

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 City of Austin, Texas, 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-05-MC-48-0500, Neighborhood Commercial Management Loan Program, in the Maximum Commitment Amount of \$3,000,000, 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 December 20, 2006. 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. **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.
- D. **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. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.)

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 December 31, 2011, 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. (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 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 December 31, 2011. 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 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:

City of Austin, Texas
Neighborhood Housing & Community Development
Attention: Diana Domeracki
1000 E. 11th Street, Suite 200
Austin, TX 78702

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 September 1, 2005 under the Funding Approval for grant number B-05-MC-48-0500 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, including, but not limited to, all rights of the Borrower (but none of the obligations of the Borrower) in and to the 'Security Documents' (as defined in paragraph 15(d) hereof) and to the collateral described therein. If necessary to provide the Secretary with a valid security interest in such other security, the Borrower shall execute a security agreement (the 'Borrower Security Agreement'), which Borrower shall be in a form acceptable to the Secretary."
 - (b) Guaranteed Loan Funds shall be used by the Borrower to finance loans (individually, a "Business Loan") to one or more for-profit **[if applicable, insert "and non-profit"]** businesses (individually, a "Business Borrower") pursuant to 24 CFR 570.703(i)(1) and §570.203, provided the loan is in substantial compliance with the Borrower's Neighborhood Commercial Management Program, approved by the Borrower's governing body on 1 February 1990, and as it may be amended from time to time during the term of this Contract. Such amendment must remain consistent with the application amendment provisions of 24 CFR 570.704(c)(5).
 - (c) Each Business Loan shall be evidenced by a promissory note (individually, the "Business Note" and,

collectively, the "Business Notes") and a loan agreement (the "Business Loan Agreement"). The Business Note and Business Loan Agreement shall contain such provisions as the Secretary deems necessary. The amount of principal and/or interest payable under the Business Notes 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. No Business Note shall be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the Note.

If the Business Borrower is a nonprofit entity, provisions of 24 CFR 570.503 and other provisions of §570.500 *et seq.* related to Subrecipients apply.

The Business Loan shall be fully secured by one or more of the following forms of collateral (collectively, the "Collateral").

- (i) A lien on real property (the "Real Property"), established through an appropriate and properly recorded mortgage (the "Business Mortgage"). The Business Mortgage shall contain such provisions as the Secretary deems necessary. The Business Mortgage may be subordinated to another lien on the property; provided, however, that the principal amount of the Business Loan secured by the Real Property shall not exceed an amount equal to 80 percent of the "as improved" appraised market value, less the outstanding balance on other indebtedness secured by a mortgage lien of senior or equal priority on the Real Property.
- (ii) A security interest (collectively referred to as the "Security Interests") in machinery and equipment ("M&E"), accounts receivable, inventory, and other items of personal property collectively, the "Personal Property"). The Security Interests may be subordinated to another lien; provided, however, that 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 (3) 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 (3) years, less the outstanding balance of other indebtedness secured by a senior security interest in said inventory.

The Security Interests shall be granted pursuant to an appropriate security agreement (the "Security Agreement"), which Security Agreement also shall be referenced in appropriate Uniform Commercial Code Financing Statements filed in accordance with the Uniform Commercial Code. The Security Agreement and such Uniform Commercial Code Financing Statements shall contain such provisions as the Secretary deems necessary.

- (iii) Any and all rights, titles, and interests of the Business Borrower to any leases covering the Real Property. Such rights, titles, and interests shall be the subject of an appropriate and properly recorded collateral assignment of leases and rents (the "Collateral Assignment of Leases and Rents"). The Collateral Assignment of Leases and Rents shall be in a form acceptable to the Secretary.
 - (iv) Any and all rights, titles, and interests of the Business Borrower in any loan or debt service reserve accounts established for the purpose of securing the Business Loan. Such rights, titles, and interests shall be the subject of a collateral assignment of interest in loan or debt service reserve accounts (the "Collateral Assignment of Interest in Loan or Debt Service Reserve Accounts"). The Collateral Assignment of Interest in Loan or Debt Service Reserve Accounts shall be in a form acceptable to the Secretary.
 - (v) Such other alternative collateral or security arrangements as may be requested by the Borrower and approved by the Secretary in writing.
- (d) The Borrower shall select a financial institution

acceptable to the Secretary (the "Custodian") to act as custodian for the documents specified in paragraph 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 executed copy of such agreement, with original signatures, shall be forwarded to the Secretary contemporaneously with the delivery of documents pursuant to paragraph 15(e) below.

