

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	March 14, 2023	[X] Consent	[] Regular
		[] Ordinance	[] Public Hearing

Department: Housing and Economic Development

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: a Section 108 Guaranteed Loan Custodial Agreement between Palm Beach County, a municipal corporation and the Clerk & Comptroller of Palm Beach County, a constitutional office.

Summary: On August 9, 2021, the Department of Housing & Economic Development applied for and was subsequently awarded \$14M from the U.S. Department of Housing & Urban Development (HUD) for the Section 108 Loan Guarantee Program. The Section 108 Loan Guarantee Program provides a source of low-cost long-term financing for economic development projects. HUD requires the designation of a Custodian to serve as the Palm Beach County Trustee for each HUD Loan Pool, responsible for safeguarding security agreements and documents executed on behalf of HUD and the County.

Per each Contract, the County (as Borrower of the Section 108 Loan Guarantee Program funds) shall deliver a standard set of documents to the Clerk (as Custodian) no later than ninety (90) days after disbursement of Section 108 Loan Guarantee Program funds to a business borrower including the Section 108 Guaranteed Loan Custodial Agreement for new HUD Loan Pool B-21-UC-12-0004.

County PPM CW-O-051 provides that all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. **These are Federal CDBG funds which require no local match.** Countywide (HJF)

Background and Justification: The initial Section 108 Guaranteed Loan Custodial Agreement was executed on September 24, 2013, designating the Clerk & Comptroller (Clerk) of Palm Beach County as the Palm Beach County Custodian and public trustee.

The Palm Beach County Section 108 Loan Guarantee Program provides low interest loans for use by borrowers to implement business ventures which revitalize lower-income communities and provide job opportunities for low- and moderate- income people.

Attachment(s):

- 1 Section 108 Guaranteed Loan Custodial Agreement

Recommended By:			
	Department Director	2/28/2023	Date

Approved By:			
	Assistant County Administrator	3/7/2023	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Grant Expenditures					
Operating Costs	\$				
External Revenues	(\$)				
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				


Is Item Included In Current Budget? Yes X No
 Does this Item include the use of Federal funds? Yes X No

Budget Account No.:

Fund _____ Dept. _____ Unit _____ Object _____ Program Code/Period _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No fiscal impact

C. Departmental Fiscal Review: 
 Valerie Alleyne, Division Director II

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

2/16/2023
 OFMB JA 2115 LM 2/16

2/24/22
 Contract Development and Control
 Feb 2/22/23

B. Legal Sufficiency:

2/28/23
 Assistant County Attorney

C. Other Department Review:

 Department Director

SECTION 108 GUARANTEED LOAN CUSTODIAL AGREEMENT

THIS AGREEMENT dated as of this 10th day of January, 2023, by and between the Palm Beach County, a municipal corporation organized and existing under the laws of the State of Florida, and having an office for the conduct of business at 100 Australian Ave. Suite 500, West Palm Beach, FL 33406 (“Borrower”), and the Clerk & Comptroller of Palm Beach County, a constitutional office, organized and existing under the laws of Florida, and having an office for the conduct of business at 205 N Dixie Hwy, West Palm Beach, FL 33401 (“Custodian”),

WITNESSETH:

WHEREAS, the Borrower will enter into a Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5308 (“Section 108 Contract”) with the Secretary of Housing and Urban Development (“HUD”) under the authority of section 108 of title I of the Housing and Community Development Act of 1974, as amended (the “Act”); and

WHEREAS, the Custodian is a government institution regulated by the Florida; and

WHEREAS, the parties to this agreement desire to set forth the terms and conditions for the deposit and custodianship of the documents evidencing and relating to the loan to be originated under section 108 of the Act, and 24 CFR part 570, subpart M; and

WHEREAS, HUD will guarantee one or more promissory notes issued by the Borrower and numbered **B-21-UC-12-0004** that together do not exceed the principal amount of **\$14,000,000.00** (the “Section 108 Guaranteed Note”).

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

1. The Borrower shall from time to time deliver for deposit with the Custodian certain Security Documents as required under the Section 108 Contract (collectively the “Security Documents”). For each such delivery, the Borrower shall furnish the Custodian with a listing of the Security Documents to be deposited, which listing shall be in the form set forth in the attached Security Document List & Custodial Receipt (the “Receipt” or “Receipt(s)”). In receiving Security Documents, and in maintaining any listing or providing any report or communication with respect to the Security Documents, the Custodian shall be required only to review the face of each document received to determine whether it appears regular on its face, appears to relate to the Section 108 Guaranteed Note, and appears to be a Security Document identified in the Receipt. The Custodian shall complete the Receipt(s) by inserting the date received next to each delivered Security Document. Once signed by the Custodian, the Receipt(s) shall document the Custodian’s receipt(s) of the Security Documents required by the Section 108 Contract to be deposited with the Custodian. The Custodian shall maintain each original Receipt together with the Security Documents it identifies, in accordance with the storage requirements in paragraph 3.

