

**SECTION 108 CUSTODIAL AGREEMENT (DOCUMENTS)**

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

THIS AGREEMENT dated as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the\_\_\_\_  
\_\_\_\_\_, a \_\_\_\_\_ organized and existing under  
the laws of the State of \_\_\_\_\_, and having an office for the conduct of business at \_\_\_\_\_  
\_\_\_\_\_ (“Borrower”), and \_\_\_\_\_, a  
\_\_\_\_\_ organized and existing under the laws of  
\_\_\_\_\_, and having an office for the conduct of business at  
\_\_\_\_\_ (“Custodian”),

**WITNESSETH:**

WHEREAS, the Borrower has entered into a Contract for Loan Guarantee Assistance (“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”); and

WHEREAS, the Custodian is a financial institution regulated by the Federal Deposit Insurance Corporation (“FDIC”), the Federal Reserve System, the Federal savings and Loan Insurance Corporation (“FSLIC”), or the U.S. Comptroller of the Currency; 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

WHEREAS, the Borrower will issue its note in the principal amount of \$\_\_\_\_\_  
\_\_\_\_\_, No. B-\_\_\_\_\_, (the “Section 108 Note”) which note shall be guaranteed by HUD.

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: \$\_\_\_\_\_ 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: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Custodian: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**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:

[List Documents as described in paragraph 15 of the Sec. 108 Contract]