____ organized and existing under the laws of _____, and having an office for the conduct of business at _____ ("Custodian"),

WITNESSETH:

WHEREAS, the Borrower will enter into a Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5308 ("Section 108 Contract") with the Secretary of Housing and Urban Development ("HUD") under the authority of section 108 of title I of the Housing and Community Development Act of 1974, as amended (the "Act"); and

WHEREAS, the Custodian is a _____ institution regulated by the _____; and

WHEREAS, the parties to this agreement desire to set forth the terms and conditions for the deposit and custodianship of the documents evidencing and relating to the loan to be originated under section 108 of the Act, and 24 CFR part 570, subpart M; and

WHEREAS, HUD will guarantee one or more promissory notes issued by the Borrower and numbered _____ that together do not exceed the principal amount of \$ _____ (the "Section 108 Guaranteed Note").

NOW THEREFORE, in consideration of the mutual undertakings expressed in this agreement, the parties agree as follows:

1. The Borrower shall from time to time deliver for deposit with the Custodian certain Security Documents as required under the Section 108 Contract (collectively the "Security Documents"). For each such delivery, the Borrower shall furnish the Custodian with a listing of the Security Documents to be deposited, which listing shall be in the form set forth in the attached Security Document List & Custodial Receipt (the "Receipt" or "Receipt(s)"). In receiving Security Documents, and in maintaining any listing or providing any report or communication with respect to the Security Documents, the Custodian shall be required only to review the face of each document received to determine whether it appears regular on its face, appears to relate to the Section 108 Guaranteed Note, and appears to be a Security Document identified in the Receipt. The Custodian shall complete the Receipt(s) by inserting the date received next to each delivered Security Document. Once signed by the Custodian, the Receipt(s) shall document the Custodian's receipt(s) of the Security Documents required by the Section 108 Contract to be

deposited with the Custodian. The Custodian shall maintain each original Receipt together with the Security Documents it identifies, in accordance with the storage requirements in paragraph 3.

2. Borrower's delivery of the Security Documents will be acknowledged by the Custodian through execution and electronic delivery of a copy of the Receipt(s) to HUD at 108Reports@hud.gov. The Custodian shall also provide copies of Receipt(s) to the Borrower. By its delivery of the Security Documents and Receipt(s) to the Custodian, the Borrower certifies to the Custodian that each Security Document listed in that Receipt is in form and substance acceptable to HUD, as required by the Section 108 Contract. Except for Custodian's obligations under this paragraph and paragraph 1 and 2 of this Agreement, the Custodian shall not otherwise be under any duty to review, inspect, examine or certify the Security Documents; and without limiting the foregoing, the Custodian shall be entitled to assume the genuineness of each such document and the genuineness and due authority of any signatures appearing thereon, and shall be entitled to assume that each such document is what it purports to be. The Custodian shall have no liability for or obligation with respect to, and shall not be construed or obliged to make any representation or warranty as to: (i) the validity, sufficiency, marketability, genuineness, value, contents or enforceability of any Security Document; (ii) the validity, adequacy or perfection of any lien upon or security interest purported to be evidenced or created thereby; or (iii) to determine that the contents of any Security Document are appropriate for the represented purpose or that any Security Document has actually been recorded or filed, as maybe applicable, or that any Security Document is other than what it purports on its face to be.

3. The Custodian shall segregate and maintain continuous custody and control of all Security Documents on behalf of HUD until the Section 108 Guaranteed Note is paid in full. The Custodian shall hold the Security Documents in secure and fireproof facilities in accordance with customary standards for such storage. The Custodian shall only rely on information pertaining to the payment of the Section 108 Guaranteed Note that is received from or confirmed by the Director of the Financial Management Division of HUD in Washington, DC ("FMD Director"), or another HUD official as may be authorized by HUD in writing ("Other HUD Designee").

4. At any reasonable time, the Custodian shall make all Security Documents available for examination and audit by representative of the Borrower or HUD.

