



# CITY OF SPARTANBURG

SOUTH CAROLINA

## CITY COUNCIL AGENDA

Special City Council Meeting  
The Franklin School  
100 Howard St.  
Spartanburg, SC 29303  
Wednesday, December 19, 2018  
5:00 p.m.

**I. Call to Order**

**II. Ordinance**

- A. Authorizing and Providing for the Issuance and Sale of a Not Exceeding \$3,000,000.00 Aggregate Principal Amount Federally Guaranteed Note of the city of Spartanburg South Carolina Pursuant to Section 108 of the Housing and Community Development act of 1974, as Amended, and Section 6-1-30, Code of Laws of South Carolina, 1976, as Amended; the Application of the Proceeds of Said Note to Provide Financing for the Northside Commons Project; the Entering into of Certain Covenants and Agreements and the Execution and Delivery of Certain Instruments Relating to the Issuance of the Aforesaid Note, Including a Contract for Loan Guarantee Assistance Between the City and the Secretary of Housing and Urban Development (“HUD”); Appropriating Funds to Pay Certain Fees to HUD; and Other Matters in Connection with the Foregoing (First Reading)  
Presenter: Martin Livingston, Neighborhood Services Director**

**III. Consent Agenda**

- A. Ordinance Consenting to the Inclusion of certain Property Located in the City of Spartanburg, South Carolina, in a Joint County Industrial and Business Park Established by and Between Spartanburg County, South Carolina and Cherokee County, South Carolina; Authorizing the Execution and Delivery of an Intergovernmental Agreement Between the City of Spartanburg and Spartanburg County; and Other Matters Relating Thereto (Second Reading)  
Presenter: Chris Story, City Manager**

**IV. Tour The Franklin School**

**V. Adjournment**





## REQUEST FOR CITY COUNCIL ACTION

**TO:** Chris Story, City Manager

**FROM:** Martin Livingston, Neighborhood Services Director

**SUBJECT:** Ordinance authorizing the issuance of a note and loan for the CDBG 108 Loan Guarantee

**DATE:** December 19, 2018

### BACKGROUND:

Staff is requesting approval of an ordinance authorizing the issuance of a note and loan for the Community Development Block (CDBG) Grant Section 108 Loan Guarantee. In August 2017, the City approved a resolution to submit an application to the U.S. Department of Housing and Urban Development for a CDBG Section 108 loan for the Northside Commons Development. The loan is not expected to have any net cost to the City – the project owner will repay the loan. Two public hearings and comment period were held prior to the submission of the application for the loan. The Northside Development Corporation (NDC), a designated local 501(C)3 non-profit organization is partnering with a for-profit entity to develop the Northside Mixed Use development as part of the implementation of the Northside Initiative. Northside New Market Mixed use development is a new construction, mixed use development providing housing and commercial space in the Northside of Spartanburg. The development is consistent with the Northside Transformation Plan approved by Council on January 26, 2015.

This project is an economic development project and funding would be provided to a third party borrower, a development entity consisting of the Northside Development Group. The City will be pledging 5 years of Community Development Block Grant (CDBG) Funds. The development team will be making scheduled payments to repay the Section 108 Loan for a 20 year period. The loan could be repaid earlier than scheduled. The developers will be required to pledge additional collateral to secure the City's investment in the project. The loan is not expected to have any net cost to the City.

### ACTION REQUESTED:

Approval of an ordinance authorizing the City Manager to issue a note and loan guarantee in connection with the CDBG Section 108 Loan Guarantee.

### BUDGET & FINANCIAL DATA:

\$3,000,000 in CDBG Section 108 loan guarantees. The loan is not expected to have any net cost to the City.

**A RESOLUTION**  
**AUTHORIZING AN APPLICATION TO THE U.S. DEPARTMENT OF HOUSING AND**  
**URBAN DEVELOPMENT THROUGH SECTION 108 OF THE HOUSING AND COMMUNITY**  
**DEVELOPMENT ACT.**

WHEREAS, the City of Spartanburg desires to assist the Northside community with implementation of the Northside Transformation Plan and the Northside Mixed Use Development; and

WHEREAS, the City has determined that an application to the Section 108 Loan Program will provide an effective financing tool to support this important project; and

WHEREAS, the City of Spartanburg held a public Hearing on Thursday, June 29, 2017, to receive comments on the proposed CDBG 108 Loan Guarantee application.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Members of Council of the City of Spartanburg in Council assembled:

Section 1. The City of Spartanburg possesses the legal authority to submit an application through Title 1, Section 108, of the Housing and Community Development Act of 1974, as amended.

