

**CITY AND COUNTY OF DENVER, COLORADO  
METRO MORTGAGE ASSISTANCE PLUS PROGRAM  
CUSTODY AGREEMENT**

**THIS CUSTODY AGREEMENT** (this “Agreement”) dated as of January 1, 2019, is made by and between the **CITY AND COUNTY OF DENVER, COLORADO** (the “City”) and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as custodian hereunder (the “Custodian”), in connection with the City’s Metro Mortgage Assistance Plus Program (the “Program”).

**W I T N E S S E T H :**

WHEREAS, the City desires to engage the services of the Custodian to act on their behalf in connection with the purchase of mortgage-backed securities (the “Certificates”) by the City from U.S. Bank National Association (the “Servicer/Administrator”), and the simultaneous sale of the Certificates to George K. Baum & Company, or its successor in interest (the “Purchaser”) as described herein;

WHEREAS, such services are to be provided in connection with the Master Mortgage-Backed Security Purchase Agreement dated \_\_\_\_\_, 2019, by and between the City, the Purchaser and the Custodian (the “Purchase Agreement”); and

WHEREAS, the Custodian is willing to act as the City’s Custodian upon the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereto agree as follows:

**Section 1. Services To Be Provided by the Custodian.** The Custodian shall:

(a) open, maintain and hold an account in the name of the City (the “City and County of Denver, Colorado Custody Account” or “Custody Account”) where it will hold all cash, cash equivalents and securities (and all certificates and instruments representing the same) deposited with, or otherwise delivered to, the Custodian, and all interest, dividend, investment income, cash and other proceeds from time to time received in respect of any or all of the foregoing;

(b) invest all cash, if any, held in the Custody Account as directed by the City in writing. The Custodian shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Agreement. The Custodian shall be authorized to make or dispose of any investment upon the written direction of the City. The City acknowledges that the Custodian is not providing investment supervision, recommendations or advice to the City. The Custodian may elect, but shall not be obligated, to credit the Custody Account with funds representing income or principal payments due on, or sales proceeds due in respect of, assets in the Custody Account, or to credit to the account assets intended to be purchased with such funds, in each case before actually receiving the requisite funds from the payment source, or to otherwise advance funds for account transactions. Notwithstanding anything else in this

Agreement, (i) any such crediting of funds or assets shall be provisional in nature, and the Custodian shall be authorized to reverse or offset any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Agreement shall constitute a waiver of any of U.S. Bank National Association's rights as a securities intermediary under Uniform Commercial Code §9-206. The Custodian may also set-off against and deduct from the Custody Account with respect to checks or other deposits that have been credited to the account but are subsequently returned unpaid or reversed, or other overdrafts that may arise from time to time in the Custody Account (whether by reason of provisional credit, fail or assumed settlements, claw-backs or other reason);

(c) disburse the net Custody Account balance, subject to Section 12(j) of this Agreement, to the City on each settlement date for a Certificate hereunder, in accordance with the wire instructions set forth in Exhibit A attached hereto, as amended from time to time by the parties hereto, unless otherwise instructed at the written direction of an authorized person or officer of the City or in accordance with a court order; and

(d) present for payment all maturing securities or any securities called for redemption and collect proceeds therefrom.

**Section 2. Sale of Certificates to City.** The Custodian shall purchase the Certificates on behalf of the City and shall not require more than two business days prior notice of the delivery of Certificates to it by the Servicer/Administrator. Notice of the delivery of Certificates is to be provided by the Servicer/Administrator to the parties detailed in Exhibit A. Instructions relating to the delivery of Certificates that are sold to the Purchaser are set forth in Exhibit A hereto. All delivery instructions are subject to amendment from time to time upon notice of such amendment to all parties.

**Section 3. Custodian.** The Custodian agrees to act on behalf of the City in connection with its simultaneous purchase of Certificates from the Servicer/Administrator and sale of such Certificates to the Purchaser.