- (e) Not later than five (5) business days after disbursement by the Borrower of Guaranteed Loan Funds to a Business Borrower, the Borrower shall deliver to the Custodian the following (as applicable to that activity):
 - (i) The original Business Note endorsed in blank and without recourse.
 - (ii) 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) The original recorded Business Mortgage signed by the Business Borrower and an assignment thereof to the Secretary, in a recordable form but unrecorded, which assignment shall be in a form acceptable to the Secretary.
 - (iv) The original Collateral Assignment of Leases and Rents and an assignment thereof to the Secretary, in a recordable form but unrecorded, which assignment shall be in a form acceptable to the Secretary.
 - (v) The original Security Agreement and a collateral assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
 - (vi) The original Collateral Assignment of Interest in Loan or Debt Service Reserve Accounts.
 - (vii) If Guaranteed Loan Funds are used to acquire real property, an appraisal of the fee simple ownership interest in the Property. 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").
 - (viii) If Guaranteed Loan Funds are used to acquire used

M&E, an appraisal of its net liquidation value.

- (ix) A mortgagee title policy, issued by a company 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 Mortgage or be accompanied by an endorsement of the policy to the Secretary.
- (x) A certified survey with a legal description conforming to the title policy and the Business Mortgage.
- (xi) 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 Texas and is **[existing, qualified to do business, in good standing, as applicable]** in and under the laws of the State of Texas;
 - (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 (ii) through (vi) 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.

- (xii) Any instruments, documents, agreements, and legal opinions required pursuant to 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 the Security Interests by filing a financing statement in accordance with the requirements of the Uniform Commercial Code and shall file such additional statements as are necessary to maintain the perfected Security Interests.
- (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 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 security requirements specified in paragraph 15(c). Such replacement shall be effected 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.
 (This action shall be required only with respect to Nonperforming Business Loans that have not been replaced as provided under (i) above.) Such 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), and thereby effectuate the transfer of the 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 Uniform Commercial Code) available by law or agreement (including any of the Security Documents, as defined in paragraph 15(d)) against the Borrower, against the Business Borrower, or against any other person or property."

- (i) Notwithstanding anything else to the contrary in paragraph 6(a), so long as no Default has occurred, amounts pledged pursuant to paragraph 5(b), 5(c), and 5(d) shall not be required to be deposited in the Loan Repayment Account; provided, however, such amounts shall be used in accordance with the regulations governing their use (including, without limitation, 24 CFR Part 570 and 24 CFR Part 92). Upon any Default, the Borrower shall immediately deposit all cash derived from such pledged amounts (then on hand or thereafter received) in the Loan Repayment Account.

- (j) 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, 2008 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 shall be submitted as directed in paragraph 12(f) above.
- (k) Notwithstanding any other provision of the Note or this Contract, the following provisions to assure compliance with Texas law shall govern:
 - (i) The Secretary shall not require the Note to be converted to a fixed-rate Note pursuant to Sections II and III thereof at an interest rate on any Principal Amount on Schedule P&I thereof that exceeds the maximum rate payable by the Borrower thereon under generally applicable Texas law, including Chapter 1204 of the Texas Government Code, as amended. This limitation on the interest rate on the principal of the Note also applies if the Note bears interest at a variable rate prior to a conversion to a fixed rate. In addition, the

accrual of interest on unpaid interest shall be limited to the extent permissible under Texas law.

- (ii) Part I, paragraph C, of the Contract is amended to delete the last sentence thereof, and to insert the following two new sentences at the end:

"The Borrower agrees that the interest rate at which the trust certificate corresponding to a specified Principal Due Date on Schedule P&I of the Note is sold to the Underwriters shall be the interest rate inserted on the Conversion Date in Schedule P&I for the Principal Amount corresponding to such Principal Due Date. Such interest rate for each trust certificate shall be that rate which the Underwriters determine will enable them to sell under then-prevailing market conditions such certificate, or interests therein, for 100% of the Principal Amount of such certificate."

- (iii) Paragraph 4(e) of the Contract is amended by deleting the paragraph as written in its entirety and substituting therefor the following:

"(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(a) and (b) of this Contract."

- (iv) The provisions of the Fiscal Agency/Trust Agreements (including any future amendments thereto or any new fiscal agency or trust agreements in the future) relating to indemnification, standard of care, choice of law and disposition of unclaimed property as they concern the Borrower are subject to the limitations of this Contract and will be enforceable against the Borrower only to the extent permitted by Texas law. The Secretary further agrees that he will require the Fiscal Agent and Trustee to maintain the registration books referred to in section 5.01 of the Amended and Restated Master Fiscal Agency Agreement and in section 5.03 of the Trust Agreement in a form that can be converted to a writing and a copy of which can be provided to the Borrower in Texas within a reasonable time after request.

- (v) To the extent that a pledge of ad valorem tax is

securing payment of all or a portion of the principal of and interest on the Note, acceleration of the maturity date of that portion of the Note shall not be available as a remedy in the event of a default by the Borrower under the Note or this Contract.

- (1) Any provision of this Contract that shall be held invalid or unenforceable shall be ineffective without invalidating the remaining provisions hereof.

[Rest 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.

The City of Austin, Texas
BORROWER

BY:

 (Signature)

 (Name)

 (Title)

 (Date)

**SECRETARY OF HOUSING AND URBAN
 DEVELOPMENT**

BY:

 (Signature)

Nelson R. Bregón
 (Name)

General Deputy Assistant Secretary
 for Community Planning & Development

 (Date)