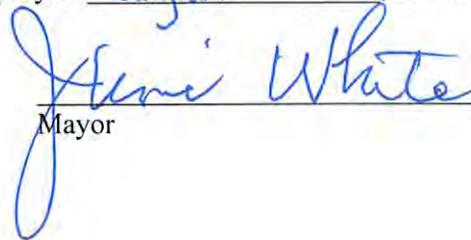
Section 2. The City desires to borrow \$3,000,000.00 to fund the eligible activities in the Northside Mixed Use Development.

Section 3. The City certifies the use of the Section 108 proceeds in accordance with regulatory requirements and pledges future Community Development Block Grant entitlement funds and additional CDBG program income to service debt payments on the Section 108 loan.

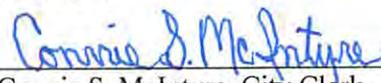
Section 4. The Mayor, on behalf of the City of Spartanburg, is authorized to sign the Section 108 application, any amendments thereto and any understandings and assurances therein, for the Northside Mixed Use Development. The Mayor is authorized to execute such documents as may be required in order to implement the application and issue debt obligations pursuant thereto.

Section 5. The City Manager is authorized to act as the official representative of the City of Spartanburg in connection with the application and provide additional information as may be required.

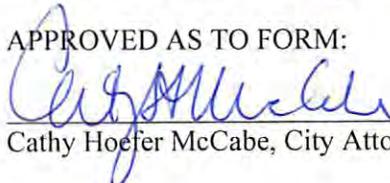
Section 6. This Resolution is adopted this 14 day of August, 2017.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Connie S. McIntyre, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cathy Hoefler McCabe, City Attorney

ORDINANCE NO. 2018-\_\_\_\_

AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF A NOT EXCEEDING \$3,000,000.00 AGGREGATE PRINCIPAL AMOUNT FEDERALLY GUARANTEED NOTE OF THE CITY OF SPARTANBURG, SOUTH CAROLINA PURSUANT TO SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, AND SECTION 6-1-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; THE APPLICATION OF THE PROCEEDS OF SAID NOTE TO PROVIDE FINANCING FOR THE NORTHSIDE COMMONS PROJECT; THE ENTERING INTO OF CERTAIN COVENANTS AND AGREEMENTS AND THE EXECUTION AND DELIVERY OF CERTAIN INSTRUMENTS RELATING TO THE ISSUANCE OF THE AFORESAID NOTE, INCLUDING A CONTRACT FOR LOAN GUARANTEE ASSISTANCE BETWEEN THE CITY AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT (“HUD”); APPROPRIATING FUNDS TO PAY CERTAIN FEES TO HUD; AND OTHER MATTERS IN CONNECTION WITH THE FOREGOING.

WHEREAS, the City of Spartanburg, South Carolina (the “City”) is an incorporated municipality located in Spartanburg County, South Carolina, and as such possesses all powers and duties granted to municipalities by the Constitution and laws of the State of South Carolina (the “State”);

WHEREAS, the City acting by and through its City Council is empowered under and pursuant to the provisions of Section 6-1-30 of the Code of Laws of South Carolina 1976, as amended (the “Code”), to implement the provisions of Title I of the Housing and Community Development Act of 1974, Public Law 93-383, enacted by the Congress of the United States and as from time to time amended (“Title I”), and to engage in all community development activities encompassed therein, including, but not limited to, the application for funds; designation of officials for administration of grants; acquisition of eligible property; appropriation of funds for eligible projects, property rehabilitation loans, grants and loan guarantees, relocation assistance, planning, management and administrative costs; and the execution of all plans, contracts, certifications, applications, agreements, indemnities, reports, guarantees and other documents required thereby;

WHEREAS, HUD has indicated its intention to approve the application submitted by the City for a loan represented by the issuance the note of the City which will be guaranteed by HUD pursuant to Section 108 of Title I in the aggregate principal amount of \$3,000,000.00 (the “Note”);

