

RESOLUTION NO. 20160225-013

WHEREAS, the City of Austin, Texas (**City**) is authorized by Section 373.005(d), Texas Local Government Code to issue notes or other obligations guaranteed by the Secretary of the U.S. Department of Housing and Urban Development (**HUD**) for the purpose of financing those activities described in Section 8, Housing and Community Development Act of 1974 (42 U.S.C. Section 5308), as amended, in furtherance of an approved community development program under Chapter 373 of the Texas Local Government Code (**Chapter 373**); and

WHEREAS, on 20 December 2011, the City submitted its loan application to HUD for approval of an \$8,000,000 HUD Section 108 loan to fund the City's Family Business Loan Program (**FBL Program**); and

WHEREAS, the City Council by Resolution No. 20120524-015 finally approved the FBL Program guidelines and criteria on 24 May 2012; and

WHEREAS, the City published notice of its Annual HUD action plan and state community development program required by Chapter 373 for Fiscal Year 2012-2013 (**2013 Action Plan**) and announced the 30 day public comment period for the 2013 Action Plan; and

WHEREAS, the City conducted public hearings and received citizen input on 5 April 2012 and 14 June 2012, as required by Texas Local Government Code Section 373.006(4) and title 24 of the Code of Federal Regulations, for its 2013 Action Plan which included the submission of an additional application to the HUD Secretary for a \$8,000,000 Section 108 guaranteed loan to fund additional business loans under the FBL Program; and

WHEREAS, pursuant to Resolution No. 20120802-031 adopted 2 August 2012, the City Council approved the City's 2013 Action Plan and authorized the City Manager to submit an additional application to the HUD Secretary for an additional \$8,000,000 Section 108 HUD guaranteed loan to fund additional business loans under the FBL Program (**Loan Application**); and

WHEREAS, the HUD Secretary notified the City that the City's request for loan guarantee assistance under Section 108 of the Housing and Community Development Act of 1974, in the principal amount of \$8,000,000, to be used to finance activities described in the Loan Application was approved; and

WHEREAS, the City Council desires to authorize the execution and delivery of the contract, note, any conversion note, and other documents relating to \$3,000,000 of the total \$8,000,000 allocation approved by HUD under HUD Section 108 Guaranteed Loan Note No. B-10-MC-48-0500 [City of Austin Family Business Loan Program] to fund business loans under the FBL Program pursuant to Chapter 373 of the Texas Local Government Code (**HUD Section 108 Loan**); **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

- (1) The City Council authorizes and approves the negotiation and execution of the HUD Section 108 Loan. The Mayor, the City Manager, the Director of the Economic Development Department, and the Chief Financial Officer of the City (**Authorized Officers**) are each individually authorized and directed to take all actions necessary or desirable to complete the HUD Section 108 Loan financing in accordance with the provisions of this resolution.

- (2) The City Council authorizes and approves the issuance by the City of a \$3,000,000 Variable/Fixed Rate Note (**Note**) to the registered holder of the Note in substantially the form attached as **Exhibit A**. This authorization is specifically conditioned on the interest rate for the Note, and any conversion of the Note from variable rate to fixed rate, being no more than the maximum net effective interest rate permitted by law to be paid on obligations issued or assumed by the City in the exercise of its borrowing powers, as prescribed by Texas law, including Texas Government Code, Chapter 1204 (Highest Lawful Rate). The actual principal amount of the Note and the interest on the Note shall be: (i) secured solely by, and payable solely from, the security described in the Note, and the Contract (defined below) relating to the Note; and (ii) payable in the manner provided in the Note. The Authorized Officers are each individually authorized to execute and deliver the Note, with such changes, insertions, deletions, or modification as may be approved by an Authorized Officer to obtain the guaranteed financing under the HUD Section 108 Loan. The execution of the Note is conclusive evidence the City Council approved the Note.
- (3) The City Council authorizes and approves the contract for loan guarantee assistance (**Contract**) between the City and HUD relating to the Note in substantially the form attached as **Exhibit B**. The Authorized Officers are each individually authorized to execute and deliver the Contract relating to the Note, with such changes, insertions, deletions, or modification as may be approved by an Authorized Officer to obtain the guaranteed financing under the HUD