5. (A) Upon notification to the Custodian by the FMD Director or Other HUD Designee that a default has occurred under the Section 108 Contract, the Custodian shall comply with any request HUD shall make for the delivery to HUD of all Security Documents, and within five business days of any such request by HUD, shall send the Security Documents via courier service to the address identified in paragraph 6 and contemporaneously provide HUD with the tracking information for the package containing the Security Documents.

(B) If, following HUD's notification to Custodian of Borrower's default under the Section 108 Contract, HUD elects to assume or transfer the duties and obligations of the Borrower and elects to continue the custodial relationship, the Custodian agrees to continue its obligations herein for HUD for a reasonable period, not to exceed 90 days, on the same terms and conditions as set forth in this agreement until it receives instructions for disposition of the Security Documents from the FMD Director or Other HUD Designee, provided, however, that in no event

shall HUD be obligated to pay compensation or a fee for the holding or release of any Security Documents during such reasonable period. If, however, HUD elects to terminate this agreement, Custodian shall comply with the provisions of this election by HUD.

6. Except for termination or cancellation of this Agreement pursuant to paragraph 5, if during the term of the Section 108 Guaranteed Note the Custodian's duties under this Agreement are discharged or this Agreement is terminated or cancelled, Custodian may release Security Documents to Borrower or to a successor custodian designated in writing by HUD upon presentation by the Borrower of written approval of the FMD Director or Other HUD Designee for the release of Security Documents to the Borrower. Provided, however, if no written approval is presented, the Custodian shall return to all Security Documents to HUD within 5 business days at the following address:

Attention: Paul Webster, Director
Financial Management Division
U.S. Department of Housing and Urban Development
451 7th Street SW – Room 7180
Washington, DC 20410

7. Consideration for services to be performed by the Custodian under this agreement shall be: **[INSERT AMOUNT OR IF NECESSARY, INCORPORATE FEE SCHEDULE AS AN ATTACHMENT TO THIS AGREEMENT]**.

8. This Agreement confers rights and remedies upon HUD, and HUD shall be an intended third-party beneficiary of this Agreement. The parties may not amend or terminate this Agreement without the prior written consent of HUD provided, however, that the Custodian may at any time resign under this Agreement by giving not less than sixty (60) days advance written notice thereof to the Borrower and HUD. Prior to the effective date of the resignation, the Borrower shall give written instruction to the Custodian designating a successor Custodian, if applicable.

9. The Custodian shall be entitled to rely on any written instructions or certifications delivered to the Custodian by the Borrower or HUD pursuant to this Agreement, in each case without any independent verification or investigation of the matters set forth therein.

10. Custodian shall not be liable to anyone for anything which it may do or refrain from doing in connection with this agreement, unless such action constitutes negligence in accordance with customary standards for document storage, gross negligence, willful misconduct, or bad faith on its part.

11. To the extent permitted by applicable law, the Borrower shall indemnify the Custodian and any director, officer, agent or employee of the Custodian from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting, directly or indirectly, from the execution, delivery and performance of this Agreement.

12. The Custodian shall be without liability to the Borrower for any damage or loss resulting from or caused by events or circumstances beyond the Custodian's reasonable control including nationalization, expropriation, currency restrictions, the interruption, disruption or suspension of the normal procedures and practices of any securities market, power, mechanical, communications or other technological failures or interruptions, computer viruses or the like, fires, floods, earthquakes or other natural disasters, civil and military disturbance, acts of war or terrorism, riots, revolution, acts of God, work stoppages, strikes, national disasters of any kind, or other similar events or acts; errors by any party in its instructions to the Custodian; or changes in applicable law, regulation or orders.

13. This Agreement may be executed in any number of counterparts and all counterparts taken together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or pdf shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or pdf shall be deemed to be their original signatures for all purposes.

14. The terms of this Agreement are hereby declared to be severable, such that if any term hereof is determined to be invalid or unenforceable, such determination shall not affect the remaining terms.