WHEREAS, the proceeds of the Note will be used to finance the Northside Commons Project;

WHEREAS, pursuant to the regulations of HUD, the borrower of the \$3,000,000.00 will be the City; however, the liability pursuant to the terms of the Note will be limited by the

security pledged for the payment thereof, which will include grants which have been or will be made or for which the City may become eligible under Section 106 of Title I;

WHEREAS, the City Council has caused to be prepared and presented to this meeting the following documents, each to be dated as set forth below or to be dated such other date as may be agreed to by the Secretary of HUD and the City, which the City proposes to execute and deliver:

1. The form of the Contract for Loan Guarantee Assistance between the City and the Secretary of Housing and Urban Development (the "Contract"), attached hereto; and,
2. The form of Note to be issued by the City, attached hereto;

WHEREAS, it appears that each of the instruments above referred to, which are now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the City for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the City of Spartanburg, South Carolina, as follows:

Section 1. Approval of the Issuance and Delivery of the Note. In order to provide for funding for the Northside Commons Project and implement certain provisions of Title I, the City Council hereby ratifies, approves, and authorizes, as applicable, the issuance and sale of the Note pursuant to the authority granted the City under Section 6-1-30 of the Code.

Section 2. Approval of the Contract. The form of the Contract, as submitted to this meeting and made a part of this ordinance as though set forth in full herein, be and the same is hereby approved. The City Manager of the City is hereby authorized and directed to execute and deliver the Contract with such changes, insertions and omissions as said City Manager determines appropriate, said execution being conclusive evidence of such approval; and the Clerk of the City is hereby authorized and directed to affix the corporate seal of the City to the Contract and to attest the same.

Section 3. Approval of the Note. The form of the Note, as submitted to this meeting and made a part of this ordinance as though set forth in full herein, be and the same is hereby approved. The City Manager of the City is hereby authorized and directed to execute and deliver the Note with such changes, insertions and omissions as said City Manager determines appropriate, said execution being conclusive evidence of such approval; and the Clerk of the City is hereby authorized and directed to affix the corporate seal of the City to the Note and to attest the same.

Section 4. Appropriation of HUD Fee. Pursuant to the provisions of the Contract, it is expected that the City shall pay to the Secretary of Housing and Urban Development a fee equal to 2.365% of the \$3,000,000 loan amount to offset the credit subsidy cost of the guaranteed loan (the "Guaranteed Loan Fee"). The City hereby appropriates funds for the payment of the

Guaranteed Loan Fee to the extent not previously appropriated or included in the City's annual budget.

Section 5. Further Acts. The City Manager and the Clerk of the City and any other proper officer of the City, be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and to cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this ordinance.

Section 6. Provisions Severable. The provisions of this ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 7. General Repealer. All orders, resolutions, ordinances and parts hereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this ordinance shall take effect and be in full force from and after its passage and approval.

[Execution Page Follows]

Enacted by the City Council of the City of Spartanburg, South Carolina, this \_\_\_\_ day of January, 2019.

CITY OF SPARTANBURG, SOUTH CAROLINA

---

Mayor

(SEAL)

ATTEST:

---

City Clerk

First Reading:  
Second Reading:

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

**VARIABLE/FIXED RATE NOTE**

NOTE NUMBER: **B-XX-XX-XX-XXXX**

DATE OF NOTE: \_\_\_\_\_

BORROWER: **City/County/State of  
[Borrower], [State]**

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.

**[[project name] Project]**

MAXIMUM COMMITMENT AMOUNT: **[\$[amount]**

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

**I. Terms Applicable Before the Conversion Date**

A. Advances

For value received, the undersigned, the City/County/State of [Borrower] (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 [State], 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 space intentionally left blank]

This is the first/second/etc. Note under B-XX-XX-XX-XXXX issued pursuant to the Funding Approval ("Commitment") in the amount of \$[amount], dated [date]. The first Note in the Maximum Commitment Amount of \$[amount] was issued on [date].

