

CUSTODIAL AGREEMENT

by and between

COLORADO SPRINGS URBAN RENEWAL AUTHORITY,

and

UMB BANK, n.a.

**concerning a
2016 Senior Loan Agreement
between Colorado Springs Urban Renewal Authority
and U.S. Bank National Association
dated as of the date hereof**

Dated as of August [__], 2016

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EXHIBIT A	CLOSING MEMORANDUM

This **CUSTODIAL AGREEMENT** (this “Agreement”) is entered into as of this [___] day of August, 2016 by and between **COLORADO SPRINGS URBAN RENEWAL AUTHORITY**, a body corporate and politic duly existing under the laws of the State of Colorado (the “Authority”), and **UMB BANK, n.a.**, in its capacity as custodian hereunder (the “Custodian”).

RECITALS

WHEREAS, all capitalized terms used and not otherwise defined in the recitals hereof shall have the respective meanings set forth in Section 1 hereof and in the 2016 Senior Loan Agreement dated as of the date hereof (the “Loan Agreement”), by and between the Authority and U.S. Bank National Association, in its capacity as lender thereunder (the “Senior Lender”); and

WHEREAS, pursuant to the Loan Agreement, the Authority authorized the issuance of a Series 2016 Senior Note to the Senior Lender that evidences the 2016 Senior Loan made by the Senior Lender to the Authority in the aggregate principal amount of \$[_____]; and

WHEREAS, an authorizing resolution (the “Authorizing Resolution”) was approved by the Board of Commissioners of the Authority (the “Board”) on July 20, 2016, which authorizes the 2016 Senior Note, the Loan Agreement, the Escrow Agreement, a 2016 Senior Swap Agreement and this Custodial Agreement, which establishes and provides for a Senior Pledged Revenue Fund, a Senior Payment Fund, a Senior Reserve Fund, a Cost of Issuance Fund and a Rebate Fund to be maintained and administered hereunder; and

WHEREAS, the Authorizing Resolution also authorizes the issuance of 2016 Subordinate Bonds pursuant to a 2016 Subordinate Indenture; and

WHEREAS, the 2016 Senior Loan proceeds will be applied as set forth herein to fund the amounts required under the Escrow Agreement, to fund the Senior Reserve Fund in the amount of the Reserve Requirement, and to fund the Cost of Issuance Fund as provided herein; and

WHEREAS, the Senior Pledged Revenue Fund and the Senior Payment Fund are not funded from proceeds of the Loan at Closing, but will be funded from Pledged Revenue as and when received by the Authority.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Unless otherwise defined herein or the context otherwise requires, capitalized terms used but not defined herein shall have the meaning set forth in Section 1 of the Loan Agreement, and in the event the Loan Agreement shall be terminated prior to this Agreement, such definitions shall be considered to survive such termination for purposes of this Agreement. In addition, the following terms as used in this Agreement shall have the following meanings, unless the context otherwise requires. These definitions shall be equally applicable to both the singular and the plural forms of the terms so defined.

“*Agreement*” means this Custodial Agreement.

“*Annual Senior Payment Cap*” shall have the meaning assigned to such term in the Loan Agreement

“*Board*” shall have the meaning set forth in the recitals hereof.

“*Business Day*” means any day of the week on which the Custodian is conducting its banking operations nationally and on which day the Senior Lender’s offices are open for business in Denver, Colorado.

“*Closing*” means the date of funding of the Loan, August [___], 2016.

“*Closing Memo*” means the Closing Memo dated August [___], 2016 and attached to this Agreement as Exhibit A.

“*Cost of Issuance Fund*” means the fund by that name established and maintained pursuant to Section 7 of this Agreement. The Cost of Issuance Fund is not security for repayment of the 2016 Senior Loan or the 2016 Senior Swap Agreement.

“*Custodian*” means UMB Bank, n.a., in its capacity as custodian under this Agreement.

“*Debt*” shall have the meaning assigned to such term in the Loan Agreement.

“*Interest Payment Date*” shall have the meaning assigned to such term in the Loan Agreement.

