

**SECTION 108 CUSTODIAL AGREEMENT CONCERNING
GUARANTEED LOAN FUNDS ACCOUNT
AND
FOR MORTGAGES AND OTHER COLLATERAL HELD AS SECURITY**
[Family Business Loan Program]

THIS SECTION 108 CUSTODIAL AGREEMENT CONCERNING GUARANTEED LOAN FUNDS ACCOUNT AND FOR MORTGAGES AND OTHER COLLATERAL HELD AS SECURITY dated effective ____ February 2016 (the "**Custodial Agreement**") by and between the **CITY OF AUSTIN, TEXAS**, a Texas home rule city and corporation under Chapter 9, Texas Local Government Code, and having an office for the conduct of business at the address as set forth in Section 7 below (the "**City**"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States, and having an office for the conduct of business at at the address set forth in Section 7 below (the "**Custodian**"),

WITNESSETH:

WHEREAS, the City has entered into a Contract for Loan Guarantee Assistance (the "**Section 108 Contract**") of even date with this Custodial Agreement with the Secretary of the U.S. Department of Housing and Urban Development (the "**Secretary**") under Section 108 of Title I 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, the Federal Reserve System, the Federal savings and Loan Insurance Corporation, or the U.S. Comptroller of the Currency; and

WHEREAS, the parties to this Custodial Agreement desire to set forth the terms and conditions for the deposit and custodianship of the documents evidencing and relating to the note to be guaranteed by the Secretary pursuant to Section 108 of Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5308 in the principal amount of **\$3,000,000, No. B-10-MC-48-0500 [City of Austin Family Business Loan Program]** (the "**Section 108 Note**"); and

WHEREAS, the parties to this Custodial Agreement desire to set forth the terms and conditions for the deposit and custodianship of the documents evidencing and relating to the collateral to be given as security (the "**Security Deposit**") pursuant to the Section 108 Contract to finance the re-lending of the proceeds of the Section 108 Note by the City to various commercial businesses in designated areas of the City under the City's Family Business Loan Program (the "**FBL Program**") which will be secured by mortgages, in either first or second lien position, (the "**Business Mortgage**," collectively the "**Business Mortgages**") on the property (the "**Business Loan Property**," collectively the "**Business Loan Properties**") or security

agreements (the "**Business Security Agreement**," collectively the "**Business Security Agreements**") with respect to personal property acquired with loan proceeds (the "**Business Loan**," collectively the "**Business Loans**"); and

WHEREAS, the City shall secure Business Mortgages and Business Security Agreements with respect to the Business Loans and pledge such to the Secretary as security for the Section 108 Note guaranteed by the Secretary. In addition, in the event a Business Loan becomes non-performing under the Contract, the City may substitute and pledge existing business loans financed under the FBL Program as additional security for the Section 108 Note (the "**Replacement Loan**"); and

WHEREAS, the parties have additionally entered into four letter agreements concerning four separate accounts described in the Section 108 Contract, including the Letter Agreement for Section 108 Loan Guarantee Program Deposit Account – Guaranteed Loan Funds Account concerning account #232952000, the Letter Agreement for Section 108 Loan Guarantee Program Deposit Account – Loan Repayment Account concerning account #232952001, the Letter Agreement for Section 108 Loan Guarantee Program Investment Account – Guaranteed Loan Funds Investment Account concerning account #232952002, and the Letter Agreement for Section 108 Loan Guarantee Program Investment Account – Loan Repayment Investment Account concerning account #232952003, all dated even date with this Custodial Agreement (collectively, the proceeds available under the four letter agreements are referred to as the "**HUD Letter Agreement Proceeds**");

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

1. The City 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 Loan Documents will be acknowledged by the Custodian by execution of the receipt in the form attached as **Exhibit "B"** attached hereto and incorporated herein by reference.

The Custodian shall segregate and maintain continuous custody and control of all Loan Documents deposited with it on behalf of the Secretary 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 City pertaining to the payment of the Section 108 Note.

2. The Custodian, only upon presentation by the City of a Request for Release of Loan Documents, shall release to the City the appropriate Loan Documents in custody of the Custodian, and shall retain the request as a receipt from the City. The City shall make such request only when it is necessary for carrying out the City's responsibilities to service, collect prepayment, replace, or foreclose a loan secured by Loan 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 City or the Secretary all Loan Documents in its custody.

4. (A) Upon representation to the Custodian by the Secretary that a default has occurred under the Section 108 Contract, the Custodian shall comply with any request the Secretary shall make for the delivery to the Secretary of all Loan Documents in the Custodian's custody.