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

City/County/State of [Borrower], State  
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-XX-XX-XX-XXXX

### Principal Due Date

### Commitment Amount

August 1, 2019  
August 1, 2020  
August 1, 2021  
August 1, 2022  
August 1, 2023  
August 1, 2024  
August 1, 2025  
August 1, 2026  
August 1, 2027  
August 1, 2028  
August 1, 2029  
August 1, 2030  
August 1, 2031  
August 1, 2032  
August 1, 2033  
August 1, 2034  
August 1, 2035  
August 1, 2036  
August 1, 2037  
August 1, 2038

\$

Maximum Commitment Amount =

\$

**SCHEDULE P&I\***

Note No. B-XX-XX-XX-XXXX

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.

**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 Spartanburg, South Carolina, 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-17-MC-45-0004 [Northside Commons Project], 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 March 2, 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.

**[Rest of Page Intentionally Left Blank]**

**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. An Attachment 1 Letter Agreement must be executed for the Guaranteed Loan Funds Account when the Guaranteed Loan Funds Account is established, and a signed copy of the Letter Agreement shall be submitted to the Secretary with the initial Advance.

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, 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. An Attachment 2 Letter Agreement must be executed for the Guaranteed Loan Funds Investment Account when the Guaranteed Loan Funds Investment Account is established, and a signed copy of the 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, 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 an electronic copy of a statement showing the balance of funds in the Guaranteed Loan Funds Account and the withdrawals from such account during the preceding calendar month, and an electronic copy of a statement identifying the obligations and their assignments in the Guaranteed Loan Funds Investment Account. Borrower shall e-mail the electronic copies to 108reports@hud.gov.

(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). An Attachment 1 Letter Agreement must be executed for the Loan Repayment Account when the Loan Repayment Account is established and a signed copy of the 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. An Attachment 2 Letter Agreement must be executed for the Loan Repayment Investment Account when the Loan Repayment Investment Account is established, and a signed copy of the 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 an electronic copy of a 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 an electronic copy of a statement identifying the obligations and their assignments in the Loan Repayment Investment Account. Borrower shall e-mail the electronic copies to 108Reports@hud.gov.

(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:

Attention: Martin Livingston, Neighborhood  
Service Director  
145 West Broad Street  
Spartanburg, South Carolina 29306-3210

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 12, 2017, under the Funding Approval for grant number B-17-MC-45-0004 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) The Borrower pledges as security for repayment of the Note, and such other charges as may be authorized in this Contract:
- (i) other security, including, but not limited to, all rights of the Borrower (but none of the obligations of the Borrower) in and to the collateral described generally in paragraph 15, including the 'Security Documents' (as defined in paragraph 15(g) hereof).

- (b) If necessary to provide the Secretary with a valid security interest in any other collateral described in this Contract, the Borrower shall execute security agreement(s) (the 'Borrower Security Agreement' or if more than one, 'Borrower Security Agreements') and Uniform Commercial Code ("UCC") Financing Statements, which shall be filed in accordance with applicable law. Any necessary Borrower Security Agreements and UCC Financing Statements shall contain such provisions as the Secretary deems necessary, and UCC Financing Statements shall be refiled as necessary to remain current and effective.
- (c) As used in this Contract, the following additional terms are defined as follows:
- (i) **"Project"** shall mean the commercial components of Northside Commons, a mixed-use redevelopment project, as described in the Borrower's HUD-approved application, which includes New Markets Tax Credit (NMTTC) investments, as illustrated in **Attachment X** hereto.
  - (ii) **"Subrecipient"** shall mean the Spartanburg Development Corporation, a non-profit entity to which the Borrower shall provide Guaranteed Loan Funds.
  - (iii) **"Obligor"** shall mean the **NEED THE LEGAL NAME** (which may also be known as the Business Borrower or the leverage lender), which is a for-profit entity to which the Subrecipient shall provide Guaranteed Loan Funds for the purpose of carrying out the Project.
  - (iv) **"Obligor Loan"** shall mean the Subrecipient's loan of the Guaranteed Loan Funds to the Obligor.
  - (v) **"Investment Fund"** shall mean Spartanburg Investment Fund LP, the entity to which the Obligor shall loan the Guaranteed Loan Funds.
  - (vi) **"Leverage Loan"** shall mean the Obligor's loan of the Guaranteed Loan Funds to the Investment Fund.
  - (vii) **"CDE"** (Community Development Entity) shall mean LIIF Sub-CDE, LLC, a qualified community development entity as defined in 26 USC 45D, into which the Investment Fund shall invest the Guaranteed Loan Funds.

