

## **CUSTODY AND CONTROL AGREEMENT**

(Collateral Held At Bank)

This Collateral Custody and Control Agreement, dated as of \_\_\_\_\_ (the "Custody Agreement"), is entered into by and among \_\_\_\_\_, a State of Indiana designated depository eligible to accept public funds on deposit with its main office in \_\_\_\_\_ (the "**Bank**") and **Indiana Board for Depositories ("IBFD")**.

**WHEREAS**, the Bank is opening, maintaining, and monitoring a custody account (the "Account") for the benefit of the IBFD, in connection with the delivery of collateral pursuant to a Pledge Agreement (Securing Deposit of Public Funds) (as amended or otherwise modified, the "Agreement").

**WHEREAS**, the Bank will perform custodial, monitoring and valuation services in connection with the Account for the benefit of the IBFD at no charge to the IBFD.

**NOW, THEREFORE**, in consideration of the premises and of the agreements hereinafter set forth, the parties hereto agree as follows:

### Article 1. DEFINITIONS.

As used herein, the following terms have the following meanings:

"Account" shall have the meaning set forth in the recitals of this Custody Agreement.

"Business Day" means any day other than a Saturday, Sunday or holiday or a day on which the Bank or IBFD are required or authorized by law to be closed.

"Collateral" means (i) cash; (ii) United States Treasury securities; (iii) federal agency securities; and (iv) securities of government-sponsored enterprises, including securities from (a) farm credit banks; (b) federal land banks; (c) the Federal Home Loan Bank and its district banks; (d) federal intermediate credit banks; (e) the Federal Home Loan Mortgage Corporation (Freddie Mac); (f) the Federal National Mortgage Association (Fannie Mae); (g) the Government National Mortgage Association (Ginnie Mae); and (h) the Federal Agricultural Mortgage Corporation (Farmer Mac).

"Collateral Requirement" means, for any day, an amount equal to 100% of the Obligations on such day.

"Market Value" shall mean, with respect to the Collateral, the amount determined in the manner set forth below:

- (i) with respect to Collateral other than cash, the closing bid for such Collateral as quoted by *The Wall Street Journal* or another national recognized printed

or electronic pricing service selected by the IBFD; or the maximum available draw value of any Letter of Credit; and

- (ii) with respect to cash proceeds of Collateral, the amount thereof, plus accrued interest.

“Obligations” means the amount of collateral required by the IBFD to be pledged by the Bank to the IBFD as it relates to securing Public Funds (as defined in the Agreement) on deposit at the Bank.

“UCC” shall mean the Indiana Uniform Commercial Code, Indiana Code § 26-1 et seq., as amended.

Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

## Article 2. DELIVERY OF COLLATERAL.

Section 2.01 *Collateralization.* On the date hereof and contemporaneously with the execution of this Custody Agreement, the Bank shall provide the IBFD with a statement of the total amount of Public Funds (as defined in the Agreement) on deposit at the Bank by sending an e-mail to Patrick W. Hastings at [phastings@tos.in.gov](mailto:phastings@tos.in.gov), or his designee. Immediately after executing this Custody Agreement, the Bank shall deposit into and deliver and credit to the Account, as security for its obligations under the Agreement, Collateral having a Market Value which equals the Collateral Requirement. If a Letter of Credit has also been obtained by the Bank as Pledged Collateral, the Bank may use the maximum draw amount under such Letter of Credit in connection with its analysis to determine if the Collateral Requirement has been satisfied (i.e., the maximum draw amount of the Letter of Credit shall be credited against the Collateral Requirement). The Bank hereby grants to the IBFD a first and prior security interest under the UCC in and to the Account and all Collateral credited to or otherwise held in the Account from time to time. The Bank acknowledges that this Custody Agreement constitutes written notification to the Bank, pursuant to Articles 8 and 9 of the UCC and applicable federal regulations for the Federal Reserve Book Entry System, of the IBFD’s security interest in the Collateral. The IBFD and the Bank are also entering into this Custody Agreement to provide for the IBFD’s control of the Collateral and to perfect, and confirm the priority of, the IBFD’s security interest in the Collateral. The Bank agrees to promptly make all necessary entries or notations on its books and records to reflect the IBFD’s security interest in the Collateral.

Section 2.02 *Collateral Valuation.* Upon request, the Bank shall provide the IBFD with a report indicating the total amount of Public Funds (as defined in the Agreement) on deposit at the Bank and the total Market Value of the Collateral delivered and credited to or otherwise held in the Account as of the close of business on the day(s) requested by the IBFD by sending an e-mail to Patrick W. Hastings at [phastings@tos.in.gov](mailto:phastings@tos.in.gov), or his designee. If the Market Value of the Collateral is less than the Collateral Requirement, after any applicable credit has been given in the amount of the maximum draw amount under any Letter of Credit as Pledged Collateral against the Collateral Requirement, on any valuation day, the Bank shall, before noon (prevailing Eastern time) on the next Business Day following the date of such determination, deliver to and

deposit into the Account Collateral having an aggregate Market Value that is not less than the amount of such deficiency so the Collateral Requirement is satisfied, and the Bank shall inform the IBFD that the Collateral Requirement has been satisfied by sending an e-mail to Patrick W. Hastings at [phastings@tos.in.gov](mailto:phastings@tos.in.gov), or his designee. The Bank shall have only one opportunity to cure the deficiency.