“*Loan Agreement*” has the meaning set forth in the recitals hereof.

“*Maturity Date*” shall have the meaning assigned to such term in the Loan Agreement.

“*PATRIOT Act*” shall have the meaning assigned to such term in the Loan Agreement.

“*Payment Date*” means a Principal Payment Date, an Interest Payment Date or a date on which a payment by the Authority is due under the 2016 Senior Swap Agreement.

“*Permitted Investments*” shall have the meaning assigned to such term in the Loan Agreement.

“*Principal Payment Date*” shall have the meaning assigned to such term in the Loan Agreement.

“*Rate Increase Event*” shall have the meaning assigned to such term in Section 7.01 of the Loan Agreement.

“*Rebate Fund*” means the fund by that name established and maintained pursuant to Section 8 of this Agreement. The amounts on deposit in the Rebate Fund are not security for the 2016 Senior Loan or the 2016 Senior Swap Agreement.

“*Senior Lender*” means U.S. Bank National Association, in its capacity as lender under the Loan Agreement.

“*Senior Payment Fund*” means the fund by that name established and maintained pursuant to Section 4 of this Agreement, which secures the 2016 Senior Loan and the 2016 Senior Swap Agreement.

“*Senior Payment Obligations*” shall have the meaning assigned to such term in the Loan Agreement.

“*Senior Pledged Revenue*” shall have the meaning assigned to such term in the Loan Agreement.

“*Senior Pledged Revenue Fund*” means the fund by that name established and maintained pursuant to Section 3 of this Agreement, which secures the 2016 Senior Loan and the 2016 Senior Swap Agreement.

“*Senior Reserve Fund Requirement*” shall have the meaning assigned to such term in the Loan Agreement.

“*Senior Reserve Fund*” means the fund by that name established and maintained pursuant to Section 6 of this Agreement, which secures the Loan 2016 Senior Loan and the 2016 Senior Swap Agreement.

“*2016 Senior Loan*” shall have the meaning assigned to such term in the Loan Agreement.

“*2016 Senior Note*” shall have the meaning assigned to such term in the Loan Agreement.

“*2016 Senior Swap Agreement*” shall have the meaning assigned to such term in the Loan Agreement.

“*2016 Subordinate Bonds*” shall have the meaning assigned to such term in the Loan Agreement.

“*2016 Subordinate Indenture*” shall have the meaning assigned to such term in the Loan Agreement.

“*Tax Certificate*” shall have the meaning assigned to such term in the Loan Agreement.

Section 2. Application of Senior Pledged Revenue. The Authority shall transfer all amounts comprising Senior Pledged Revenue to the Custodian as soon as may be practicable after the receipt thereof. The Custodian shall credit all amounts received at Closing of the 2016 Senior Loan as provided in Section 2.01(c) of the Loan Agreement. Thereafter, the Custodian shall deposit all Senior Pledged Revenue received from the Authority in the Senior Pledged Revenue Fund, to be disbursed prior to each Payment Date in the following order of priority.

FIRST: To the credit of the Senior Payment Fund, the annual amounts estimated by the Senior Lender pursuant to Section 2.02(j) of the Loan Agreement for Senior Payment Obligations for the then-current Fiscal Year other than prepayment of principal;

SECOND: To the credit of the Senior Reserve Fund, the amount, if any, necessary for the amounts therein to equal the Senior Reserve Fund Requirement;

THIRD: To the credit of the Senior Payment Fund, the annual amounts estimated by the Senior Lender pursuant to Section 2.02(j) of the Loan Agreement for prepayment of principal pursuant to Section 2.02(d) of the Loan Agreement for the then-current Fiscal Year other than prepayment of principal; and

FOURTH: After the payments and accumulations set forth above shall equal the Annual Senior Payment Cap for such Fiscal Year, any remaining Senior Pledged Revenue shall cease to be Senior Pledged Revenue and shall thereafter be Subordinate Pledged Revenue and applied by the Custodian, in its capacity as trustee for the 2016 Subordinate Bonds, as provided in the 2016 Subordinate Indenture.