- (viii) "**QEI**" shall mean the Investment Fund's qualified equity investment (as defined in 26 USC 45D) into the CDE of the Guaranteed Loan Funds.
  - (ix) "**Qualified Business**" shall mean Northside Commons, to which the CDE shall make loan of the Guaranteed Loan Funds.
  - (x) "**QLICI**" shall mean a qualified low-income community investment.
  - (xi) "**QLICI Loan**" shall mean one or more loans that together equal the principal amount of \$3,000,000 from the CDE to the Qualified Business pursuant to the Contract.
  - (xii) "**Property**" shall mean the real property on which the Project assisted with Guaranteed Loan Funds is situated shall be described in **Attachment 4** hereto.
- (d) Guaranteed Loan Funds shall be used by the Borrower to make a loan (the "Obligor Loan") to the Obligor solely for use of the Guaranteed Loan Funds in connection with the project as described in the Borrower's request for approval for the use of funds within the New Market Tax Credit structure illustrated in **Attachment 3** (including any documents and communications submitted to HUD in connection with this approval.

Through the New Market Tax Credit structure, the Obligor shall make a loan to the Investment Fund (a "Leverage Loan"). The Investment Fund will invest all proceeds from the Leverage Loan as well as additional available funds directly into the CDE as equity.

The CDE will in turn make a loan of these equity monies to the Qualified Business (the "QLICI Loan") to assist in financing development of commercial space as part of the Project, pursuant to 24 CFR 570.703(i)(1) and § 570.203(b).

The Obligor Loan shall be evidenced by a promissory note (the "Obligor Loan Note") and a loan agreement (the "Obligor Loan Agreement"), which Obligor Loan Note and Obligor Loan Agreement shall be in form and content consistent with this Contract (with such provisions as are necessary to ensure compliance with requirements applicable

to the use of the Guaranteed Loan Funds), enforceable under state and local law, and shall contain such other provisions as a prudent lender would reasonably require.

The amount of principal and/or interest payable under the Obligor Loan 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 Borrower's Note for the corresponding period.

After Conversion of the Borrower's Note (as defined in such note), the Obligor Loan Note shall not be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the Borrower's Note.

- (e) The Borrower shall include provisions in the Obligor Loan Agreement that:
- (i) Require the Obligor to use one hundred percent of the Guaranteed Loan Funds received from the Borrower through the Obligor Loan to make the Leverage Loan to the Investment Fund.
  - (ii) Require the Obligor to evidence the Leverage Loan with a promissory note (the "Leverage Loan Note") and a loan agreement (the "Leverage Loan Agreement") that shall be in form and content consistent with this Contract (with such provisions as are necessary to ensure compliance with requirements applicable to the use of the Guaranteed Loan Funds), shall be enforceable under state and local law, shall contain such provisions as a prudent lender would reasonably require, and that, after Conversion of the Borrower's Note (as defined in such note), and shall not be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the Borrower's Note.
  - (iii) Require the Obligor to include additional provisions in the Leverage Loan Note and Leverage Loan Agreement that obligate the Investment Fund to: (1) use an amount equal to one hundred percent of the Leverage Loan as a QEI for use by the CDE to make a loan to the Qualified Business for the Project; and (2) to grant to the Obligor a collateral assignment, which permits subsequent

assignment, of the Investment Fund's membership interest [or partnership interest, if applicable] in the CDE (a "Collateral Assignment of Membership [or Partnership] Interest") to secure the payment and performance of the Investment Fund's obligations to the Obligor.

- (iv) Require the Obligor to collaterally assign the membership interest [or partnership interest, if applicable] in the CDE covered by the Collateral Assignment of Membership [or Partnership] Interest to the Borrower to secure the payment and performance of the Obligor's obligations to the Borrower.
- (f) The Borrower shall include provisions in the Obligor Loan Agreement that are necessary or appropriate to ensure that:
  - (i) The QLICI Loan shall be evidenced by a promissory note (the "QLICI Note") and a loan agreement (the "QLICI Loan Agreement"), which QLICI Note and QLICI Loan Agreement shall be in form and content consistent with this Contract (with such provisions as are necessary to ensure compliance with requirements applicable to the use of the Guaranteed Loan Funds), enforceable under state and local law, and shall contain such other provisions as a prudent lender would reasonably require. After Conversion of the Borrower's Note (as defined in such note), the QLICI Note shall not be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the Borrower's Note. The QLICI Loan shall be subject to the collateral provisions described in paragraph (c) below.
  - (ii) At a minimum, an amount equal to one hundred percent of the Guaranteed Loan Funds will be loaned to the Qualified Business to carry out the Project as described in the documents provided to HUD to support approval of this Project.
  - (iii) The Qualified Business will satisfy criteria for a national objective and applicable recordkeeping requirements as set forth in 24 CFR 570.208 and 570.506.