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

5. Custodian shall invest and reinvest any HUD Letter Agreement Proceeds in the _____ **Fund**, unless otherwise instructed in writing by City. Such written instructions, if any, referred to in the foregoing sentence shall specify the type and identity of the investments to be purchased and/or sold and shall also include the name of the broker-dealer, if any, which City directs the Custodian to use in respect of such investment, any particular settlement procedures required, if any (which settlement procedures shall be consistent with industry standards and practices), and such other information as Custodian may reasonably require. Receipt, investment and reinvestment of the HUD Letter Agreement Proceeds shall be confirmed by Custodian as soon as practicable by account statement and with respect to any discrepancies in any such account statement City shall make a good faith effort to inform Custodian about such discrepancy within 90 calendar days after receipt thereof.

6. Within a commercially reasonable time immediately following the close of each monthly bank statement period, the Custodian shall submitted simultaneously to the City and the Secretary at the notice addresses or by electronic mail delivery to the electronic mail address set forth in Section 8 of this Custodial Agreement the immediately preceding monthly bank statements established under this Custodial Agreement.

7. All notices, demands and communications provided for herein or made hereunder, unless otherwise provided in this Custodial Agreement, shall be delivered, or sent by certified mail, return receipt requested, addressed in each case as follows, until some other address shall have been designated in a written notice to the other party hereto and the Secretary given in like manner:

If to the City:

City of Austin
Financial Services Department - Treasury
Attn: Georgia Sanchez (Family Business Loan Program)
700 Lavaca Street
Suite 94-
P.O. Box 2106
Austin, Texas 78768-2106

By electronic delivery, send to: georgia.sanchez@austintexas.gov

If to the Secretary:

U.S. Department of Housing and Urban Development
Attn: Judy Ward, CPD Financial Management Division
DGBF, Room 7178
451 Seventh Street, S.W.
Washington, DC 20410

By electronic delivery, send to: judy.s.ward@hud.gov

If to the Custodian:

U.S. Bank National Association
Attn: Mauri R. Cowen
5555 San Felipe Street
Suite 1150
Houston, Texas 77056

By electronic delivery, send to: mauri.cowen@usbank.com

8. Consideration for services to be performed by the Custodian under this agreement shall be the amounts as set forth in **Exhibit "C"** to this Custodial Agreement and by this reference incorporated in it and other good and valuable consideration the receipt and sufficiency of which is acknowledged.

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

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

CITY OF AUSTIN, TEXAS

By: _____

Name: Marc A. Ott

Title: City Manager

U.S. BANK NATIONAL ASSOCIATION

By: _____

Name: _____

Title: _____

EXHIBIT A

LOAN DOCUMENTS

City shall deposit with the Custodian the following documents:

- A. An original financing transcript with respect to the Attorney General approved \$3,000,000 Section 108 Note.
- B. With respect to each Business Loan or Replacement Loan in accordance with the Section 108 Contract, as applicable:
 - 1. The original Business Note.
 - 2. The original Business Loan Agreement, and an assignment of the document to the Secretary.
 - 3. A certified copy of the Business Mortgage, with the original Business Mortgage to follow, and an assignment of the document to the Secretary.
 - 4. An Assignment of Leases and Rents, and an assignment of the document to the Secretary.
 - 5. A certified copy of the Security Agreement, with the original Security Agreement to follow, and an assignment of the document to the Secretary.
 - 6. A certified copy of the Assignment of Interest in Loan or Debt Service Reserve Accounts, with the original Assignment of Interest or Debt Service Reserve Accounts to follow.
 - 7. An appraisal of the value of the property or the net liquidation value of machinery or equipment.
 - 8. A mortgagee title commitment, with the policy to follow, naming the Secretary as an additional insured party.
 - 9. A certified survey.
 - 10. An opinion of City's counsel.
 - 11. Such additional documents the City Attorney or HUD may require.

EXHIBIT B

CUSTODIAN'S RECEIPT

The undersigned hereby acknowledges receipt of the following documents delivered in accordance with that certain **SECTION 108 CUSTODIAL AGREEMENT CONCERNING GUARANTEED LOAN FUNDS ACCOUNT AND FOR MORTGAGES AND OTHER COLLATERAL HELD AS SECURITY** dated effective 1 January 2016 by and between the **CITY OF AUSTIN, TEXAS** and the undersigned with respect to **HUD 108 Loan No. B-10-MC-48-0500**:

Custody Services for
City of Austin
HUD 108 Variable/Fixed Rate Notes
Series 2016-A Certificates

1. **Fees.** City will pay Custodian fees per this Section 1 promptly upon receipt of an invoice.

A. Acceptance Fee: \$ 500.00

The acceptance fee includes administrative review of documents, initial set-up of the account, and other reasonably required services up to and including closing. This is a flat one-time fee, payable at closing.

B. Annual Administration Fee: \$2,500.00

Annual administration fee for performance of the routine duties associated with the administration of the account. Administration fees are payable in advance without proration, until Custodian receives actual notice of the termination of the Custodial Agreement.