Section 3. Senior Pledged Revenue Fund. There is herein established and created a fund, to be held and administered by the Custodian, designated as the Senior Pledged Revenue Fund, which shall secure repayment of the Loan. There shall be credited to the Senior Pledged Revenue Fund all of the Senior Pledged Revenue received from the Authority. All amounts on deposit in the Senior Pledged Revenue Fund shall be applied in accordance with and in the order of priority set forth in Section 2 hereof.

Section 4. Senior Payment Fund. There is herein established and created a fund, to be held and administered by the Custodian, designated as the Senior Payment Fund, which shall secure repayment of the 2016 Senior Loan and payment of obligations required by the 2016 Senior Swap Agreement. The Custodian shall credit funds into the Senior Payment Fund from the Senior Pledged Revenue Fund, in an amount which, when combined with other legally available moneys in the Senior Payment Fund (not including moneys available in the Senior Reserve Fund), will be sufficient to pay Senior Payment Obligations which have become due or are estimated to become due as provided in Section 2.02(j) of the Loan Agreement in the year in which the credit is made. Moneys in the Senior Payment Fund (including any moneys transferred thereto from the Senior Reserve Fund) shall be used by the Custodian solely to pay Senior Payment Obligations in the following order of priority.

FIRST: On a pro rata basis, (a) to the payment of interest due in connection with the 2016 Loan (including without limitation current interest, accrued but unpaid interest, and interest due as a result of compounding, if any) on each Interest Payment Date as required by Section 2.02(b) of the Loan Agreement, and (b) to the payment of any Authority Net Regularly Scheduled Swap Payment on each payment date therefor set forth in the 2016 Senior Swap Agreement; and

SECOND: To the extent any moneys are remaining in the Senior Payment Fund after the payments in FIRST above, to the payment of principal due on the 2016 Senior

Loan on each Principal Payment Date, as required by Section 2.02(c) of the Loan Agreement;

THIRD: To the extent any moneys are remaining in the Senior Payment Fund after the payments in FIRST and SECOND above, to the payment of any Termination Payments payable by the Authority under the 2016 Senior Swap Agreement; and

FOURTH: to the extent set forth in Section 2.02(d) of the Loan Agreement, to the prepayment of principal of the 2016 Senior Loan as provided in such Section 2.02(d).

In the event that available moneys in the Senior Payment Fund (including any moneys transferred thereto from the Senior Reserve Fund) are insufficient for the payment of the amounts set forth above on their respective Payment Dates, the Custodian shall apply all available amounts in the Senior Payment Fund on such Payment Date in the order set forth above.

Section 5. Reserved.

Section 6. Senior Reserve Fund. There is herein established and created a fund, to be held and administered by the Custodian, designated as the Senior Reserve Fund, which shall secure repayment of the 2016 Senior Loan and the 2016 Senior Swap Agreement. The Senior Reserve Fund shall constitute a fund for the benefit of the Senior Lender and the 2016 Senior Swap Counterparty.

(a) ***Maintenance of Senior Reserve Fund.*** The Senior Reserve Fund shall initially be funded in the amount of the Senior Reserve Fund Requirement from the proceeds of the 2016 Senior Loan. The Custodian shall maintain the Senior Reserve Fund for so long as the 2016 Senior Loan or the 2016 Senior Swap Agreement remains Outstanding. Amounts on deposit in the Senior Reserve Fund shall be disbursed only for the purposes and uses authorized in this Agreement, the Loan Agreement and the 2016 Senior Swap Agreement. The Senior Reserve Fund shall be maintained in an amount equal to the Senior Reserve Fund Requirement and shall be replenished from Senior Pledged Revenue as needed and to the extent Senior Pledged Revenue is available for such purpose in accordance with Section 2, SECOND, hereof. To the extent the Senior Reserve Fund balance is less than the Senior Reserve Fund Requirement, the Authority shall deposit all Senior Pledged Revenue available after payments described in Section 2, FIRST, hereof in the Senior Reserve Fund until the Senior Reserve Fund Requirement is met, subject to the limitation of the Annual Senior Payment Cap. Until such time as the 2016 Senior Loan and the 2016 Senior Swap Agreement are no longer outstanding, amounts on deposit in the Senior Reserve Fund shall be held as collateral for payment of the 2016 Senior Loan in accordance with the Loan Agreement and the payment obligations of the Authority under the 2016 Senior Swap Agreement in accordance therewith.