Section 108 Loan, provided that the Contract contains provisions assuring compliance with Texas law relating to the maximum rate of interest, choice of law, and, if any ad valorem taxes are pledged to secure payment of all or a portion of the Note, limitations on actions relating to ad valorem taxes. The execution of the Contract relating to the Note is conclusive evidence the City Council approved the Contract relating to the Note.

- (4) The City Council authorizes and approves the custodial agreement (**Custodial Agreement**) between the City and **U.S. Bancorp**, a national banking association, relating to the Note in substantially the form attached as **Exhibit C**. The Authorized Officers are each individually authorized to execute and deliver the Custodial Agreement relating to the Note, with such changes, insertions, deletions, or modification as may be approved by an Authorized Officer to obtain the guaranteed financing under the HUD Section 108 Loan.
- (5) The City Council authorizes and approves the Authorized Officers to approve and execute any documents necessary to complete the conversion of the Note from variable to fixed rate provided that such conversion is in compliance with the requirements and legal limitations contained in this resolution, the Contract, the Note, and HUD requirements.
- (6) The City Council authorizes and approves the Authorized Officers to pay from the proceeds of the HUD Section 108 Loan or otherwise all expenses related to the issuance and delivery of the Note, the Contract, any conversion of the Note, and the related agreements,

expenses of approval by the Texas Attorney General's Office, as well as the City's share of any expenses of any public offering.

- (7) The City Council authorizes and approves each of the Authorized Officers to execute and deliver documents not mentioned in this resolution if these documents are needed to complete the issuance and delivery of the Note, including any documents required to complete the conversion of the Note in accordance with the terms of the Note and the Contract, the execution and delivery of the Contract, to obtain approval from the Texas Attorney General's Office, and to complete the documents specifically described in this resolution.

BE IT FURTHER RESOLVED:

That it is determined the City posted sufficient written notice of the date, hour, place, and subject of the meeting of the City Council at which this resolution was adopted at a place convenient and readily accessible at all times to the general public at the Austin City Hall for the time required by the Open Meetings Act, Chapter 551, Texas Government Code. The meeting has been open to the public as required by law at all times during which this resolution and its subject matter were discussed, considered, and formally acted upon. The City Council approves and confirms the written notice, the contents, and the posting.

ADOPTED: February 25, 2016

ATTEST:

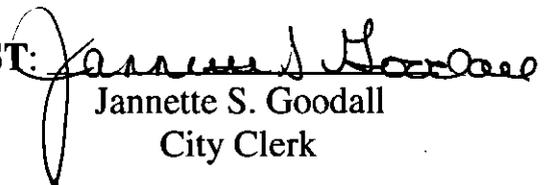

Jannette S. Goodall
City Clerk

Exhibit A

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

VARIABLE/FIXED RATE NOTE

NOTE NUMBER: B-10-MC-48-0500

BORROWER: City of Austin, Texas

[Family Business Loan Program]

DATE OF NOTE: _____

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.

MAXIMUM COMMITMENT
AMOUNT: \$3,000,000

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 of Austin, Texas (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 Texas, 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 is the First Note in the maximum commitment amount of \$3,000,000 for the Borrower's Family Business Loan Program, which is part of HUD's B-10-MC-348-0500 commitment for Section 108 guaranteed loans not to exceed \$8,000,000.