15. The covenants and agreements set forth herein shall be binding upon and inure to the benefit of each of the parties and their respective successors and permitted assigns. No party shall be permitted to assign their rights under this Agreement without the written consent of the parties and the FMD Director or Other HUD Designee, except that any corporation or association into which the Custodian may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Custodian shall be a party, or any corporation or association to which the Custodian transfers all or substantially all of its corporate trust business, shall be the successor of the Custodian hereunder, and shall succeed to all of the rights, powers and duties of the Custodian hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

16. This Agreement constitutes the complete and exclusive agreement of the parties with regard to the matters addressed herein and supersedes and terminates as of the date hereof, all prior agreements, agreements or understandings, oral or written between the parties to this Agreement relating to such matters.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

THIS AGREEMENT is hereby executed on behalf of the parties as follows:

Borrower: _____

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

Custodian: _____

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

Note to Borrowers: the form below is a form of Security Document List & Custodial Receipt that must be completed by the Borrower and submitted to the Custodian for use as a receipt whenever Borrower is required by the Section 108 Contract to submit additional Security Documents (identified in the Section 108 Contract as "Security Documents").

SECURITY DOCUMENT LIST & CUSTODIAL RECEIPT

The following documents were delivered in accordance with the agreement dated _____, between the undersigned ("Custodian"), and _____ ("Borrower"), and which is known as the "Section 108 Guaranteed Loan Custodial Agreement":

<u>Mark with "X" if received by Custodian</u>	<u>Name of Security Document</u>	<u>Date Received</u>
	[HUD to COPY DOCUMENTS FROM PARAGRAPH 15, insert one in each line]	

This is the _____ [Borrower to insert "first," "second," "third," etc. as appropriate] Security Document List & Custodial Receipt under the Section 108 Guaranteed Loan Custodial Agreement between Custodian and Borrower dated the ____ day of _____, 20__.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

The undersigned hereby acknowledges receipt of the documents indicated with an 'X' in the table above, on the dates acknowledged in the table:

Custodian: _____

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 108-GUARANTEED LOANS: MODEL LEGAL OPINIONS
FOR INTERIM FINANCING (VFR NOTE)

[For use by counsel to CDBG entitlement grantees not using a
designated public agency to issue guaranteed notes]
[See also instructions following opinions]

Secretary of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dear Sir or Madam:

The undersigned, being duly licensed and in good standing to practice law in the State [Commonwealth] of _____, is legal counsel to the [City, County, etc.] of _____ ("Borrower"). As such, I [we] have represented Borrower regarding that certain Variable/Fixed Rate Note, referred to as Note No. [See _____ in the Maximum Commitment Amount of \$ instruction 5 below] (the "Note"), to be executed by Borrower payable to the order of the Registered Holder thereof, and to be guaranteed by the Secretary of Housing and Urban Development ("HUD") under section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5308 ("Section 108"). The Note will initially be issued to the interim lender, which will make advances to the Borrower in the amount requested by the Borrower under the Note. HUD's guarantee of the Note will be governed by the Contract for Loan Guarantee Assistance under Section 108 between the Borrower and HUD (the "Contract"), in which the Borrower pledges Community Development Block Grants pursuant to 24 CFR 570.705(b)(2), as well as any other security specified therein, as security for HUD's guarantee. It is anticipated that the Note, as authorized by the Contract, will be included in a future trust created by HUD (together with other Section 108 Notes issued by other borrowers), and participation certificates based on the trust will ultimately be sold in a future public offering by the underwriters selected by HUD.

In my [our] capacity as legal counsel, I [we] have made an examination and investigation of all such matters of fact and questions of law as I [we] consider necessary or advisable to enable me [us] to render the opinion hereafter set forth. Specifically, and without limiting the generality of the

foregoing, I **[we]** have examined:

1. [Cite applicable provisions of the Constitution and/or Statutes of the State [Commonwealth]]. **[Optional]**
2. [Cite applicable provisions of Charter and Ordinances of the Borrower]. **[Optional]**
3. Resolution No. _____ of the governing body of Borrower, dated _____, authorizing Borrower to enter into this transaction, and authorizing **[Insert name(s) or title(s) of official(s) authorized to execute Note and Contract]** to execute on behalf of Borrower all documents necessary or desirable to accomplish the transaction.
4. The Contract.
5. The Note.
6. The Amended and Restated Master Fiscal Agency Agreement dated as of May 17, 2000, the Trust Agreement dated as of January 1, 1995, together with Amendment No. 1 thereto, dated as of June 30, 2004, and the form of Supplement to the Trust Agreement.