Section 2.03 *Withdrawal of Collateral.* Only upon written authorization from the IBFD, shall the Bank be permitted to withdraw Collateral and/or other assets, property or monies held in the Account and only so long as the Market Value of Collateral delivered and credited to or otherwise held in the Account following the proposed withdrawal equals or exceeds the Collateral Requirement on the day of withdrawal. Only so much Collateral may be withdrawn as will not reduce the aggregate Market Value of the Collateral on the day of withdrawal to less than the Collateral Requirement on such day.

Section 2.04 *Substitution of Collateral.* The Bank shall be entitled on a Business Day to substitute for any Collateral other Collateral having the same or a greater Market Value at the time of substitution and the IBFD shall have and is hereby granted a first and prior security interest under the UCC in and to such Collateral.

Section 2.05 *Interest on Collateral.* The Bank shall be paid all interest on the Collateral, provided that, only so much interest shall be paid to the Bank as will not reduce the Market Value of the Collateral on the payment date to less than the Collateral Requirement on such payment date.

Section 2.06 *Notice of Exclusive Control.* The Bank shall be permitted to administer the Account and Collateral in accordance with the terms of this Custody Agreement until such time as the Bank receives from the IBFD a written notice stating that the IBFD is exercising exclusive control over the Account (a “Notice of Exclusive Control”), which Notice of Exclusive Control shall be considered an entitlement order as defined in UCC § 8-102(a)(8). After the Bank receives a Notice of Exclusive Control, the Bank shall, after having had a reasonable opportunity to act on the notice, (a) cease complying with entitlement orders or other directions concerning the Collateral and Account originated by the Bank, (b) if directed by the IBFD, cease distributing interest and dividends on the Collateral to the Bank, (c) comply solely with instructions originated by the IBFD, and (d) liquidate the Collateral as and to the extent directed by the IBFD and pay over to the IBFD all proceeds therefrom.

### Article 3. CUSTODY OF COLLATERAL.

Section 3.01 *The Account.* The Bank agrees to hold the Collateral deposited hereunder (or any substitutions thereof or additions thereto) pursuant to this Custody Agreement for the benefit of the IBFD and to promptly deposit such Collateral into the Account. The parties hereto each agree that the Collateral or other property held in the Account for the IBFD shall be treated as a financial asset under Article 8 of the UCC.

Section 3.02 *Segregation.* The Bank agrees to identify on its books the interest of the IBFD in the Collateral deposited hereunder for the benefit of the IBFD, to segregate on its books all such Collateral and other property from any property owned by the Bank and from any

other property held by the Bank for other parties, and to confirm to the IBFD receipt of the initial deposit of such Collateral, pursuant to a written notice in customary form and substance. The Bank shall, in connection with its identification of the IBFD's interest in the Collateral, also note and display that the IBFD is "Secured Party" under the Agreement. Notwithstanding anything contained herein to the contrary, the parties hereby acknowledge and agree that the Bank shall be permitted to deposit and collectively maintain any Collateral delivered by the Bank in connection with the Agreement in the Account.

Section 3.03 *No Lien.* The Bank agrees that the Collateral in the Account shall not be subject to any security interest, lien or right of set off in favor of the Bank or any third party claiming through the Bank, and the Bank shall not pledge, encumber, hypothecate, transfer, dispose of or otherwise grant any third party an interest in such Collateral. The Bank will not agree with any third party that the Bank will comply (and the Bank will not comply) with any entitlement orders, instructions or directions of any kind concerning the Collateral originated by such third party without the IBFD's prior written consent.

Section 3.04 *Representations and Covenants of the Bank.* The Bank represents and covenants that:

- (a) it is, and will at all times be acting as, a "securities intermediary" within the meaning of Section 8-102 of the UCC and the Account established hereunder will be a "securities account" within the meaning of Section 8-501 of the UCC;
- (b) it is a State of Indiana designated depository eligible to accept public funds on deposit and authorized to do business in the State of Indiana; and
- (c) (i) it is duly organized, validly existing, and authorized to conduct its business relevant hereto; (ii) this Custody Agreement constitutes a legal, valid, binding and enforceable obligation of the Bank; and (iii) no authorization, license or approvals of, or registrations or declarations with any Federal or State of Indiana governmental or other authority are required to be obtained or made in connection with the Bank's execution and delivery, or performance of its obligations under, this Custody Agreement.

Section 3.05 *Control.* Notwithstanding any other provision herein, the parties hereto agree that the IBFD is and will be the entitlement holder of the Account opened for its benefit and has control of all security entitlements with respect to all Collateral credited to such Account. Additionally, without limiting the foregoing, the Bank agrees that it will only comply with entitlement orders or other directions concerning the Account originated by the IBFD without further consent by the Bank or any other party.