- (iv) Each entity receiving a loan or investment of guaranteed loan funds agrees that it shall comply with all requirements associated with the use of the Guaranteed Loan Funds contained in the Contract and in 24 CFR part 570 subpart M, and that these Section 108 program requirements shall control in the event they conflict with any term or provision in any subsequent agreement governing the disbursement of the loan or investment.
- (g) As discussed in paragraph (b)(iii)(C) and (D) above, to secure the payment and performance of the secured obligations of the Investment Fund to the Obligor, the Investment Fund shall collaterally assign its membership interest in the CDE to the Obligor for security purposes (the "Collateral Assignment of Membership Interest").

To secure the payment and performance of the secured obligations of the Obligor to the Borrower, the Obligor shall collaterally assign to the Borrower the Collateral Assignment of Membership Interest granted to the Obligor by the Investment Fund (the "Obligor Collateral Assignment of Membership Interest"). In addition, the Borrower may obtain such other alternative collateral or security arrangements from the Obligor as may be requested by the Borrower and approved by the Secretary in writing.

- (h) Upon the final payment due date of the Obligor Loan and the Leverage Lender Loan, Borrower may receive as acceptable additional collateral, or as full satisfaction of the Obligor Loan and the Investment Obligor Loan, an assignment of Investment Fund's interest in the QLICI Loan, including interests in all collateral required below to secure the QLICI Loan.

As required by subparagraph (b)(iv)(A), the Borrower, through the Obligor Loan Agreement, shall require the Investment Fund and the CDE to obtain the following collateral for the QLICI Loan (collectively, the "Collateral"):

- (i) A lien on the Property described in **Attachment 4**, established through an appropriate and properly recorded mortgage (the "QLICI Mortgage"). The lien may be subordinated as a second priority lien only if

the fair market value of the as built property is not less than 125 percent (125%) of the principal balance of the Obligor Loan Note plus any outstanding balance on other indebtedness secured by a mortgage lien of senior or equal priority on the Property. The QLICI Mortgage shall be in form and content consistent with this Contract, enforceable under state [commonwealth] and local law, shall contain such other provisions as a prudent lender would reasonably require, and may contain the provisions in paragraphs (ii) and (iii) below if applicable to this transaction.

- (ii) An assignment of any and all rights, titles, and interests of the Qualified Business in and to any leases covering the Property ("Assignment of Leases and Rents"), which shall be in a form acceptable to the Borrower.
- (iii) An assignment of any and all rights, titles, and interests of the Qualified Business in and to any licenses, permits, and other agreements covering the Property ("Assignment of Interest in Licenses, Permits and Agreements"), which shall be in a form acceptable to the Borrower.
- (iv) Such other alternative collateral or security arrangements as may be requested by the Borrower and approved by the Secretary in writing.
- (i) The Borrower shall enter into a written "Collateral Agency Agreement" with the CDE and the Qualified Business receiving a loan from the CDE [other parties may be added, e.g., Investment Fund, Guarantor, if applicable, etc.], in order to permit the Borrower to act as Collateral Agent for such CDE with respect to the exercise of the CDE's security rights under the Security Documents with respect to the QLICI Loan and the Property (to the extent provided therein), and to perform other functions identified and consented to therein by the CDE and the Qualified Business related to assuring completion of the Project and compliance with applicable Section 108-related requirements as provided in such Security Documents. The form and content of the Collateral Agency Agreement shall be satisfactory to the Secretary.