2. Borrower's delivery of the Security Documents will be acknowledged by the Custodian through execution and electronic delivery of a copy of the Receipt(s) to HUD at 108Reports@hud.gov. The Custodian shall also provide copies of Receipt(s) to the Borrower. By its delivery of the Security Documents and Receipt(s) to the Custodian, the Borrower certifies to the Custodian that each Security Document listed in that Receipt is in form and substance acceptable to HUD, as required by the Section 108 Contract. Except for Custodian's obligations under this paragraph and paragraph 1 and 2 of this Agreement, the Custodian shall not otherwise be under any duty to review, inspect, examine or certify the Security Documents; and without limiting the foregoing, the Custodian shall be entitled to assume the genuineness of each such document and the genuineness and due authority of any signatures appearing thereon, and shall be entitled to assume that each such document is what it purports to be. The Custodian shall have no liability for or obligation with respect to, and shall not be construed or obliged to make any representation or warranty as to: (i) the validity, sufficiency, marketability, genuineness, value, contents or enforceability of any Security Document; (ii) the validity, adequacy or perfection of any lien upon or security interest purported to be evidenced or created thereby; or (iii) to determine that the contents of any Security Document are appropriate for the represented purpose or that any Security Document has actually been recorded or filed, as maybe applicable, or that any Security Document is other than what it purports on its face to be.

3. The Custodian shall segregate and maintain continuous custody and control of all Security Documents on behalf of HUD until the Section 108 Guaranteed Note is paid in full. The Custodian shall hold the Security Documents in secure and fireproof facilities in accordance with customary standards for such storage. The Custodian shall only rely on information pertaining to the payment of the Section 108 Guaranteed Note that is received from or confirmed by the Director of the Financial Management Division of HUD in Washington, DC ("FMD Director"), or another HUD official as may be authorized by HUD in writing ("Other HUD Designee").

4. At any reasonable time, the Custodian shall make all Security Documents available for examination and audit by representative of the Borrower or HUD.

5. (A) Upon notification to the Custodian by the FMD Director or Other HUD Designee that a default has occurred under the Section 108 Contract, the Custodian shall comply with any request HUD shall make for the delivery to HUD of all Security Documents, and within five business days of any such request by HUD, shall send the Security Documents via courier service to the address identified in paragraph 6 and contemporaneously provide HUD with the tracking information for the package containing the Security Documents.

(B) If, following HUD's notification to Custodian of Borrower's default under the Section 108 Contract, HUD elects to assume or transfer the duties and obligations of the Borrower and elects to continue the custodial relationship, the Custodian agrees to continue its obligations herein for HUD for a reasonable period, not to exceed 90 days, on the same terms and conditions as set forth in this agreement until it receives instructions for disposition of the Security Documents from the FMD Director or Other HUD Designee, provided, however, that in no event shall HUD be obligated to pay compensation or a fee for the holding or release of any Security Documents during such reasonable period. If, however, HUD elects to terminate this agreement, Custodian shall comply with the provisions of this election by HUD.

6. Except for termination or cancellation of this Agreement pursuant to paragraph 5, if during the term of the Section 108 Guaranteed Note the Custodian's duties under this Agreement are discharged or this Agreement is terminated or cancelled, Custodian may release Security Documents to Borrower or to a successor custodian designated in writing by HUD upon presentation by the Borrower of written approval of the FMD Director or Other HUD Designee for the release of Security Documents to the Borrower. Provided, however, if no written approval is presented, the Custodian shall return all Security Documents to HUD within 5 business days at the following address:

Attention: Paul Webster, Director
Financial Management Division
U.S. Department of Housing and Urban Development
451 7th Street SW – Room 7282
Washington, DC 20410

7. Consideration for services to be performed by the Custodian under this agreement shall be: \$0.00.

8. This Agreement confers rights and remedies upon HUD, and HUD shall be an intended third-party beneficiary of this Agreement. The parties may not amend or terminate this Agreement without the prior written consent of HUD provided, however, that the Custodian may at any time resign under this Agreement by giving not less than sixty (60) days advance written notice thereof to the Borrower and HUD. Prior to the effective date of the resignation, the Borrower shall give written instruction to the Custodian designating a successor Custodian, if applicable.