Based on the foregoing investigation and authorities, I am **[we are]** of the opinion that:

1. Borrower has authorized in accordance with **[the cited]** **[applicable]** State and local law, the transaction, including issuance of the Note, the pledge of grant funds, and the execution of all documents necessary or desirable to accomplish the transaction.

2. Borrower has authorized **[Insert name(s) of authorized official(s) who executed Note and Contract]** in **[his, her or their]** capacity**[ies]** as **[Insert title(s) of authorized official(s)]** to execute the Contract, the Note and all other documents necessary or desirable to accomplish the transaction.

3. The Note and the Contract have been duly executed by the aforementioned authorized representative**[s]** of the Borrower, and upon delivery thereof, due execution of the Contract and the Guarantee on behalf of HUD, and receipt of the loan proceeds on behalf of the Borrower, the Note and the Contract, including the

provisions for compensation of the Fiscal Agent/Trustee from funds pledged under the Contract (as incorporated therein), shall be valid, binding and enforceable obligations of the Borrower.

4. The pledge of present and future Community Development Block Grants by the Borrower pursuant to 24 CFR 570.705(b)(2) and the Contract is valid and binding.

5. There is no outstanding, or to my **[our]** knowledge threatened, action, suit, proceeding, investigation or litigation by or against the Borrower which will affect the validity of the Note or the security therefor.

Sincerely,

INSTRUCTIONS

[The model opinion and instructions are available electronically from HUD. Contact your HUD program office representative in the Financial Management Division or the attorney listed at the end of the instructions.]

1. Opinions must be signed by an attorney licensed to practice and in good standing in the applicable State or Commonwealth. The attorney shall issue the opinion on behalf of a private firm or local government legal officer or office that represented the CDBG grantee/section 108 Borrower in the transaction, and it must be on the firm or office's letterhead. If issued by a firm, the opinion must be signed on behalf of the firm by a partner. If issued by a government legal officer or office, the opinion must be signed by the officer, the head of the legal office, or by a senior lawyer with authority to bind the office. ***The appropriate bracketed pronouns in the draft should be used for opinions signed on behalf of multi-lawyer firms or offices.***

2. The language marked "optional" in the first numbered paragraphs 1 and 2 in the opinion, including citations, is recommended to evidence thoroughness and to enhance the credibility of the opinion, but it can be omitted in the judgment of the attorney rendering the opinion. However, citing the applicable resolution (or equivalent specific action) of the local governing body is required. Of course, should facts or legal authorities come to HUD's attention which call an opinion into question, HUD reserves the right to reject, or require such

revision to, any opinion, as HUD in its sole discretion may determine.

3. Opinions of counsel are based upon the requirements of paragraph 4(c) of the Contract, and are also in support of requirements in the Interim Financing Agreement between HUD and the interim lender for a HUD opinion to the interim lender, as a condition of such interim financing. The use of the model opinion without substantial change is strongly encouraged to permit HUD staff to accept and rely on the opinion on its face, without time-consuming call-backs, investigation, and revision. Conditions and qualifying language in legal opinions require specific review by HUD professional legal staff, may tend to slow processing of the loan guarantee documentation, and are generally discouraged, unless they are essential in a particular case.

However, qualifications which exclude the validity of the signatures on behalf of the Borrower from the coverage of the opinion, assume the validity of such signatures, or exempt the signatory attorney from knowledge of the validity of the signatures, are not acceptable. HUD deals nationally with many cities, counties, and other public bodies, and cannot independently verify the signatures of officials of those entities. The counsel's opinions covering proper execution serve as an important check on such validity.

