Position 5

Form RD 1942-9
(Rev. 10-96)

FORM APPROVED
OMB. No. 0575-0015

LOAN RESOLUTION SECURITY AGREEMENT

A RESOLUTION OF THE _____

OF THE _____
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS IN THE

PRINCIPAL AMOUNT OF _____ FOR THE PURPOSE
PROVIDING A PORTION OF THE COST OF ACQUIRING AND CONSTRUCTING A

_____ , PROVIDING FOR THE COLLECTION, HANDLING, AND DISPOSITION OF REVENUES THEREFROM, AND AUTHORIZING MAKINGS OF PROMISSORY NOTES, SECURITY INSTRUMENTS, AND PLEDGES OF REVENUES TO EVIDENCE AND SECURE THE PAYMENT OF SAID INDEBTEDNESS AND FOR RELATED PURPOSES.

WHEREAS, the _____ , (hereinafter referred to as the "Organization"), was organized under _____ _____ for the purpose of providing a

_____

_____

_____

_____ (hereinafter referred to as the "Facility") to serve the members of the said Organization; and

WHEREAS, a meeting of the members of the said Organization was held on the _____ day of _____ pursuant to proper notice thereof to consider plans for the acquisition, construction, and methods of financing the Facility:

and, as shown by the minutes of said meeting, of the _____ members of record of the Organization there were present and voting

_____ , and by a recorded vote, the Facility and its financing were authorized; and,

WHEREAS, the proposed Facility is to be constructed and in accordance with plans and specifications

prepared by _____

and in order to finance the Facility, the _____ (hereinafter referred to as the "Board") is authorized and empowered, in their discretion, for and in the name of the Organization, to make application to the United States of America, through the United States Department of Agriculture, (hereinafter referred to as the "Government"), for financial assistance; to cause the execution and delivery of an installment promissory note or notes or other evidence of indebtedness (hereinafter referred to as the "Note"), and appropriate security instruments to secure any loan or loans made or insured by the Government; to comply with any requirements, terms or conditions prescribed by the Government or by Government regulations; and to execute contracts or enter into agreements and, without limitation, to take any and all other action as may be necessary, incidental or appropriate to finance, acquire, construct, complete, or equip the Facility for and on behalf of the Organization.

NOW THEREFORE, it is hereby resolved by the Board as follows:

Section 1. (Determination of Board). That it is necessary to defray a portion of the costs of financing the Facility by obtaining a loan made or insured by the Government in accordance with applicable provisions of the Consolidated Farm and Rural Development Act, it being determined that the Organization is unable to obtain sufficient credit elsewhere to finance the Facility, taking into consideration prevailing private and cooperative rates and terms currently available;

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0015. The time required to complete this information collection is established to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section 2. (Terms of Loan). That the Organization borrow $_____ and issue as evidence thereof Note in the form prescribed by the Government for the full principal amount of the loan. The note shall be signed by the President, attested by the Secretary and if necessary, have the corporate seal of the Organization affixed thereto, and shall bear interest from its date, which shall be the

date of delivery, at a rate not to exceed _____ percent per annum;

the principal and interest shall be paid over a period of _____ years in accordance with the payment schedule set forth in the Note, until the

principal and interest are fully paid except the final payment of the entire indebtedness, if not sooner paid, shall be due and payable_____ years from the date of the Note. Each payment shall be applied first to the payment of the accrued interest and second to the payment of the principal. Prepayments of any installment may be made in any amount at any time at the option of the Organization.

Section 3. (Assignment and Pledge of Revenue). The indebtedness hereby authorized to be incurred, together with the interest thereon, shall be payable from the gross income and revenue to be derived from the operation of the Facility, a sufficient portion of which, to pay the principal and interest as and when the same shall become due, is hereby assigned, and pledged and shall be set aside for that purpose and this assignment and pledge shall extend to and include any assessments that may be levied pursuant to Section 5 (d) hereof.