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

City of Austin, Texas
BORROWER

By: _____
(Signature)

Steve Adler
(Name)

Mayor
(Title)

By: _____
(Signature)

Marc A. Ott
(Name)

City Manager
(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-10-MC-48-0500

<u>Principal Due Date</u>	<u>Commitment Amount</u>
August 1, 2016	\$ 0
August 1, 2017	0
August 1, 2018	167,000
August 1, 2019	167,000
August 1, 2020	167,000
August 1, 2021	167,000
August 1, 2022	167,000
August 1, 2023	167,000
August 1, 2024	167,000
August 1, 2025	167,000
August 1, 2026	167,000
August 1, 2027	167,000
August 1, 2028	167,000
August 1, 2029	167,000
August 1, 2030	167,000
August 1, 2031	167,000
August 1, 2032	167,000
August 1, 2033	167,000
August 1, 2034	164,000
August 1, 2035	164,000

Maximum Commitment Amount = **\$3,000,000**

SCHEDULE P&I*

Note No. B-10-MC-48-0500

Principal Amount	Principal Due Date	Interest Rate**	Optional Redemption Available	
			YES	NO
	August 1, 2016			X
	August 1, 2017			X
	August 1, 2018			X
	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	

\$ = Aggregate Principal Amount

Principal Amounts due on or after August 1, 2026, may be redeemed, subject to the terms contained herein and in the Trust Agreement, on any Interest Due Date on or after August 1, 2025.

*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.

Exhibit B

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 City of Austin, Texas, 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-10-MC-48-0500 [Family Business Loan Program], 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 January 23, 2012 in the amount of \$ 8,000,000, and this Contract covers other Notes having the same Note number up to such Commitment amount. 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. **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.
- D. **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.

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. Such Letter Agreement must be executed when the Guaranteed Loan Funds Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.)

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 September 30, 2017, 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. Such Letter

Agreement must be executed when the Guaranteed Loan Funds Investment Account is established. (A fully executed copy of such 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 September 30, 2017. 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 a written statement showing the balance of funds in the Guaranteed Loan Funds Account and the withdrawals from such account during the preceding calendar month, and a statement identifying the obligations and their assignments in the Guaranteed Loan Funds Investment Account.

(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). Such Letter Agreement must be executed when the Loan Repayment Account is established. (A fully executed copy of such 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. Such Letter Agreement must be executed when the Loan Repayment Investment Account is established. (A fully executed copy of such 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 a written 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 a statement identifying the obligations and their assignments in the Loan Repayment Investment Account.

(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 and allocations 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. Borrower agrees that this Contract obligates allocations pledged under paragraph 5(a) of this Contract for the limited purpose of making payments required under paragraph 2 or paragraph 4 or pursuing remedies under paragraph 12 upon a Default or declaration of Default under this Contract.
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:

City of Austin, Texas

Marc Ott, City Manager
301 W. 2nd Street
Austin, Texas 78701

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 October 1, 2010, under the Funding Approval for grant number B-10-MC-48-0500 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) Paragraph 5(c) of the Contract is amended by deleting the paragraph as written in its entirety and substituting the following in its place:
- "(c) Other security, including, but not limited to, all rights of the Borrower (but none of the obligations of the Borrower) in and to the 'Security Documents' (as defined in paragraph 15(d) hereof) and to the collateral described therein. If necessary to provide the Secretary with a valid security interest in such other security, the Borrower shall execute a security agreement (the 'Borrower Security Agreement'), which Borrower shall be in a form acceptable to the Secretary."
- (b) Guaranteed Loan Funds shall be used by the Borrower to finance loans (individually, a "Business Loan") to one or more for-profit businesses (individually, a "Business Borrower") pursuant to 24 CFR 570.703(i)(1) and §570.203.

The Borrower shall not incur any obligations to be paid with guaranteed loan funds prior to the receipt of a written determination from the HUD San Antonio Field Office that either (i) each individual activity to be undertaken or supported with loan guarantee funds

meets the eligibility requirements of 24 CFR 570.703, the national objective requirements of §570.208 and, if applicable, the public benefit standards of §570.209(b), or (ii) the Borrower's procedures for assuring compliance with the requirements are acceptable.