While not a cause for rejection of an opinion per se, it is not necessary to qualify an opinion by stating that enforceability of the notes may be limited by bankruptcy, insolvency, reorganization, moratorium, liquidation, or similar general laws or equity principles relating to or affecting creditors' rights or providing remedies for the relief of debtors, or that the availability of specific performance or injunctive relief in aid of enforcement of the documents may be limited by equitable rights and defenses. HUD is aware that there may be exceptions to the enforceability of its rights as a creditor based on generally applicable laws and equitable principles; that is one reason why HUD regards the pledge of present and future CDBG grants, which are controlled by HUD, as the principal security for repayment of the notes. The purpose of the legal opinions is not to get an attorney to act as insurer of the absolute enforceability of the documents but rather to require that there has been legal review adequate to assure proper authorization and execution of the notes and related documents by the proper parties under State and local law.

Generally, where multiple officials are each required to execute the documents, they should each be listed in the appropriate paragraphs of the opinion to the Secretary, and the last named official should be preceded by "and." If alternative authorized officials are listed, only one of whom must execute the documents, the last named official should be preceded by "or." For officials who sign documents only for purposes of attestation, it is not necessary to list them as authorized in the opinion.

4. Separate model opinions are available from HUD for transactions in which the CDBG entitlement grantee is using a designated public agency to issue notes and receive the proceeds thereof on its behalf. Similarly, separate models are available for State's Program nonentitlement grantees and their States, where a CDBG State's Program nonentitlement grantee is issuing section 108-guaranteed obligations. If you are involved in one of the foregoing transactions, please obtain the appropriate model from the program office (see paragraph 7 below).

5. The Borrower's attorney should ensure that the legal name of the Borrower in the Note and the Contract is correct, and should notify HUD if it is not. The note number to be inserted in the opinions in the first paragraph appears at the top left heading of an interim Note, and in the first paragraph of the Contract. The Maximum Commitment Amount to be inserted in the first paragraph of the opinions appears in the first paragraph of the Contract; it is also in the heading of the Note.

6. **"Other security" opinions.** In most cases, an additional opinion or opinions will be requested of Borrower's counsel or other counsel with regard to "other security," often called "additional security," as negotiated between HUD and the Borrower for a particular transaction (see 24 CFR 570.705(b)(3)). Generally, any additional opinions related to other security will be described in paragraph 15 of the Contract. Often, such "other security" opinions are not specifically required upon execution or delivery of the Note and Contract, but at a later time, and often such opinions are delivered directly to a documents custodian, rather than to HUD. If so, it is recommended that such opinions be separate from the attached model opinion required with respect to execution and validity of the Note and Contract. However, if other security opinion(s) are to be submitted to HUD at the same time as the model opinion, they may be combined with the model opinion to the Secretary. Due to the variety of such "other security"

opinions, model language cannot be furnished.

7. If there are any questions, the local CDBG program office or counsel may contact their representative in HUD's Office of Community Development, Financial Management Division, at 202-708-1871. Local counsel may also directly call Carey Whitehead in HUD's Office of General Counsel at 202.402.3106 or Makani Drummond at 202.402.6192, or send an email to Carey.C.Whitehead@hud.gov or Makani.D.Drummond@hud.gov, with questions about the legal opinion or other documents, including "other security" provisions of the Contract.

**AUTHORIZED SIGNATURE CARD
FOR PAYMENT VOUCHERS
ON LETTER OF CREDIT**

Letter of Credit Number

Federal Reserve Bank

Letter of Credit Issued in Favor of *(Recipient)*

Issued by *(Federal Agency)*

SIGNATURES OF INDIVIDUALS AUTHORIZED
TO DRAW ON THE CITED LETTER OF CREDIT

___ ONLY ONE SIGNATURE REQUIRED ON PAYMENT VOUCHERS or
 X ANY TWO SIGNATURES REQUIRED TO SIGN OR COUNTERSIGN

Typed Name and Signature

Typed Name and Signature

Typed Name and Signature

Typed Name and Signature

I CERTIFY THAT THE SIGNATURES ABOVE ARE OF THE INDIVIDUALS AUTHORIZED TO DRAW PAYMENT VOUCHERS FOR THE CITED LETTER OF CREDIT.

APPROVED: [to be completed by HUD]

DATE AND SIGNATURE OF AUTHORIZING OFFICIAL (Recipient)

[individual signing here should be different from persons who sign above]

DATE AND SIGNATURE OF AGENCY CERTIFYING OFFICER

