

DEPOSITORY COLLATERAL PLEDGE AGREEMENT (NY)

THIS DEPOSITORY COLLATERAL PLEDGE AGREEMENT ("Agreement") is made and executed between the parties designated on the last page hereof as the Local Government (herein referred to as the "Local Government") and the Bank (herein referred to as the "Bank").

WITNESSETH

WHEREAS, the Local Government desires to maintain or continue to maintain public deposits with the Bank;

WHEREAS, the Bank desires to obtain such deposits and provide security therefor as required by Sections 10 and 11 of the New York State General Municipal Law ("GML");

WHEREAS, the Bank agrees to provide safekeeping services and to hold securities pledged by the Bank in a custodial account established for the benefit of all Participating Local Governments as secured parties pursuant to this Agreement and agreements between the Bank and other Participating Local Governments;

NOW, THEREFORE, in consideration of the mutual promises set forth hereafter, the parties hereto agree as follows:

1. Collateral Requirement

The Bank is obligated pursuant to this Agreement to pledge to the Local Government an undivided pro rata portion of the Pool Assets that is not less than the total amount of the Uninsured Deposits of the Local Government held by the Bank times one hundred percent (100%).

2. Security Requirements

- a. The Bank, to secure the timely payment of Uninsured Deposits heretofore or hereafter made by the Local Government, including any interest due thereon, and any costs or expenses arising out of the collection of such Deposits upon default, agrees to provide the Local Government with a pledge of an undivided pro rata portion of Pool Assets.
- b. The Bank agrees that the Total Market Value of the Pool Assets shall be no less than one hundred percent (100%) of the then current balances of all Uninsured Deposits made in the Bank by all Participating Local Governments. It shall be the duty of the Bank to maintain continuously the required level of Pool Assets in accordance with the terms of this Agreement. The Bank shall carry in its accounting records at all times a general ledger or other appropriate account of the Total Market Value of the Eligible Securities that constitute Pool Assets and the total amount of Uninsured Deposits of all Participating Local Governments required to be secured by pledges of pro rata portions of such Pool Assets.

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- c. The Bank shall determine, as of the opening of business on each Business Day, the then current balances of all Uninsured Deposits of all Participating Local Governments required to be secured. If as of the opening of business on any Business Day, the total balances of all Uninsured Deposits of all Participating Local Governments exceed the Total Market Value of the Pool Assets, the Bank shall transfer to the Account, no later than the close of business on that Business Day, additional Eligible Securities having a Market Value not any less than the amount of such excess. If as of the opening of business on any Business Day, the Total Market Value of the Pool Assets exceeds the total balances of all Uninsured Deposits of all Participating Local Governments, the Bank may transfer from the Account, on that Business Day, such Eligible Securities having a Market Value not any greater than the amount of such excess. The Bank may make such transfers without notice to, or consent of, the Local Government.
- d. Whenever collateral is provided pursuant to this section, the Bank hereby grants to the Local Government a pledge of, and security interest in and to, an undivided pro rata portion of Pool Assets. The share of Pool Assets so pledged shall be in the proportion that the total amount of the Local Government's Uninsured Deposits so secured by Pool Assets bears to the total amount of Uninsured Deposits of all Participating Local Governments similarly so secured. The security interest of the Local Government in the pro rata portion of the Pool Assets shall terminate upon the transfer of such pro rata portion of Eligible Securities from the Account consistent with the terms of this Agreement.
- e. The Bank will determine on a monthly basis the Total Market Value of the Eligible Securities that comprise the Pool Assets. If the Total Market Value of the Eligible Securities is determined by the Bank to be less than the total balances of all Uninsured Deposits of all Participating Local Governments, the Bank will transfer to the Account additional Eligible Securities having a Market Value equal to or greater than such deficiency no later than one Business Day after such determination. If the Total Market Value of the Eligible Securities is determined by the Bank to exceed the total balances of all Uninsured Deposits of all Participating Local Governments, the Bank may transfer securities from the Account to the extent of such excess. The Bank may make such transfers without notice to, or consent of, the Local Government.
- f. The Bank may substitute Eligible Securities ("Substitute Securities") for any Eligible Securities constituting Pool Assets previously pledged to the Participating Local Governments so long as the Substitute Securities have a Market Value equal to or greater than the Eligible Securities which they will replace. In the event that the Bank determines that the Substitute Securities have a Market Value equal to or greater than the Eligible Securities which they will replace, the Bank may transfer Eligible Securities out of the Account against delivery to the Account on the same Business Day of the Substitute Securities. The Bank may make such substitutions without notice to, or consent of, the Local Government.

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3. Custody of Pool Assets

- a. The Bank shall cause Eligible Securities that constitute Pool Assets to be credited to the Account and pledged to the Participating Local Governments. The Bank shall assign a pledge code or designation to such securities. The Bank agrees to establish and maintain the Account and appropriate records identifying the Pool Assets pledged by the Bank to the Participating Local Governments.
- b. The Bank and the Local Government agree that the Bank shall establish the Account at a third-party custodian ("Third-Party Custodian") pursuant to an agreement between the Bank and such Third-Party Custodian. The Account shall be kept separate and apart from the general assets of the Bank and the general assets of the Third-Party Custodian and will not, in any circumstances, be commingled with, or become part of, the backing for any other deposit or other liability of the Bank or the Third-Party Custodian.
- c. The Bank shall provide the Local Government each month with a statement identifying all Eligible Securities in the Account, the Total Market Value thereof as of the date of such statement, and the total amount of the Uninsured Deposits of the Participating Local Governments secured by the Pool Assets. At the request of the Local Government, the Third-Party Custodian will provide the Local Government with a statement describing the amount and valuation of the Pool Assets that it holds up to four times per year. The Bank will provide the Local Government with a separate statement showing its Deposits held at the Bank in accordance with the terms and conditions of the deposit account agreement for that account.
- d. The Bank shall act as agent of, and custodian for, the Local Government when performing its duties and responsibilities pursuant to this Section 3, when taking actions involving the receipt, substitution or release of Pool Assets, and when acting upon any notice received from the Local Government with respect to the occurrence of an event of default.