- (c) Each Business Loan shall be evidenced by a promissory note (individually, the "Business Note" and, collectively, the "Business Notes") and a loan agreement (the "Business Loan Agreement"). The Business Note and Business Loan Agreement shall contain such provisions as the Secretary deems necessary.

The amount of principal and/or interest payable under the Business Notes 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 Note for the corresponding period. No Business Note shall be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the Note.

HUD must be notified before the Borrower enters an intercreditor agreement or similar agreement affecting Borrower's rights under the Obligor Note or Obligor Loan Agreement or HUD's ability to enforce its rights under the Security Documents ("Intercreditor Agreement"). Any Intercreditor Agreement, including amendments, must be in a form acceptable to the Secretary.

The Business Loan shall be fully secured by one or more of the following forms of collateral (collectively, the "Collateral").

- (i) A lien on real property (the "Real Property"), established through an appropriate and properly recorded mortgage (the "Business Mortgage"). The Business Mortgage shall contain such provisions as the Secretary deems necessary. The Business Mortgage may be subordinated to another lien on the property; provided, however, that the principal amount of the Business Loan secured by the Real Property shall not exceed an amount equal to 80 percent of the "as improved" appraised market value, less the outstanding balance on other indebtedness secured by a mortgage lien of senior or equal priority on the Real Property.
- (ii) Any and all rights, titles, and interests of the Business Borrower to any leases covering the Real Property. Such rights, titles, and interests

shall be the subject of an appropriate and properly recorded collateral assignment of leases and rents (the "Collateral Assignment of Leases and Rents"). The Collateral Assignment of Leases and Rents shall be in a form acceptable to the Secretary.

(iii) A security interest (collectively referred to as the "Security Interests") in machinery and equipment ("M&E"), accounts receivable, inventory, and other items of personal property collectively, the "Personal Property"). The Security Interests may be subordinated to another lien; provided, however, that the principal amount of the Business Loan secured by the Personal Property shall not exceed an amount determined as follows:

(A) in the case of used M&E, not more than 90 percent of the appraised net liquidation value, less the outstanding balance of other indebtedness secured by a senior security interest in such M&E; and

(B) in the case of new M&E, not more than 80 percent of the cost thereof (including installation), less the outstanding balance of other indebtedness secured by a senior security interest in such M&E; and

(C) in the case of accounts receivable, not more than 80 percent of the average of the ending balances of the last three (3) years of accounts receivable, less the outstanding balance of other indebtedness secured by a senior security interest in said accounts receivable; and

(D) in the case of inventory, not more than 50 percent of the average of the ending inventory balances of the last three (3) years, less the outstanding balance of other indebtedness secured by a senior security interest in said inventory.

The Security Interests shall be granted pursuant to an appropriate security agreement (the "Security Agreement"), which Security Agreement also shall be referenced in appropriate Uniform Commercial Code Financing Statements filed in accordance with the Uniform Commercial Code. The Security Agreement and such Uniform Commercial Code Financing Statements shall contain such provisions as the Secretary deems necessary.

(iv) Any and all rights, titles, and interests of the Business Borrower in any loan or debt service

reserve accounts established for the purpose of securing the Business Loan. Such rights, titles, and interests shall be the subject of a collateral assignment of interest in loan or debt service reserve accounts (the "Collateral Assignment of Interest in Loan or Debt Service Reserve Accounts"). The Collateral Assignment of Interest in Loan or Debt Service Reserve Accounts shall be in a form acceptable to the Secretary.