Section 4. (Protection and Disposition of Funds). The _____ of the Organization shall be the custodian of all funds of the Organization. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

The _____ is hereby directed to establish the following accounts into which the current funds of the Organization, Note proceeds, the revenues from the Facility and any other income shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid:

(a) Construction Account.
The proceeds of the Note, hereby authorized not disbursed contemporaneously with loan closing for incurred Facility costs, and at least the amount

of $_____ to be contributed by the Organization from the collection of initial connection fees, membership fees or contributions shall be deposited in an account designated as the Construction Account which shall be established as required by the Government. Withdrawals from the construction account shall be made only on checks signed by the _____ of the Organization as authorized by the Board from time to time, and with prior concurrence of the Government. At the option of the Government, the construction account may be established as a "supervised bank account". Amounts in the supervised bank account exceeding $100,000 shall be secured by the depository bank in advance in accordance with 31 C.F.R. part 22. Withdrawals from a supervised bank account shall be made only on checks signed by the

_____ of the Organization and countersigned by an authorized official of the Government. The Organization's share of any insurance or liquidated damages and other monies paid by defaulting contractors or their sureties will be deposited in the Construction Account to assure completion of the Facility. When all construction costs have been paid in full, any balance remaining in the Construction Account may be applied on the loan or used for other authorized purposes that have been approved by the Government and the Construction Account shall be closed.

(b) General Account.
As soon as the Facility becomes revenue producing, all funds received shall be set aside in an account to be designated as the General Account Disbursements and transfers from this account shall be for: debt service, operations and maintenance, and transfers to an account designated as the Reserve Account. Monies deposited in the General Account shall be used only in the manner and order as follows:

(1) Organizations making monthly Government debt service payments shall use the General Account for making such payments plus operating and maintenance expenses. Any remaining funds will be transferred from this account to the Reserve Account in accordance with (d) below.

(2) Borrowers making other than monthly Government debt service payments shall first use the General Account to pay operating and maintenance expenses. Then other transfers from this account will be made in the following order: (i) To an account designated as the Debt Service Account will be made in accordance with (c) below, (ii) Transfers to the Reserve Account will be made in accordance with (d) below.

(c) Debt Service Account
Organizations making other than monthly debt service payments, shall transfer subject to income availability from the General Account to the Debt Service Account, a sum not to increase the next installment on the note.

(d) Reserve Account.
From the remaining funds in the General Account, after transfers and payments required in (b) (1) or (b) (2) and (c), there shall be set aside into the Reserve Account the sum of $ _____ each month until there is accumulated in that account the sum of $ _____ after which deposits may be suspended, except to replace withdrawals. When necessary, disbursements may be used for payments due on the Note if sufficient funds are not available in the General or Debt Service Account. With the prior written approval of the Government, funds may be withdrawn for:

(1) paying the cost of repairing or replacing any damage to the Facility which may have been caused by catastrophe, or
(2) making extensions or improvements to the Facility.

Whenever disbursements are made from the Reserve Account, monthly deposits shall then be resumed until there is again accumulated the amount $ _____, at which time deposits may be discontinued. Whenever there shall accumulate in the General Account, amounts in excess of those required in subsections (b) (1) and (2), (c), and (d), such excess will be used by the Organization to make prepayments on the loan or retained in the General Account. The accounts required in subsections (b) (1) and (2), (c) and (d) may be established and maintained as bookkeeping accounts or as separate bank accounts at the election of the Organization, unless otherwise directed by the Government.

Section 5. (Other Covenants and Agreements of the Organization). The Organization covenants and agrees that so long as the indebtedness hereby authorized remains unpaid:

(a) It will indemnify the Government for any payments made or losses suffered by the Government.

(b) It will comply with applicable state laws and regulations and continually operate and maintain the Facility in good condition.

(c) It will impose and collect such rates and charges that gross revenues will be sufficient at all times to provide for the payment of the operation and maintenance thereof and the installment payments on the Note and the maintenance of the various accounts herein created. All service rendered by or use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the Organization.