#### Article 4. FEES, INDEMNITY AND DUTIES.

Section 4.01 *Fees.* The Bank hereby agrees to be responsible for all fees and expenses concerning the Account. The IBFD shall not be responsible for any fees, expenses and costs (including reasonable attorneys' fees) incurred under or associated with this Custody Agreement.

Section 4.02 *Duties and Indemnity.* The Bank and its nominees shall be responsible for only those duties expressly provided for by the UCC, expressly stated in this Custody Agreement or expressly contained in instructions delivered to the Bank or its nominees, as the case may be, pursuant to the provisions of this Custody Agreement. The Bank shall use the same care with respect to the safekeeping of the Collateral as the Bank uses in respect of other similar property of the Bank, and the Bank shall maintain reasonable and customary insurance to cover any loss regarding its duties hereunder including, but not limited to, with respect to the Collateral. If the Bank fails to perform its duties expressly provided for by the UCC, expressly stated in this Custody Agreement or expressly contained in instructions delivered to the Bank or its nominees, as the case may be, pursuant to the provisions of this Custody Agreement, the Bank shall be responsible for any loss sustained by the IBFD, and the Bank, for its own behalf and for its successors and assigns, agrees to indemnify, defend and hold the IBFD harmless from and against any and all damages, losses, obligations, liabilities, guarantees, demands, judgments, liens, injuries, penalties, claims, actions or causes of action, encumbrances, costs, and expenses (including, without limitation, reasonable attorneys' fees), suffered, sustained, incurred or required to be paid by the IBFD arising out of, based upon, or in any way relating to the Bank's failure to perform said duties. The Bank shall also defend, indemnify and hold harmless the IBFD with respect to any and all claims or causes of action that arise under, are derived from or with respect to this Custody Agreement.

Article 5. MISCELLANEOUS.

Section 5.01 *Notices.* Notices required or authorized hereunder shall be in writing and delivered either by registered or certified mail, postage prepaid return receipt requested, by hand delivery or by facsimile, receipt confirmed by telephone or by overnight delivery, to the following addressee at the address set forth below (or to such other address as any party hereto may from time to time designate by notices duly given in accordance with this paragraph):

Bank:

Attention:

Telephone:

Telecopy:

E-Mail:

IBFD:

Indiana Board for Depositories  
Indiana State Treasurer's Office  
242 State House  
Indianapolis IN 46204  
Attn: Patrick W. Hastings  
Telephone: (317) 232-5257  
Facsimile: (317) 232-6650

Section 5.02 *Governing Law.* This Custody Agreement shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to the conflict of laws principles thereof.

Section 5.03 *Amendments, Changes and Modifications.* This Custody Agreement may be amended or any of its terms modified only by a written document authorized, executed and delivered by each of the parties hereto.

Section 5.04 *Severability of Provisions.* If any one or more of the provisions contained in this Custody Agreement is declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 5.05 *Counterparts.* This Custody Agreement may be executed in several counterparts and, as so executed, shall constitute one agreement binding upon the parties hereto. Facsimile and .pdf executed copies of this Custody Agreement shall be considered originals for all purposes.

Section 5.06 *Interpretation.* The headings of the articles and sections hereof are for convenience of reference only and shall not affect the meaning or construction of any provision hereof.

Section 5.07 *Termination.* Unless earlier terminated pursuant to the terms hereof, this Custody Agreement shall terminate upon the date on which the Agreement terminates. Upon termination hereof prior to the Bank's receipt of a Notice of Exclusive Control from the IBFD, the assets of the Account shall be distributed pursuant to the instructions of the IBFD either to the IBFD, to a third-party designated by the IBFD, or as otherwise directed by the IBFD. Upon termination after the Bank's receipt of a Notice of Exclusive Control, the assets of the Account shall be distributed promptly pursuant to the instructions of the IBFD either to the IBFD, to a third-party designated by the IBFD, or as otherwise directed by the IBFD.

Section 5.08 *Security Advice Waiver.* The Bank and the IBFD acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Bank and IBFD the right to receive brokerage confirmations for certain security transactions as they occur, the Bank and IBFD specifically waive receipt of such confirmations to the extent permitted by law. The Bank will furnish the IBFD periodic cash transaction statements that include detail for all investment transactions made by the Bank.

Section 5.09 *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, the Bank requires documentation to verify its formation and existence as a legal entity. The Bank may ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. Bank and IBFD acknowledge that a portion of the identifying information set forth herein is being requested by the Bank in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and Bank and IBFD

agree to provide any additional information requested by the Bank in connection with the Act or any similar legislation or regulation to which Bank is subject, in a timely manner.

IN WITNESS WHEREOF, the parties have caused this Custody Agreement to be executed by their respective duly authorized officers, all as of the date and year first above written.

[\_\_\_\_\_] , as **Bank**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Indiana Board for Depositories, as IBFD**

By: \_\_\_\_\_  
Its: \_\_\_\_\_