9. The Custodian shall be entitled to rely on any written instructions or certifications delivered to the Custodian by the Borrower or HUD pursuant to this Agreement, in each case without any independent verification or investigation of the matters set forth therein.

10. Custodian shall not be liable to anyone for anything which it may do or refrain from doing in connection with this agreement, unless such action constitutes negligence in accordance with customary standards for document storage, gross negligence, willful misconduct, or bad faith on its part.

11. To the extent permitted by applicable law, the Borrower shall indemnify the Custodian and any director, officer, agent or employee of the Custodian from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting, directly or indirectly, from the execution, delivery and performance of this Agreement.

12. The Custodian shall be without liability to the Borrower for any damage or loss resulting from or caused by events or circumstances beyond the Custodian's reasonable control including nationalization, expropriation, currency restrictions, the interruption, disruption or suspension of the normal procedures and practices of any securities market, power, mechanical, communications or other technological failures or interruptions, computer viruses or the like, fires,

floods, earthquakes or other natural disasters, civil and military disturbance, acts of war or terrorism, riots, revolution, acts of God, work stoppages, strikes, national disasters of any kind, or other similar events or acts; errors by any party in its instructions to the Custodian; or changes in applicable law, regulation or orders.

13. This Agreement may be executed in any number of counterparts and all counterparts taken together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or pdf shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or pdf shall be deemed to be their original signatures for all purposes.

14. The terms of this Agreement are hereby declared to be severable, such that if any term hereof is determined to be invalid or unenforceable, such determination shall not affect the remaining terms.

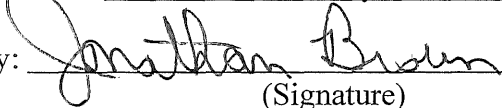
15. The covenants and agreements set forth herein shall be binding upon and inure to the benefit of each of the parties and their respective successors and permitted assigns. No party shall be permitted to assign their rights under this Agreement without the written consent of the parties and the FMD Director or Other HUD Designee, except that any corporation or association into which the Custodian may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Custodian shall be a party, or any corporation or association to which the Custodian transfers all or substantially all of its corporate trust business, shall be the successor of the Custodian hereunder, and shall succeed to all of the rights, powers and duties of the Custodian hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

16. This Agreement constitutes the complete and exclusive agreement of the parties with regard to the matters addressed herein and supersedes and terminates as of the date hereof, all prior agreements, agreements or understandings, oral or written between the parties to this Agreement relating to such matters.

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

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

Borrower: Palm Beach County

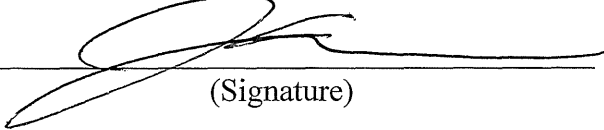
By: 
(Signature)

Name: Jonathan Brown

Title: Director of Housing and Economic
Development Department

Date: 1/10/2023

Custodian: Clerk of the Circuit Court & Comptroller,
Palm Beach County

By: 
(Signature)

Name: Joseph Abruzzo

Title: Clerk of the Circuit Court & Comptroller

Date: January 10, 2023

Note to Borrowers: the form below is a form of Security Document List & Custodial Receipt that must be completed by the Borrower and submitted to the Custodian for use as a receipt whenever Borrower is required by the Section 108 Contract to submit additional Security Documents (identified in the Section 108 Contract as "Security Documents").

SECURITY DOCUMENT LIST & CUSTODIAL RECEIPT

The following documents were delivered in accordance with the agreement dated _____, between the undersigned ("Custodian"), and _____ ("Borrower"), and which is known as the "Section 108 Guaranteed Loan Custodial Agreement":

<u>Mark with "X" if received by Custodian</u>	<u>Name of Security Document</u>	<u>Date Received</u>
	[BORROWER to COPY SECURITY DOCUMENTS from Loan Guarantee Assistant Contract Paragraph 15, insert one in each line]	

This is the _____ [Borrower to insert "first," "second," "third," etc. as appropriate] Security Document List & Custodial Receipt under the Section 108 Guaranteed Loan Custodial Agreement between Custodian and Borrower dated the ___ day of _____, 20__.

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

The undersigned hereby acknowledges receipt of the documents indicated with an 'X' in the table above, on the dates acknowledged in the table:

Custodian: _____

By: _____
(Signature)

Name: _____

Title: _____

Date: _____