**Section 4. Powers of the Custodian.** The Custodian is authorized and empowered to:

(a) hold assets in the City's name or in the name(s) of a nominee selected by the Custodian or at recognized securities depositories;

(b) employ agents other than its employees and delegate to them such ministerial and other nondiscretionary duties as it sees fit and to rely upon information furnished by such agents; and

(c) make, execute, acknowledge and deliver any and all documents of transfer and conveyance and other instruments that may be necessary or appropriate to carry out its duties and powers.

## **Section 5. Records, Reports, and Inspection.**

(a) The Custodian shall furnish to the City a monthly statement of the Custody Account reflecting all activity during the month, and an inventory of assets including their market value as of month end. The Custodian will furnish such other reports as the City may reasonably request, including reports to the City's accountants or examiners, but no more frequently than monthly.

(b) The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions relating to the funds held pursuant to this Agreement, the City waives receipt of such confirmations, to the extent permitted by law. The Custodian shall furnish a statement of security transactions on its regular monthly

(c) The Custodian shall furnish to the City, or the City's designee, such statements, records, reports, data and information as the City, or the City's designee, may request pertaining to matters covered by this Custody Agreement.

(d) The Custodian shall, during normal business hours and as often as the City may deem reasonably necessary, make available to the City, including its auditor, for examination all of its records and data with respect to all matters covered by this Custody Agreement and shall permit the City or its designated or authorized representative to audit and inspect all invoices, materials, payrolls, records of personal conditions of employment and other data relating to all matters covered by this Custody Agreement. Such records shall be maintained for a minimum period of three (3) years following payment or services hereunder.

**Section 6. Fees.** The Custodian shall receive compensation from the City as set forth in Exhibit B attached to this Agreement, as may be amended from time to time by the parties. The Custodian shall also be reimbursed by the City for its reasonable out-of-pocket expenses during the performance of the Custodian's duties under this Agreement. The Custodian is authorized and permitted to set off, recoup and/or otherwise deduct any unpaid fees, and/or non-reimbursed expenses from cash and other assets on deposit in the Custody Account if not paid by the City within 30 days of the due date specified in the invoice submitted to the City by the Bank.

**Section 7. Authorized Persons.** The City shall furnish a list to the Custodian of persons authorized to act on behalf of the City for the purpose of transmitting instructions to the Custodian concerning the assets in the Custody Account (and shall update such list from time to time when there are changes therein). An initial list is attached hereto as Exhibit C. The Custodian shall have no duty to confirm whether the information on Exhibit C is current. Unless and until written notice of any changes to Exhibit C shall be delivered to and acknowledged by the Custodian, the Custodian shall be entitled to assume that such information is current.

**Section 8. Amendment and Termination.** This Agreement may be amended by written agreement of the City and the Custodian, at any time, executed by an authorized representative of the Custodian and the Chief Financial Officer of the City or in the absence of the Chief Financial Officer of the City by the Executive Director of the Office of Economic Development of the City.

This Agreement shall continue in effect until terminated by either party upon 30 days' prior written notice to the other party. Upon termination, all cash and other assets held in the Custody Account shall be delivered by the Custodian to the City or to any other person in accordance with the City's written instruction. Any outstanding and unpaid fees and expenses owed to the Custodian may be deducted by the Custodian from the cash and other assets held in the Custody Account prior to delivery to the City or as the City directs.

**Section 9. Indemnification and Limitation on Liability.** To the extent permitted by law and subject to annual appropriation therefor, the City agrees to indemnify, defend and hold the Custodian and its agents, affiliates, successors and assigns harmless from and against any and all damages, claims, liabilities, losses, costs and expenses, including without limitation attorney's fees and expenses ("Losses"), that may be imposed on, incurred by, or asserted against the Custodian by reason of its acceptance of this account or the performance of its duties under this Agreement or the Purchase Agreement, including, but not limited to Losses incurred by the Custodian as a result of its efforts in following directions and/or any action or inaction of the Custodian or of any other authorized parties, including third parties, regarding the Custody Account, unless such Losses are finally adjudicated to have been directly caused by the negligence or willful misconduct of the Custodian. IN NO EVENT SHALL THE CUSTODIAN BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS) FROM ANY ACTION TAKEN OR OMITTED TO BE TAKEN BY IT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION. The foregoing indemnification shall survive any termination or assignment of this Agreement and any resignation or removal of the Custodian.

