



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2018	2019	2020	2021	2022
Grant Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	*				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes \_\_\_\_\_ No X  
 Does this Item include the use of Federal funds? Yes \_\_\_\_\_ No X

Budget Account No.:

Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_ Program Code/Period \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

\* No fiscal impact.

**C. Departmental Fiscal Review:**

  
 Beverley Reid, Fiscal Manager I

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 8/22/18  
 OFMB  8/22/18  8/22/18

 8/23/18  
 Contract Development and Control  
 8/23/18 

**B. Legal Sufficiency:**

 8/27/18  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**SECTION 108 DOCUMENT CUSTODIAL AGREEMENT**

*[To be completed according to paragraph 15(d)  
of the Contract for Loan Guarantee Assistance under Sec. 108]*

THIS AGREEMENT dated as of this 24 day of September, 2013, is made and entered into by and between the County of Palm Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, ("Borrower"), and the Clerk & Comptroller, Palm Beach County, a constitutional office existing under the laws of Florida ("Custodian"),

WITNESSETH:

WHEREAS, the Borrower has entered into five separate Contracts for Loan Guarantee Assistance (collectively, the "Section 108 Contract") with the U.S. Department of Housing and Urban Development ("HUD") under Section 108 of the Housing and Community Development Act of 1974, as amended (the "Act"), for commitments B-07-UC-12-0004, B-08-UC-12-0004, B-09-UC-12-0004, B-10-UC-12-0004, and B-11-UC-12-0004; and

WHEREAS, pursuant to paragraph 15(d) of the Section 108 Contract, HUD has agreed to the Borrower's selection of the Clerk & Comptroller, Palm Beach County, to act as custodian for the documents specified in paragraph 15(e) of the Section 108 Contract; and

WHEREAS, the parties to this agreement desire to set forth the terms and conditions for the deposit and custodianship of the documents evidencing and relating to the mortgage loan to be originated under Section 108 of Title I of the Act, and 24 CFR Part 570, Sub-part M; and

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

1. The Borrower shall deposit with the Custodian the documents set forth at Exhibit "A" attached hereto and incorporated herein by reference (collectively the "Loan Documents").

Receipt of the items described above will be acknowledged by the Custodian by execution of the receipt in the form attached as Exhibit A.

The Custodian shall segregate and maintain continuous custody and control of all Loan Documents deposited with it on behalf of HUD until the Section 108 Note is paid in full, and shall hold the Loan Documents in secure and fireproof facilities, in accordance with customary standards for such storage. The Custodian may rely on information received from the Borrower pertaining to the payment of the Section 108 Note.

2. The Custodian, only upon presentation by the Borrower of a Request for Release of Documents, shall release to the Borrower the appropriate Loan Documents in custody of the Custodian, and shall retain the request as a receipt from the Borrower. The Borrower shall make such request only when it is necessary for carrying out the Borrower's responsibilities to service, collect prepayment, or foreclose a loan secured by documents with the Custodian, as described in the Section 108 Contract.

3. At any reasonable time, the Custodian shall make available for examination and audit by representative of the Borrower or HUD all documents in its custody.

4. (A) Upon representation to the Custodian by HUD that a default has occurred under the Section 108 Contract between the Borrower and HUD, the Custodian shall comply with any request HUD shall make for the delivery to HUD of all loan documents in the Custodian's custody.

(B) If, following such a default, HUD elects to assume or transfer the duties and obligations of the Borrower and elects to continue the custodial relationship, the Custodian agrees to continue its obligations herein for HUD a reasonable time on the same terms and conditions as set forth this Agreement, provided that in no event shall HUD be obligated to pay compensation or fee for the holding or release of any Loan Documents during such reasonable period. If, however, HUD elects to terminate such Agreement, Custodian shall comply with the provisions of this election by HUD.

5. Consideration for services to be performed by the Custodian under this Agreement shall be: \$ -0- and other good and valuable consideration, receipt of which is hereby acknowledged.

**[Remainder of Page Intentionally Left Blank - Signature Page Follows]**

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

Borrower: Palm Beach County

By: Shannon R LaRocque  
(Signature)

Name: Shannon R LaRocque

Title: Assistant County Administrator

**APPROVED**  
By HCP - Legal Services Dept. at 9:34 am, Sep 24, 2013

Custodian: Clerk & Comptroller, Palm Beach County

By: Sharon R. Bock  
(Signature)

Name: Sharon R Bock

Title: Clerk & Comptroller

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
[Signature]  
COUNTY ATTORNEY

**EXHIBIT "A"**  
**CUSTODIAN'S RECEIPT**

The undersigned hereby acknowledges receipt of the following documents delivered in accordance with that certain Section 108 Custodial Agreement dated as of \_\_\_\_\_, between the undersigned and the Borrower:

- (i) The original Business Note endorsed in blank and without recourse.
- (ii) The original Business Loan Agreement, and an assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
- (iii) The original recorded Business Mortgage signed by the Business Borrower and an assignment thereof to the Secretary, in a recordable form but unrecorded, which assignment shall be in a form acceptable to the Secretary.
- (iv) The original Collateral Assignment of Leases and Rents and an assignment thereof to the Secretary, in a recordable form but unrecorded, which assignment shall be in a form acceptable to the Secretary.
- (v) The original Security Agreement and a collateral assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
  