(b) ***Application of Amounts in Senior Reserve Fund.*** The amounts on deposit in the Senior Reserve Fund shall be maintained, used, transferred, reimbursed and liquidated as follows:

(i) Amounts on deposit in the Senior Reserve Fund shall be transferred by the Custodian to the Senior Payment Fund and used to pay Senior Payment Obligations (other than prepayment of principal) on any Payment Date if, on such date, amounts on deposit in the Senior Payment Fund are insufficient to pay any such Senior Payment Obligations then due and payable.

(ii) At any time the amounts on deposit in the Senior Reserve Fund are sufficient to pay the 2016 Senior Loan in full, including all fees, principal and interest due thereon, and to pay all amounts due under the 2016 Senior Swap Agreement, including any required Termination Payment thereunder, all amounts on deposit in the Senior Reserve Fund shall be transferred by the Custodian to the Senior Payment Fund and applied to pay such amounts.

(iii) If any amounts remain on deposit in the Senior Reserve Fund at such time all amounts described in clause (ii) above have been repaid, all such amounts shall be paid to the Authority.

(c) ***Termination of Senior Reserve Fund.*** The Senior Reserve Fund hereunder shall terminate only when all Senior Payment Obligations with respect to the 2016 Senior Loan and the 2016 Senior Swap Agreement have been paid in full.

(d) ***Notice of Senior Reserve Fund Balances.*** Not less than monthly, the Custodian shall provide a statement to the Authority of the amount on deposit in the Senior Reserve Fund. Such statement shall reflect the balance in the Senior Reserve Fund as of the last Business Day of the applicable month.

Section 7. Cost of Issuance Fund. The Cost of Issuance Fund is hereby created and shall be maintained by the Custodian. All moneys on deposit in the Cost of Issuance Fund shall be applied by the Custodian at the direction of the Authority for the payment of costs in connection with Closing expenses, including, without limitation, printing costs, regulatory fees, the fees and expenses of bond counsel, general counsel, bank counsel, placement agent's counsel and other counsel, the fees and expenses of the Authority's accountant, manager, special consultants, and other professionals, the costs of the Custodian, and other costs and expenses of the Authority relating to the Closing of the Loan, all as set forth in the Closing Memo attached hereto as Exhibit A. The Cost of Issuance Fund shall be funded at Closing in the amount of \$[_____]. All amounts shown on the Closing Memo for which the Custodian receives an invoice at Closing shall be paid from the Cost of Issuance Account. Amounts remaining on deposit in the Cost of Issuance on the date that is 180 days after the Closing shall be transferred by the Custodian to the Senior Payment Fund.

Section 8. Rebate Fund.

(a) ***Deposits to Rebate Fund.*** There shall be deposited into the Rebate Fund all moneys received by the Custodian that are accompanied by the written directions that such moneys are to be deposited into the Rebate Fund.

(b) ***Use of Moneys in Rebate Fund.*** Amounts credited to the Rebate Fund shall be used solely as provided in the Tax Certificate.

(c) **Administration of Rebate Fund.** Absent written investment instruction, the Custodian will hold amounts credited to the Rebate Fund uninvested. The Custodian, at the direction of the Authority, shall invest the Rebate Fund in accordance with the Tax Certificate and shall deposit earnings from the investment of moneys in the Rebate Fund into the Rebate Fund immediately upon receipt thereof. Records with respect to the deposits to, payments from and administration of the Rebate Fund shall be retained by the Authority and the Custodian until six years after the final retirement of the Loan.

Section 9. Interest on Investments.