**Section 10. Notices.** All notices, instructions, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if delivered personally to the party to whom notice is to be given; (b) on the day of transmission if sent by email or facsimile transmission to the email address or facsimile number given below, respectively, and written confirmation of receipt is obtained promptly after completion of transmission; (c) on the day after delivery via Federal Express or similar overnight courier service or the Express Mail service maintained by the United States Postal Service; or (d) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed, return receipt requested, to the party as follows:

Notices to the City shall be directed and mailed as follows:

City and County of Denver, Colorado  
Attn: Chief Financial Officer  
Department of Finance  
201 West Colfax Avenue  
Department 1010  
Denver, CO 80202

with copies to: Office of Economic Development  
Attn: Executive Director  
201 West Colfax Avenue  
Department 1011  
Denver, CO 80202

Denver City Attorney's Office  
Attn: City Attorney  
457 Bannock Street  
Room 353  
Denver, CO 80202

CSG Advisors, as Program Monitor  
Attn: David Jones  
41 Perimeter Center East  
Suite 615  
Atlanta, Georgia 30346  
Email: djones@csgadvisors.com

Notices to the Custodian shall be directed and mailed as follows:

U.S. Bank National Association  
Attn: Kathleen Connelly  
950 17<sup>th</sup> Street, 5<sup>th</sup> Floor  
Denver CO 80202  
Email: Kathleen.Connelly@usbank.com

Any party may change its address for purposes of the paragraph by giving the other parties written notice of the new address in the manner set forth above.

**Section 11. Inspection Privileges.** The books, records, documents, accounting procedures and practices of the Custodian relevant to this Agreement are subject to examination by the City, or its designated independent public accountants or consultants, during normal business hours and at the requesting party's expense. The Custodian shall retain its books, records, and documents associated with the Program for a minimum of three years following the termination hereof.

**Section 12. Regarding the Custodian.**

(a) The Custodian shall not be liable for any action taken or not taken under this Agreement so long as it shall have acted without negligence or willful misconduct.

(b) The rights and obligations of the City may not be assigned or delegated to any other person without the written consent of the Custodian. Subject to the foregoing, the terms and provisions hereof shall be binding upon and inure to the benefit of the parties

hereto and their respective successors and permitted assigns. No other persons shall have any rights under this Agreement.

(c) The Custodian is not a party to, is not bound by, and has no duty to inquire into any agreement other than this Agreement and the Purchase Agreement. The Custodian shall have no implied duties, fiduciary or otherwise, beyond the express duties set forth herein.

(d) The Custodian shall not be required to expend or risk its own funds or otherwise incur financial liability (other than expenses or liabilities otherwise required to be incurred by the express terms of this Agreement) in the performance of its duties hereunder if it believes that repayment of such funds, or adequate indemnity, is not assured to it.

(e) The Custodian shall have the right, but not the obligation, to consult with counsel or other such professionals of the Custodian's choice and shall not be liable for action taken or omitted to be taken by the Custodian in accordance with the advice or counsel of such professionals.

(f) Any authority or association into which the Custodian is converted or merged, or with which it is consolidated, or to which it sells or transfers all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any authority or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Custodian is a party, shall be and become the successor to the Custodian under this Agreement and shall have and succeed to all of the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any other act.

(g) The Custodian may resign as such following the giving of 30 calendar days' prior written notice to the City. The City may remove the Custodian upon 30 calendar days' prior written notice to the Custodian. The duties of the Custodian shall terminate 30 days after recipient's receipt of such notice (or as of such earlier date as may be mutually agreed by the Custodian and the City). The Custodian shall deliver the cash and other assets then in the Custody Account to a successor custodian in accordance with the City's written direction. If the City fails to appoint a successor prior to the expiration of a 30 calendar day notice period, the Custodian may, in its sole discretion, deliver the cash and other assets in the Custody Account to the City, or may petition any court of competent jurisdiction for the appointment of a successor custodian.