- (vi) The original Collateral Assignment of Interest in Loan or Debt Service Reserve Accounts.
- (vii) If Guaranteed Loan Funds are used to acquire real property, an appraisal of the fee simple ownership interest in the property. The appraisal shall be completed by an appraiser who is certified by the state and has a professional designation (such as "SRA" or "MAI"), and shall conform to the standards of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").
- (viii) If Guaranteed Loan Funds are used to acquire used M&E, an appraisal of its net liquidation value.
- (ix) A mortgagee title policy, issued by a company and in a form acceptable to the Secretary, naming the Borrower as the insured party. The policy must either include in the definition of the "insured" each successor in ownership of the indebtedness secured by the Mortgage or be accompanied by an endorsement of the policy to the Secretary.
- (x) A certified survey with a legal description conforming to the title policy and the Business Mortgage.

(xi) An opinion of Borrower's counsel on its letterhead, addressed and satisfactory to the Secretary, that:

- (A) the Business Borrower is duly organized and validly existing as a **[corporation, partnership, etc.]** under the laws of the State of \_\_\_\_\_ and is **[existing, qualified to do business, in good standing, as applicable]** in and under the laws of the State of Florida;
- (B) the Business Note has been duly executed and delivered by an authorized party and is a valid and binding obligation of the Business Borrower, enforceable in accordance with its terms, except as limited by bankruptcy and similar laws affecting creditors generally; and
- (C) the instruments specified in (ii) through (vi) above are valid and legally binding obligations, enforceable in accordance with their respective terms.

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

(xii) Any instruments, documents, agreements, and legal opinions required pursuant to paragraph 15(c)(v).

# DES Department of Economic Sustainability

County Administration, Palm Beach County, Florida

Date: September 24, 2013

To: Shannon R. LaRocque, Assistant County Administrator

Thru: Sherry Howard, Deputy Director *SH*

**Re: Request for Signatures on Custodial Agreement between DES and Palm Beach Clerk and Comptroller's Office**

Attached please find the Custodial Agreement between Department of Economic Sustainability and Palm Beach Clerk & Comptroller Office. This agreement was requested by the Housing and Urban Department to confirm that The Palm Beach County Clerk & Comptroller is the County's public trustee, responsible for safeguarding the security agreements and documents executed by DES on behalf of HUD and the County. The Florida Constitution established the Clerk & Comptroller as a Constitutional Officer, directly elected by and accountable to Palm Beach County citizens.

RECEIVED

2018 APR 30 PM 3:18

SHANNON R. BOCK, CLERK  
BOARD OF CO. COMM PBC  
FINANCE

*7/18/18 alc*



**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

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SYRACUSE, NY 13202  
(315) 423-7100

**STEVEN A. MARSHALL**  
ATTORNEY  
DIRECT: (315) 214-2029  
FAX: (315) 422-9331  
SMARSHALL@HARRISBEACH.COM

September 19, 2013

Section 108 Loan Guarantee Program  
Office of Community Planning and Development  
U.S. Department of Housing and Urban Development  
451 7th Street, SW Room 7206  
Washington, D.C. 20410  
Attn. Paul Webster; Director, Financial Management Division

**Re: Palm Beach County – Custodian of Security Documents**

To the Director:

Related to a conference call held on the morning of May 3, 2011 with HUD counsel Evelyn Wrin and HUD loan officer Jason Triplett and pursuant to Paragraph 15(d) of those certain Contract for Loan Guarantee Assistance under Section 108 between Palm Beach County and HUD regarding those notes numbered B-07-UC-12-0004, B-08-UC-12-0004, B-09-UC-12-0004, B-10-UC-12-0004, and B-11-UC-12-0004; this letter is notice that the County of Palm Beach has designated a Custodian for those Security Documents specified in Paragraph 15(e) of the Contract for Loan Guarantee Assistance.

Please be advised that the Custodian so designated by the County to take custody of the Security Documents is the **Palm Beach County Clerk**, having an address of **301 N. Olive Ave., West Palm Beach, FL 33401, Phone: (561) 355-2996**; the Clerk being an instrumentality of the County separate and distinct from the Palm Beach County Economic Development Office.

The Security Documents entered into under the Contract and held in the custody of the Custodian shall be as listed in a letter delivered to HUD counsel along with the opinion of County counsel to HUD upon the closing of any Business Loan. HUD shall have access to the Security Documents pursuant to the Contract for Loan Guarantee Assistance. The standard language of the Security Documents was originally prepared under the supervision of HUD counsel, and this standard language forms the basis for the Security Documents prepared for each Business Loan.

During the conference call, Ms. Wrin and Mr. Triplett advised the County and its counsel of the sufficiency of the above.

Very truly yours,

Steven A. Marshall

Cc (via email): Jason Triplett (jason.t.triplett@hud.gov)  
Sherry Howard (showard@pbcgov.org)  
Dawn Wynn (dwynn@pbcgov.org)