(a) **Permitted Investments.** All moneys held by the Custodian in the Senior Pledged Revenue Fund, the Senior Payment Fund, the Senior Reserve Fund and the Cost of Issuance Fund shall be promptly invested or reinvested by the Custodian, at the written direction of the Authority, in Permitted Investments only. The Custodian may conclusively rely upon the Authority's written instruction as to both the suitability and legality of the directed investments. If the Authority fails to provide written directions concerning investment of moneys held by the Custodian, the Custodian may invest in a money market fund, provided funds will be available for withdrawal from such money market fund prior to the date such funds will be needed. The Custodian may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. The Custodian is not required to issue confirmations of Permitted Investments for any month in which a monthly statement is rendered by the Custodian. The Custodian will not issue a monthly statement for any fund or account if no activity occurred in such fund or account during such month. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Custodian to the Authority shall confirm that the investment transactions identified therein accurately reflect the investment directions of the Authority, unless the Authority notified the custodian in writing to the contrary within thirty (30) days of the date of such statement. The Custodian is specifically authorized to purchase or invest in shares of any investment company that (i) is registered under the Investment Company Act of 1940, as amended (including both corporations and Massachusetts business trusts, and including companies for which the Custodian may provide advisory, administrative, custodial, or other services for compensation), (ii) invests substantially all of its assets in short-term high-quality money-market instruments, limited to obligations issued or guaranteed by the United States, and (iii) maintains a constant asset value per share. The Custodian is specifically authorized to implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments.

(b) **Direction of Authority.** Such investments shall mature or be redeemable no later than the dates when moneys held for the credit of the Senior Pledged Revenue Fund, the Senior Payment Fund, the Senior Reserve Fund and the Cost of Issuance Fund will be required for the purposes set forth herein. The Authority may direct the Custodian to, in accordance with this Subsection 9(b), invest and reinvest the moneys in any investment permitted hereby so that the maturity date, interest payment date, or date

of optional redemption shall coincide as nearly as practicable with the times at which money is needed to be so expended.

(c) **Tax Matters.** Any and all such investments shall be subject to full and complete compliance at all times with the covenants and provisions of the Tax Certificate.

(d) **Treatment of Investment Earnings.** Interest earned from the investment or reinvestment of moneys on deposit in the Senior Pledged Revenue Fund, the Senior Payment Fund and the Senior Reserve Fund shall be retained therein, except, with respect to the Senior Reserve Fund, any investment earnings which cause the amount in the Senior Reserve Fund to exceed the Reserve Requirement shall be withdrawn by the Custodian and, if so withdrawn, shall be transferred to the Senior Payment Fund. Interest earned from the investment or reinvestment of moneys on deposit in the Cost of Issuance Fund shall be transferred to the Senior Pledged Revenue Fund.

(e) **General.** The Custodian shall not be responsible for any losses resulting from the investment of amounts in the Senior Pledged Revenue Fund, the Senior Payment Fund, the Senior Reserve Fund or the Cost of Issuance Fund or for obtaining any specific yield or percentage of earnings on such investments. The Custodian shall determine the value of all investments in such funds at least annually and such value shall be equal to the lower of cost or fair market value of such investments as reasonably determined by the Custodian.

Section 10. Further Assurances. At any time and from time to time, if requested by the Authority, the Custodian shall execute, deliver, acknowledge, file and/or record any notice, financing statement, continuation statement, assignment or other document or agreement that the Authority reasonably deems necessary or advisable to create, preserve, continue or perfect any security interest intended to be created hereunder.

Section 11. Custodian's Costs and Expenses. The Authority shall from time to time, subject to any agreement then in effect with the Custodian, pay the Custodian compensation for its services and reimburse the Custodian for all its advances and expenditures hereunder. The obligations of the Authority under this Section 11 shall survive the termination and discharge of this Agreement.