- (v) As applicable, personal and/or corporate guaranties (individually and collectively a "Personal Guaranty") of all payments due under the Business Note. The Personal Guaranty shall be in a form acceptable to the Secretary.
- (vi) Such other alternative collateral or security arrangements as may be requested by the Borrower and approved by the Secretary in writing.
- (d) Unless otherwise agreed to by the Secretary, the Borrower shall select a financial institution acceptable to the Secretary (the "Custodian") to act as custodian for the documents specified in paragraph 15(e) below (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 paragraph 15(e) below. For each Business Note subsequent to the initial Business Note, a copy of the executed letter or other communication to the document custodian transmitting Security Documents shall be forwarded to the Secretary for each such Business Note.
- (e) Not later than five (5) business days after disbursement by the Borrower of Guaranteed Loan Funds to a Business Borrower, the Borrower shall deliver to the Custodian the following (as applicable to that activity):
 - (i) The original Business Note endorsed in blank and without recourse.
 - (ii) The original Business Loan Agreement, and a collateral 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) The original Personal Guaranty and a collateral assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
- (viii) If Guaranteed Loan Funds are used to acquire real property:
 - (1) 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");
 - (2) A copy of a mortgagee title policy (with the original to follow not later than five (5) business days after Borrower receives the original from the title company), 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; and
 - (3) A certified survey with a legal description conforming to the title policy and the Business Mortgage.
- (ix) If Guaranteed Loan Funds are used to acquire used M&E, an appraisal of its net liquidation value.
- (x) 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 Texas and is [*existing, qualified to do business, in good standing, as applicable*] in and under the laws of the State of Texas;
- (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 (vii) 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.

- (xi) Any instruments, documents, agreements, and legal opinions required pursuant to paragraph 15(c)(vi).
- (f) The Borrower covenants that it shall:
 - (i) ensure the diligent performance of the usual and customary functions related to the servicing of the Business Notes; and
 - (ii) promptly perfect the Security Interests by filing a financing statement in accordance with the requirements of the Uniform Commercial Code and shall file such additional statements as are necessary to maintain the perfected Security Interests, and provide verification to the Secretary upon request that the Security Interests have been perfected and maintained in the manner described above.
- (g) The Borrower shall promptly notify the Secretary in writing whenever an event which constitutes a default (an "Event of Default") under (and as defined in) any of the Security Documents pertaining to a Business Loan has occurred and has continued unremedied for a period of 90 days after such occurrence. Such Business Loan

shall be hereinafter referred to as the "Nonperforming Business Loan." However, if a Debt Service Reserve Fund has been established by the Borrower in an amount sufficient to satisfy at least one year's debt service to HUD on the Nonperforming Business Loan(s) at the date that the loan(s) become nonperforming, the Borrower shall have an additional year prior to the required notification to remedy the default. Notification of a Nonperforming Business Loan shall be delivered to the Secretary as directed in paragraph 12(f) above.

The Borrower shall within 60 days of such notification take one of the following actions:

- (i) The Borrower may replace the Nonperforming Business Loan with another, performing loan (the "Replacement Loan") which meets the security requirements specified in paragraph 15(c). Such replacement shall be effected by delivery to the Custodian of the Security Documents that would be delivered if the Replacement Loan were made from Guaranteed Loan Funds. If the payments of principal and interest on the Replacement Loan are insufficient to satisfy the payments that are due on the Nonperforming Business Loan, the Borrower shall purchase Government Obligations that mature and bear interest at times and in amounts sufficient, together with payments due on the Replacement Loan, to pay when due the principal and interest to become due on the Nonperforming Business Loan. Such Government Obligations shall be deposited in the Loan Repayment Investment Account.
- (ii) If the Borrower elects not to replace a Nonperforming Business Loan, the Borrower shall purchase Government Obligations that mature and bear interest at times and in amounts sufficient to pay when due the principal and interest to become due on the Nonperforming Business Loan. (This action shall be required only with respect to Nonperforming Business Loans that have not been replaced as provided under (i) above.) Such Government Obligations shall be deposited in the Loan Repayment Investment Account.
- (h) Paragraph 12 is amended by adding at the end thereof the following language:
 - "(g) The Secretary may complete the endorsement of the Business Notes and record the assignments referred to in paragraph 15(e), and thereby effectuate the transfer of the documents referenced and

underlying indebtedness from the Borrower to the Secretary or the Secretary's assignee.