C. Out-of-Pocket Expenses: Reimbursement of expenses associated with the performance of Custodian's duties, including but not limited to fees and expenses of legal counsel, accountants, and other agents, tax reporting and filing, publications, amendments, and filing fees.

D. Extraordinary Fees: Extraordinary fees are payable to Custodian for duties or responsibilities not expected to be incurred at the outset of the transaction, not routine or customary, and not incurred in the ordinary course of business. Payment of extraordinary fees is appropriate where particular inquiries, events or developments are unexpected, even if the possibility of such things could have been identified at the inception of the transaction. Extraordinary services might include, without limitation, amendments or supplements, specialized reporting, non-routine calculations, use investments not automated with Custodian's trust accounting system, and actual or threatened litigation or arbitration proceedings.

2. **Identifying Information.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, Custodian requires documentation to verify its formation and existence as a legal entity. Custodian may require financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. City acknowledges that a portion of the identifying information set forth herein is being requested by Custodian in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and City agrees to provide any additional information requested by Custodian in connection with the Act or any similar legislation or regulation to which Custodian is subject, in a timely manner.

3. **Investments.**

A. Investment Direction. If applicable, and in the absence of specific written direction to the contrary, Custodian is hereby specifically directed by City to invest and reinvest all other available moneys in the Custodian Money Market Account as described in Section 5 of the Custodial Agreement or on Attachment C-1 to this exhibit. City acknowledges that Custodian has no duty to, nor will it undertake

any duty to provide, investment advice. All investments shall be made in the name of Custodian. Custodian may, without notice to City, sell or liquidate any of the foregoing investments at any time for any disbursement from the Fund permitted or required hereunder. All investment earnings shall become part of the Fund and investment losses shall be charged against the Fund. Custodian shall not be liable or responsible for loss in the value of any investment made pursuant to the Custodial Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of any part of the Fund.

B. Security Advice Waiver. City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant them the right to receive brokerage confirmations for certain security transactions as they occur, they specifically waive receipt of such confirmations to the extent permitted by law. Custodian will furnish periodic cash transaction statements that include detail for all investment transactions made by Custodian, if any, and in accordance with Section 6 of the Custodial Agreement.

4. Miscellaneous Provisions.

A. Duties, Limitation of Liability. Custodian shall have only those duties and obligations specifically set forth in the Custodial Agreement, none of which are fiduciary in nature, and shall have no implied duties or obligations. Custodian shall not be liable for any damages, losses, or expenses incurred as a result of any act or failure to act, except to the extent that such damages, losses, or expenses were caused by Custodian's gross negligence or willful misconduct. Custodian shall not be required to risk or advance its own funds. Under no circumstances shall Custodian be liable for (i) special, indirect or consequential damages or penalties even if Custodian has been advised of the likelihood of such damages or penalty and regardless of the form of action, (ii) any action taken pursuant to instruction or request of City or HUD or (iii) for any loss, liability, or delay caused by accidents, strikes, fire, flood, war, riot, equipment breakdown, electrical, computer or mechanical failure, acts of God or any cause which is reasonably unavoidable or beyond its reasonable control. Custodian may consult legal counsel selected by it in the event of any dispute or question as to the construction of or its duties under any of the provisions hereof, the Custodial Agreement or of any other agreement, or relating to any dispute involving any party hereto. Custodian shall be under no obligation to institute any suit, or to undertake any proceeding under the Custodial Agreement, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in enforcement of, or in relation to, its rights powers, duties, and obligations hereunder, until it is approved in writing in advance by City.

Custodian is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Fund, without determination by Custodian of such court's jurisdiction in the matter. If any portion of the Fund is at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance, or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment, or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, Custodian is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment, or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if Custodian complies with any such order, writ, judgment, or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment, or decree may be subsequently reversed, modified, annulled, set aside, or vacated.

B. Suspension of Performance; Disbursement into Court. If, at any time, (i) there shall exist any dispute involving City, HUD or any other person with respect to the holding or disposition of all or any portion of the Fund or any other obligations of Custodian hereunder, (ii) Custodian is unable to determine, to its sole satisfaction, the proper disposition of all or any portion of the Fund or Custodian's proper actions with respect to its obligations hereunder, or (iii) City or HUD has not, within 10 calendar

days of the furnishing by Custodian of a notice of resignation, appointed a successor to act hereunder, then Custodian may, in its sole discretion, take either or both of the following actions:

- a. suspend the performance of any of its obligations (including without limitation any disbursement obligations) under the Custodial Agreement until such dispute or uncertainty shall be resolved to its sole satisfaction or until a successor has been appointed.
- b. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, in any venue convenient to Custodian, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all of the Fund, after deduction and payment to Custodian of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Custodian in connection with the performance of its duties and the exercise of its rights hereunder.