(h) The Custodian may assume the genuineness of, and may rely on, any written notice or communication from any person, without further verification, that the Custodian believes is from the proper party and shall be protected in doing so by the City.

(i) The Custodian shall not be responsible or liable for any failure or delay in the performance of its obligation under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances;

sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Custodian shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

(j) In the event that the Custody Account, or any cash or assets contained therein, shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree, shall be made or entered by any court affecting the property deposited or held under this Agreement, the Custodian is hereby authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, and in the event that the Custodian obeys or complies with any such writ, order or decree it shall not be liable to the City or any other person, firm or authority, by reason of such compliance notwithstanding that such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

### **Section 13. Tax Matters.**

(a) ***Reporting of Income.*** The Custodian shall report to the Internal Revenue Service (the “IRS”), as of each calendar year-end, and to the City, all income earned from the investment of any sum held in the Custody Account, as and to the extent required under the provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the “Code”). The City shall furnish the Custodian with a completed Form W-8 or Form W-9, as applicable.

(b) ***Preparations and Filing of Tax Returns.*** The City assumes the obligation to prepare and file, to the extent applicable, any and all income or other tax returns applicable to the Custody Account with the IRS and any state or local taxing authorities.

(c) ***Payment of Taxes.*** Any taxes payable on income earned from the investment of any sums held in the Custody Account shall be paid by the City, whether or not the income was distributed by the Custodian during any particular year, to the extent required under the provisions of the Code or otherwise.

**Section 14. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

**Section 15. Venue and Governing Law.** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Custody Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

**Section 16. No Discrimination in Employment.** In connection with the performance of all work under this Custody Agreement, the Custodian agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts entered into in furtherance of this Custody Agreement.

**Section 17. Waiver.** No rights may be waived except by an instrument of writing signed by the party charged with such waiver. No assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Custody Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

**Section 18. Professional Liability (Errors And Omissions).** Custodian shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

**Section 19. Entire Agreement.** This Agreement is the final integration of the agreement of the parties with respect to the matters covered by it and supersedes any prior understanding or agreement, oral or written, with respect thereto.

**Section 20. Severability.** The invalidity of any portion of this Agreement shall not affect the validity of the remainder hereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, authorized officers of the parties have duly executed this Agreement as of the day and year first written above.

CITY:

CITY AND COUNTY OF DENVER, COLORADO

By: \_\_\_\_\_  
Deputy Mayor and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as Custodian

By \_\_\_\_\_  
[\_\_\_\_\_]

[Signature Page to Custody Agreement]

**EXHIBIT A**

**CITY AND COUNTY OF DENVER, COLORADO  
METRO MORTGAGE ASSISTANCE PLUS PROGRAM**

**WIRE INSTRUCTIONS**

**A. NOTICES OF CERTIFICATE DELIVERIES FROM U.S. BANK NATIONAL ASSOCIATION, AS SERVICER**

U.S. Bank National Association (“U.S. Bank”), as Servicer, will provide notice of Certificate deliveries to:

michael.kerrigan@denvergov.org  
andrew.johnston@denvergov.org  
margaret.danuser@denvergov.org  
douglas.selbee@denvergov.org  
laura.brudzynski@denvergov.org  
djones@csgadvisors.com  
pjohnson@csgadvisors.com  
riffle@gkbaum.com  
biegelsen@gkbaum.com  
barber@gkbaum.com  
moore@gkbaum.com  
paskulin@gkbaum.com  
lehrer@gkbaum.com  
millerj@gkbaum.com  
desena@gkbaum.com  
browningk@gkbaum.com  
james.coreno@usbank.com  
jason.hubbard2@usbank.com

**B. TRANSFER OF CERTIFICATE PURCHASE PRICE (GEORGE K. BAUM & COMPANY TO U.S. BANK NATIONAL ASSOCIATION, AS CUSTODIAN)**

George K. Baum & Company, will transfer the purchase price for the Certificate to the following account:

U.S. Bank National Association

ABA: [\_\_\_\_\_]

A/C #: [\_\_\_\_\_]

Attn: [\_\_\_\_\_]

OBI: [\_\_\_\_\_]

Account: [\_\_\_\_\_]

**C. PURCHASE OF CERTIFICATES BY U.S. BANK NATIONAL ASSOCIATION, AS CUSTODIAN (ON BEHALF OF THE CITY) FROM U.S. BANK NATIONAL ASSOCIATION, AS SERVICER (DVP BASIS)**

U.S. Bank National Association, as Custodian (on behalf of the City) will purchase the Certificates from U.S. Bank National Association, as Servicer, in a delivery versus payment (“DVP”) transaction. The Certificates will be delivered by U.S. Bank via Fedwire transaction to the following U.S. Bank account:

U.S. Bank National Association

ABA: [\_\_\_\_\_]

A/C #: [\_\_\_\_\_]

Attn: [\_\_\_\_\_]

OBI: [\_\_\_\_\_]

Account: [\_\_\_\_\_]

**D. DELIVERY OF CERTIFICATES TO GEORGE K. BAUM & COMPANY (DVP BASIS)**

U.S. Bank National Association, as Custodian will deliver the Certificates to George K. Baum & Company in a delivery versus payment (“DVP”) transaction. The Certificates will be delivered by U.S. Bank via Fedwire transaction to the following account:

George K. Baum & Company

ABA# 0210-0001-8

Account Name: BK of NYC/GKBAUM

**EXHIBIT B**  
**CITY AND COUNTY OF DENVER, COLORADO**  
**METRO MORTGAGE ASSISTANCE PLUS PROGRAM**

**CUSTODIAN'S FEE SCHEDULE**

**Acceptance Fee and 1st Year Annual Fee** **\$1,000**

The acceptance fee and 1st year annual fee includes review of all related documents and accepting the appointment of Custodian on behalf of U.S. Bank National Association. The fee also includes setting up the required account(s) and accounting records, document filing, and coordinating the receipt of funds/assets for deposit to the Account. Payable in advance, with the first installment due at the time of Agreement execution.

**Annual Administration Fee** **\$1,000**

Payable annually in advance beginning with the first anniversary date of this Agreement as long as it shall remain in effect.

**Transaction Charge for each Certificate Purchased** **\$100**

The Transaction Charge includes:

- receipt of the Purchase Price wire from George K. Baum & Company
- purchase of the Certificate by U.S. Bank National Association, as Custodian, from U.S. Bank National Association, as Servicer/Administrator
- delivery of the Certificate to George K. Baum & Company

Such fee shall be payable annually in arrears beginning with the first anniversary date of this Agreement as long as it shall remain in effect. Such fee shall be calculated based on the number of separate Certificate pools delivered and sold during the prior year.

**Extraordinary Expenses**

For any services other than those covered by the aforementioned, a special per hour charge will be made to commensurate with the character of the service, time required and responsibility involved. Such services include but are not limited to excessive administrative time, specialized reports or audits, etc.

U.S. Bank National Association's fee quote is based on the following assumptions:

- Number of accounts to be established: One
- Term: Ongoing
- Funds will not be invested at U.S. Bank National Association

**EXHIBIT C**  
**CITY AND COUNTY OF DENVER, COLORADO**  
**METRO MORTGAGE ASSISTANCE PLUS PROGRAM**

**WIRE TRANSFER AUTHORIZATION FOR CALL BACK VERIFICATION**

Listed below are the staff members of the City and County of Denver, Colorado, authorized to act pursuant to this Agreement and to provide fed wire instructions to U.S. Bank National Association, as Custodian, in connection with this Agreement.

The contacts for call back verification of such fed wire instructions and related questions are

	<b>Name</b>	<b>Title</b>	<b>Telephone Number</b>	<b>Signature</b>
1.				
2.				