- "(h) The Secretary may exercise or 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, as defined in paragraph 15(d)) against the Borrower, against the Business Borrower, against the personal/corporate guarantor, or against any other person or property."
- (i) Notwithstanding any other provision of the Note or this Contract, the following provisions to assure compliance with Texas law shall govern:
- (1) The Secretary shall not require the Note to be converted to a fixed-rate Note pursuant to Sections II and III thereof at an interest rate on any Principal Amount on Schedule P&I thereof that exceeds the maximum rate payable by the Borrower thereon under generally applicable Texas law, including Chapter 1204 of the Texas Government Code, as amended. This limitation on the interest rate on the principal of the Note also applies if the Note bears interest at a variable rate prior to a conversion to a fixed rate. In addition, the accrual of interest on unpaid interest shall be limited to the extent permissible under Texas law.
 - (2) Part I, paragraph C, of the Contract is amended to delete the last sentence thereof, and to insert the following two new sentences at the end:

"The Borrower agrees that the interest rate at which the trust certificate corresponding to a specified Principal Due Date on Schedule P&I of the Note is sold to the Underwriters shall be the interest rate inserted on the Conversion Date in Schedule P&I for the Principal Amount corresponding to such Principal Due Date. Such interest rate for each trust certificate shall be that rate which the Underwriters determine will enable them to sell under then-prevailing market conditions such certificate, or interests therein, for 100% of the Principal Amount of such certificate."
 - (3) Paragraph 4(e) of the Contract is amended by deleting the paragraph as written in its entirety and substituting therefor the following:

"(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(a) and (b) of this Contract."

- (4) The provisions of the Fiscal Agency/Trust Agreements (including any future amendments thereto or any new fiscal agency or trust agreements in the future) relating to indemnification, standard of care, choice of law and disposition of unclaimed property as they concern the Borrower are subject to the limitations of this Contract and will be enforceable against the Borrower only to the extent permitted by Texas law. The Secretary further agrees that he will require the Fiscal Agent and Trustee to maintain the registration books referred to in section 5.01 of the Amended and Restated Master Fiscal Agency Agreement and in section 5.03 of the Trust Agreement in a form that can be converted to a writing and a copy of which can be provided to the Borrower in Texas within a reasonable time after request.
- (5) To the extent that a pledge of ad valorem tax is securing payment of all or a portion of the principal of and interest on the Note, acceleration of the maturity date of that portion of the Note shall not be available as a remedy in the event of a default by the Borrower under the Note or this Contract.
- (6) The Borrower covenants that Advances under the initial Note executed contemporaneously with this Contract and any subsequent Note shall be made in accordance with the Advance Schedule attached and to and made a part of this Contract as **Attachment 3**. Borrower shall amend **Attachment 3** to add an Advance Schedule for each subsequent Note issued pursuant to this Contract up to the Commitment amount of \$8,000,000.

[Rest of Page Intentionally Left Blank]

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 Austin , Texas

BORROWER

BY: _____

(Signature)

Marc A. Ott

(Name)

City Manager

(Title)

(Date)

SECRETARY OF HOUSING AND URBAN
DEVELOPMENT

BY: _____

(Signature)

Marion Mollegen McFadden

(Name)

Deputy Assistant Secretary
for Grant Programs

(Title)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**LETTER AGREEMENT FOR
SECTION 108 LOAN GUARANTEE PROGRAM
CUSTODIAL ACCOUNT**

Name of Institution (and Branch)

Street

City, State, Zip Code

Date:

This account is established for funds received by the Borrower under Note(s) guaranteed by the United States Department of Housing and Urban Development (HUD) under the Section 108 Loan Guarantee Program. (**Guaranteed Loan Funds Account**)

This account is established for repayment of the Note guaranteed by HUD under the Section 108 Loan Guarantee Program. (**Loan Repayment Account**)

This account is established as a debt service reserve under the Section 108 Loan Guarantee Program. (**Debt Service Reserve Account**)

You are hereby authorized and requested to establish a custodial account to be specifically designated:

"_____
Trustee of United States Department of Housing and Urban Development." All deposits made in such account shall be subject to withdrawal therefrom by the Borrower named below and shall also be subject to withdrawal therefrom by HUD. No agent of the Borrower shall be authorized to withdraw funds from the account. You are also authorized to pay HUD at any time, upon its written demand, which need not name a specific amount, the entire amount in such account subject only to notice requirements contained in applicable regulations governing this institution, but in no event to exceed seven business days.