Custodian shall have no liability to City, the HUD, or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Fund or any delay in or with respect to any other action required or requested of Custodian.

C. Indemnification. To the extent allowed by Texas law, the City agrees that it is responsible to the exclusion of any such responsibility of the Custodian for City's own proportionate share of liability for City's negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to the Custodial Agreement and as determined by a court of competent jurisdiction, provided that the execution of the Custodial Agreement will not be deemed a negligent act. This provision shall survive the termination of the Custodial Agreement.

D. Instructions. Custodian is authorized and shall incur no liability for following instructions or requests received from the City or any other person believed in good faith by Custodian to represent City even if contrary to instructions received from City.

E. IRS Reporting. All interest or other taxable income earned by the Fund shall be taxable to City to the extent the City is taxed and City shall be solely responsible for the preparation and filing of all applicable tax returns. City shall provide Custodian with appropriate forms W-9 or W-8 and all information requested by Custodian in connection with the preparation of all applicable Form 1099 and Form 1042-S documents with respect to all distributions as well as in the performance of Custodian's reporting obligations under the Foreign Account Tax Compliance Act and Foreign Investment in Real Property Tax Act or other applicable law or regulation. If such tax documentation and information is not so provided, Custodian may withhold taxes as required by the IRS.

F. Optional Security Procedures. In the event that funds transfer instructions, address changes, or change in contact information are given, whether in writing, by facsimile or otherwise, Custodian is authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to the person or persons designated on Attachment C-2 to this exhibit, and Custodian may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Custodian and shall be effective only after Custodian has a reasonable opportunity to act on such changes. If Custodian is unable to contact any of the designated representatives identified in Attachment C-2 to this exhibit, Custodian is hereby authorized but shall be under no duty to seek confirmation of such

instructions by telephone call-back to any one or more of City's executive officers ("Executive Officers"), as the case may be, which shall include the titles of Chief Executive Officer, President and Vice President, as Custodian may select. Such Executive Officer shall deliver to Custodian a fully executed incumbency certificate, and Custodian may rely upon the confirmation of anyone purporting to be any such officer. City agrees that Custodian may, at its option, record any telephone calls made pursuant to this Section. With respect to any funds transfer, Custodian may rely solely upon any account numbers or similar identifying numbers provided by City. Custodian may apply any part of the Fund for any payment order it executes using any such identifying number. City acknowledges that these optional security procedures are commercially reasonable.

5. Jury Trial Waiver. Each of City and Custodian, to the extent permitted by law, waives any right to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise, between City and Custodian arising out of, in connection with, related to, or incidental to the relationship established among the parties in connection with the Custodial Agreement or any other agreement or document executed or delivered in connection herewith or the transactions related hereto.

**U.S. BANK NATIONAL ASSOCIATION
MONEY MARKET ACCOUNT AUTHORIZATION
DESCRIPTION AND TERMS**

The U.S. Bank Money Market account is a U.S. Bank National Association ("U.S. Bank") interest-bearing money market deposit account designed to meet the needs of U.S. Bank's Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank's discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank's trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per City, as determined under FDIC Regulations, up to applicable FDIC limits.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.

**Incumbency Certificate and
Persons Designated to Confirm Funds Transfer Instructions**

I am City Manager of the City of Austin, Texas (the "**Borrower**"). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the Borrower. I also certify that each person holds the office listed opposite the person's name, and that the signatures below are the genuine signatures of the persons indicated. I also certify that the persons employed by Borrower and listed below are authorized to give U.S. Bank National Association (the "**Custodian**") on behalf of the Borrower all notices, order, directions, or instructions (including but not limited to written, electronic, or facsimile funds transfer instructions) in connection with any transactions with respect to Borrower's HUD Section 108 Variable/Fixed Rate Note for Series 2016-A Certificates (Note No. B-10-MC-48-0500) \$3,000,000 financing to which Custodian and the Borrower are or in the future may be parties.

<i>Printed Name</i>	<i>Title</i>	<i>Signature</i>
Art Alfaro	Financial Services Department - Treasury City Treasurer	_____
Georgia R. Sanchez	Financial Services Department - Treasury Assistant Treasurer	_____
Belinda Erwin	Financial Services Department - Treasury Assistant Treasurer	_____

Custodian is authorized to confirm funds transfer instructions issued in the name of the Borrower with any person purporting to be a person designated below, whether or not that person is the person who has issued the funds transfer instruction to Custodian.

<i>Name</i>	<i>Telephone Number</i>
Art Alfaro	512 / 974-7882
Georgia Sanchez	512 / 974-7886
Belinda Erwin	512 / 974-7885

WITNESS my hand and the seal of the Borrower effective on ____ **February 2016.**

Marc A. Ott
City Manager