The Trustee shall not be required to advance its own funds, and before taking any action under this Indenture, other than the payment of monies on deposit in any of the funds as provided for herein, the Trustee may require that indemnity satisfactory to it be furnished to it for the reimbursement of all costs and expenses which it may incur, including attorney's fees, and to protect it against all liability, except liability which may result from its gross negligence or willful misconduct, by reason of any action so taken. To the extent permitted by law, the Authority agrees to indemnify the Trustee against any claims arising out of the exercise and performance of its powers and duties hereunder in good faith and without negligence; provided that this agreement shall not act as a waiver of immunity of the District under the Colorado Governmental Immunity Act.

Section 12. Assignment. This Agreement and the rights and obligations hereunder may be assigned only with the express written consent of the parties and express hereto and of the express third party beneficiaries set forth in Section 15, and upon the written assignment and assumption by the assignee of such rights and obligations.

Section 13. Successors and Assigns. This Agreement shall bind and shall inure to the benefit of, the successors and assigns of the Authority, the Custodian and the third party beneficiaries set forth in Section 15.

Section 14. Notices, Etc. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, or by prepaid facsimile or electronic delivery and shall be deemed to be given for purposes of this Agreement on the day that such writing is delivered to the intended recipient thereof in accordance with the provisions of this Section 14 Unless otherwise specified in a notice sent or delivered in accordance with the foregoing provisions of this Section 14, notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties hereto at their respective addresses (or to their respective facsimile numbers) indicated below:

To Authority: Colorado Springs Urban Renewal Authority
30 S. Nevada Ave.
Suite 502
Colorado Springs, CO 80903
Attention: Jim Rees, Executive Director
Telephone: (719) 651-3136
Email: reescsura@gmail.com

(with a copy to): Kraemer Kendall Rupp Deen Neville LLC
430 N. Tejon
Suite 300
Colorado Springs, CO 80903
Attention: David Neville, Esq.
Telephone: (719) 471-3690
Email: dneville@k2blaw.com

To Senior Lender: U.S. Bank National Association
950 17th Street
8th Floor
Denver, CO 80202
Attention: Jason Edrington
Telephone: (303) 585-4873
Email: Jason.edrington@usbank.com

(with a copy to): Kline Alvarado Veio, P.C.
1775 Sherman Street
Suite 1790
Denver, CO 80203

Attention: Brent Kline, Esq.
Telephone: (720) 266-4021
Email: bkline@kvfirm.com

To Custodian: UMB Bank, n.a.
Corporate Trust & Escrow Services
1670 Broadway
Denver, CO 80202
Attention: Leigh Lutz
Telephone: (303) 839-2220
Email: leigh.lutz@umb.com

Section 15. Third Party Beneficiaries. The parties hereto hereby agree that the Senior Lender and the 2016 Senior Swap Counterparty are intended to be and shall be express third party beneficiaries of this Agreement, with full right, power and authority to enforce the provisions hereof for their benefit as if they were parties hereto.

Section 16. Electronic Execution and Storage. The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 17. Integration, Modification and Waiver. This Agreement, together with any other documents referred to herein, constitutes the entire agreement among the Authority and the Custodian with respect to the matters set forth herein. No modification of this Agreement (including waivers of rights) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

Section 18. Counterparts. This document may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof.

Section 19. Severability. No provision of this Agreement that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable.

Section 20. Time. Time is of the essence in the performance of all obligations under this Agreement.

Section 21. Governing Law. This Agreement shall be governed by the internal laws of the State of Colorado.

Section 22. PATRIOT Act Notice. The Custodian hereby notifies the Authority that pursuant to the requirements of the PATRIOT Act it is required to obtain, verify and record

information that identifies the Authority, which information includes the name and address of the Authority and other information that will allow the Custodian to identify the Authority in accordance with the PATRIOT Act. The Authority hereby agrees that it shall promptly provide such information upon request by the Custodian.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Custodial Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

UMB Bank, n.a., as Custodian

By _____
Name _____
Title _____

Colorado Springs Urban Renewal Authority

By _____
Chair

[SEAL]

Attest:

By _____
Executive Director/Secretary

[Signature Page to Custodial Agreement]

EXHIBIT A
CLOSING MEMORANDUM