You are further authorized, upon the request of HUD, to refuse to honor any instrument drawn upon or withdrawals from such account by parties other than HUD and to change the name of the aforesaid account to the "United States Department of Housing and Urban Development." In no instance shall the funds in the custodial account be used

to offset funds which may have been advanced to, or on behalf of, the Borrower by the custodian institution.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certification below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower

By: [Signature]

Title

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under Account Number: _____, and agrees with the Borrower named above and HUD to honor demands on such account in the manner provided in the above letter, subject only to notice requirements contained in applicable regulations governing this institution, but in no event to exceed seven business days. The undersigned institution further agrees, upon the written request of HUD, to refuse to honor any instruments drawn upon or withdrawals from such account by parties other than HUD and to change the name of the aforesaid account to "United States Department of Housing and Urban Development." In no instance shall the funds in the custodial account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the custodian institution. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

Name of Institution

By (Signature and Title)

Date:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**LETTER AGREEMENT FOR
SECTION 108 LOAN GUARANTEE PROGRAM
CUSTODIAL INVESTMENT ACCOUNT**

Name of Institution (and Branch)

Street

City, State, Zip Code

Date: _____

This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Guaranteed Loan Funds Account. **(Guaranteed Loan Funds Investment Account)**

This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Loan Repayment Account. **(Loan Repayment Investment Account)**

This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Debt Service Reserve Account. **(Debt Service Reserve Investment Account)**

You are hereby authorized and requested to hold obligations and assignments of those obligations in trust for the United States Department of Housing and Urban Development (HUD) in an account specifically designated:

"_____
Trustee of United States Department of Housing and Urban Development." All obligations and assignments shall be subject to release to the Borrower named below and shall also be subject to release to HUD. No agent of the Borrower shall be authorized to release the obligations or assignments. You are also authorized to release the obligations and assignments to HUD at any time, upon its written demand, which need not name specific obligations and assignments, all obligations and assignments being held in such account subject only to notice requirements contained in applicable regulations governing this institution, but in no event to exceed seven business days.

You are further authorized, upon the request of HUD, to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD and to change the name of the aforesaid account to the "United States Department of Housing and Urban Development." In no instance shall the obligations in this account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the custodian institution.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certification below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower

By: {Signature}

Title

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under Account Number: _____, and agrees with the Borrower named above and HUD to honor requests for release on such account in the manner provided in the above letter, subject only to notice requirements contained in applicable regulations governing this institution, but in no event to exceed seven business days. The undersigned institution further agrees, upon the written request of HUD, to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD and to change the name of the aforesaid account to "United States Department of Housing and Urban Development." In no instance shall the obligations in the account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the custodian institution. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

Name of Institution

By (Signature and Title)

Date: _____

ATTACHMENT 3

Advance Drawdown Schedule

Borrower Advances under the following Note or Notes issued in connection with this Contract shall be made in the amounts and on the dates as set forth as follows:

Advance Schedule for Variable/Fixed Rate Note Number B-10-MC-48-0500 in the amount of \$3,000,000 and dated ____ February 2016 is as set forth in **Attachment 3-A**.

ATTACHMENT 3-A

Advance Drawdown Schedule – \$3,000,000 Note Dated __ February 2016

<u>Amount of Each Advance</u>	<u>Date of Advance</u>
\$1,000,000	contemporaneous with Texas Comptroller's registration of the Note
\$1,200,000	on or before 31 March 2016
\$800,000	on or before 30 April 2016

Exhibit C

[variation 9-2-05 - Modified]

**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.

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