- (j) The Borrower shall select a financial institution acceptable to the Secretary (the "Custodian") to act as custodian for the documents specified in (f) below (hereinafter referred to as 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 shall be forwarded to the Secretary contemporaneously with the delivery of documents pursuant to 15(f) below.
- (k) Not later than five business days after the disbursement of the Guaranteed Loan Funds to the Obligor, the Borrower shall deliver to the Custodian the following:
  - (i) The original Obligor Loan Note, endorsed in blank and without recourse.
  - (ii) The original Obligor Loan Agreement and a collateral assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
  - (iii) A copy of the QLICI Loan Note, QLICI Loan Agreement, QLICI Mortgage, and the Collateral Assignments of Leases and Rents and of Licenses, Permits and Agreements, if applicable, as well as a copy of the Leverage Loan Note and the Leverage Loan Agreement.
  - (iv) The original Collateral Agency Agreement, and a collateral assignment thereof to the Secretary, which shall be in a form satisfactory to the Secretary.
  - (v) The original Obligor Collateral Assignment of Membership Interest in the CDE and a collateral assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
  - (vi) Opinions of Borrower's counsel and of counsel to other parties, on their letterhead, addressed and satisfactory to the Secretary, that:
    - (A) The Obligor, Investment Fund, CDE, and Qualified Business are duly organized and validly existing, respectively, as a **[corporation, partnership, limited liability company, etc.]** under the laws of its state of organization and they are **[existing, qualified to do business, in good**

**standing, as applicable]** in and under the laws of the State of South Carolina;

- (B) The Obligor Loan Note, Leverage Loan Note and QLICI Note have each been duly executed and delivered by a party authorized by the respective Obligor, Investment Fund or Qualified Business to take such action and each is a valid and binding obligation of the respective Obligor, Investment Fund or Qualified Business, enforceable in accordance with its terms, except as limited by bankruptcy and similar laws affecting creditors generally; and
- (C) The security instruments, assignments and agreements specified in (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 Obligor, Investment Fund, CDE, or Qualified Business, Borrower's counsel may attach and expressly rely on an opinion of counsel to each such entity satisfactory to the Secretary.

- (vii) In the event that the Borrower acquires or otherwise assumes the interest of the CDE in the Property described in **Attachment 4**, then the Borrower shall also deliver 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.
- (viii) A certified survey with a legal description conforming to the title policy (if required) and the QLICI Mortgage.
- (ix) An appraisal of the fee simple ownership interest in the Property specifying an as-built estimate of fair market value of not less than 125 percent (125%) of the principal balance of the Obligor Loan Note plus any outstanding balance on other indebtedness secured

by a mortgage lien of senior or equal priority on the Property. The appraisal shall be completed by an appraiser who is certified by the state [commonwealth] 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").

- (x) Any instruments, documents, agreements, and legal opinions required pursuant to paragraph (c) or (c)(iv) above.
- (1) Paragraph 12 is amended by adding at the end thereof the following language:
  - "(g) The Secretary may exercise any appropriate remedies to enforce the liens on the Properties and other collateral referred to in paragraph 15(a).
  - (h) The Secretary may 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, against the collateral described in this Contract, against the Borrower, or against any other person or property (including Property), but shall be subject to none of the obligations, of the Borrower under the Collateral Agency Agreement."
- (m) The Borrower agrees that it shall promptly notify the Secretary in writing upon the occurrence of any event which constitutes a default (an "Event of Default") under (and as defined in) any of the Security Documents, as defined in paragraph 15(g). Notification of an Event of Default shall be delivered to the Secretary as directed in paragraph 12(f) above. Upon the occurrence of an Event of Default, the Secretary may (without prior notice or hearing, which Borrower hereby expressly waives), in addition to (and not in lieu of) exercising any and all remedies that may be available under the Security Documents and to enforce the Security described in paragraph 15(a), declare the Note in Default and exercise any and all remedies available under paragraph 12. This paragraph shall not affect the right of the Secretary to declare the Note in Default pursuant to paragraph 11 and to exercise in connection therewith any and all remedies available under paragraph 12.

- (n) 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, 2017 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).

- (o) 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.

**[Rest of page intentionally left blank]**

DRAFT

**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.

**City of Spartanburg,  
South Carolina**  
\_\_\_\_\_  
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: NMTC Flow of Funds Chart as of 7.11.18**

**Attachment 4: Legal Description of Real Property**