(d) If, for any reason, gross revenues are insufficient, it will cause to be levied and collected such assessments as may be necessary to operate and maintain the Facility in good condition and meet installment payments on the Note as the same become due.

(e) It will (i) establish and maintain such books and records relating to the operation of the Facility and its financial affairs, (ii) will provide for the annual audit thereof in such manner as may be required by the Government, (iii) will provide the Government without its request a copy of each such audit, and (iv) will make and forward to the Government such additional information and reports as it may from time to time require.

(f) It will provide the Government, at all reasonable times, access to the Facility and all its books and records so that the Government may ascertain that the Organization is complying with the provisions hereof and with the provisions of other instruments incident to the making or insuring of the loan.

(g) It will maintain at least such insurance and fidelity bond or employee dishonesty coverage as may be required by the Government.

(h) It will not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility, exclusive of normal maintenance, without obtaining the prior written consent of the Government.

(i) It will not cause or permit any voluntary dissolution of the Organization or merge or consolidate with an other organization, without obtaining the prior written consent of the Government. It will not dispose of, or transfer title to the Facility or any part thereof, including lands and interest in lands by sale, security instrument, lease or other encumbrance, without obtaining the prior written consent of the Government. Revenue, in excess of the amount required to maintain the accounts described by Section 4 herein, will not be distributed or transferred to any other organization or legal entity.

(j) It will not modify or amend its organizational documents, including any articles of incorporation or bylaws without the written consent of the Government.

(k) It will provide adequate service to all persons within the service area who can feasibly and legally be served and will obtain Government's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Organization or public body.

(l) All present and future contract rights, accounts receivable, and general intangibles arising in connection with the Facility are pledged as security for the loan.

(m) It will comply with the measures identified in the Government's environmental impact analysis for this Facility for the purpose of avoiding or reducing the adverse environmental impacts of the Facility's construction or operation.

Section 6. (Security Instruments). In order to secure the payment of the principal and interest of the Note, the President and Secretary of the Organization are hereby authorized and directed to execute and deliver good and sufficient lien instruments, where necessary, encumbering the properties and assets, both real and personal, constituting said Facility, as completed, or as the same may be thereafter extended, including an assignment and pledge of revenues and such other instruments as may be prescribed by the Government.

Section 7. (Refinancing). If at any time it shall appear to the Government that the Organization is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time the Organization will, upon request of the Government, apply for, and accept, such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

Section 8. ("Equal Employment Opportunity under Construction Contracts and Nondiscrimination"). The President and the Secretary be and they are authorized and directed to execute for and on behalf of the Organization, Form RD 400- 1, "Equal Opportunity Agreement", and Form RD 400-4, "Assurance Agreement".

Section 9. (Authorization of Officials). In the case of a grant in the sum not to exceed $ _____, the Organization hereby accepts the grant under the terms as offered by the Government and that the _____ and _____ of the Organization are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant and the Organization hereby resolves to operate the Facility under the terms as offered in said grant agreements.

Section 10. (Cross Default). Default under the provisions of this agreement or any instrument incident to the making or issuing of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Organization, and default under any such instrument may be construed by the Government to constitute default hereunder.

Section 11. (Resolution of Contract). The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instruments, shall constitute a contract between the Organization and the Government or assignee so long as the note hereby authorized remains unpaid.

Section 12. (Effective Date). This resolution shall take effect and be in force from and after the _____ day of _____, being the date of its enactment.

The vote was: Yeas _____ Nays _____ Absent _____

_____

(SEAL) *(if applicable)* By _____

Attest: Title _____

_____

Title _____

CERTIFICATION

I, the undersigned, as secretary of the _____

hereby certify that the _____ of such Organization or Corporation is composed of _____

members of whom _____; constituting a quorum, were present at a meeting thereof duly called and held on the _____ day of _____,

_____; that the foregoing resolution was adopted at such meeting by the vote shown above, and that said resolution has not been rescinded or amended in any way.

Dated, this _____ day of _____.

_____

Secretary of _____