4. Events of Default

In the event that the Bank fails to pay the Local Government any amount of its Deposits covered by this Agreement in accordance with the terms of such Deposits, or should the Bank fail or suspend active operations, the Deposits of the Local Government in such Bank shall become due and payable immediately and the Local Government shall have the right to unilaterally demand delivery of Eligible Securities having a Market Value in an amount equal to its pro rata portion of the Pool Assets as contained in the Account, by notice to the Third-Party Custodian and the Bank (or, in the case of the Bank's failure, to the Receiver of the Bank). Upon receipt of such notice, the Bank shall provide to the Third-Party Custodian written confirmation of the Local Government's pro rata interest in the Pool Assets. After delivery by the Third-Party Custodian of Eligible Securities to the Local Government, the Local Government shall have the right to sell such securities at public or private sale. In the event of such sale, the Local Government, after

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deducting all legal expenses and other costs, including reasonable attorneys' fees, from the proceeds of such sale, shall apply the remainder towards any one or more of the liabilities of the Bank to the Local Government and shall return the surplus, if any, to the Bank.

5. Representations and Warranties

a. Representations of the Bank. The Bank hereby represents and warrants that:

1. It is the legal and actual owner, free and clear of all liens and claims, of all Pool Assets pledged pursuant to this Agreement;
2. This Agreement was executed by an officer or other authorized representative of the Bank who was authorized by the Bank's board of directors to do so, and this Agreement will at all times be maintained as an official record of the Bank;
3. All securities pledged pursuant to this Agreement are Eligible Securities;
4. The Bank is a national bank located and authorized to do business in the State of New York; and
5. All acts, conditions and things required to exist, happen or be performed on its part precedent to and in the execution and delivery of this Agreement exist or have happened or have been performed.

b. Representations of the Local Government. The Local Government hereby represents and warrants that:

1. This Agreement has been legally and validly entered into, does not and will not violate any statute or regulation applicable to it, and is enforceable against the Local Government in accordance with its terms;
2. No other action by the Local Government is required and this Agreement was executed by an officer of the Local Government authorized to do so;
3. It will not transfer, assign its interest in, or its rights with respect to, any Eligible Securities pledged pursuant to this Agreement except as authorized pursuant to Section 4 of the Agreement; and
4. All acts, conditions and things required to exist, happen or be performed on its part precedent to and in the execution and delivery of this Agreement exist or have happened or have been performed.

6. Liability, Performance and Records

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- a. The Bank shall not be liable for any loss or damage sustained or incurred by the Local Government, including counsel fees, resulting from the Bank's action or failure to act in the performance of its duties hereunder, except for any loss, damage, claim or expense arising out of the Bank's own negligence or willful misconduct.
- b. The Bank will not have any liability or responsibility, in the event that it is unable to perform any of its duties or responsibilities under this Agreement due to any act of God, fire, flood, civil or labor disturbance, war, act of governmental authority, fraud or forgery, malfunction of equipment or software, extreme weather, inability to obtain (or interruption of) external communications facilities, or any other cause beyond the reasonable control of the Bank, provided that the Bank shall use commercially reasonable efforts under the circumstances to resume performance as soon as reasonably practicable.
- c. The Local Government's authorized officer, upon reasonable notice, shall have access to the Bank's books and records maintained with respect to the Local Government's interest in the Account during the Bank's normal business hours. Upon the reasonable request of the Local Government, copies of any such books and records shall be provided by the Bank to the Local Government or the Local Government's authorized officer at the Local Government's expense.

7. Termination

Either of the parties hereto may terminate this Agreement by giving to the other party a notice in writing specifying the date of such termination, which shall be the earlier of (i) not less than 30 days after the date of giving such notice or (ii) the date on which the Deposits of the Local Government are paid in full. Such notice shall not affect or terminate the Local Government's security interest in the undivided pro rata portion of Pool Assets in the Account. Upon the date set forth in the termination notice, this Agreement shall terminate except as otherwise provided herein and all obligations of the parties to each other hereunder shall cease.

8. Miscellaneous

- a. The Bank shall have the right to collect and retain for its own account any and all interest, principal, dividend or other payments made with respect to the Eligible Securities held in the Account.
- b. It is the purpose of this Agreement to comply with the provisions of 12 U.S.C. § 1823(e) and GML §§ 10 and 11.
- c. This Agreement shall constitute a security agreement and a custodial agreement for purposes of GML § 10(3)(a).

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- d. Any notice or other instrument in writing authorized or required by this Agreement to be given to the Local Government shall be sufficiently given if sent by regular mail to the Local Government at its most recent address as reflected in the records of the Bank's Treasury Operations unit.
- e. Any notice or other instrument in writing authorized or required by this Agreement to be given to the Bank shall be sufficiently given if sent by regular mail to the Bank at its offices at Treasury Operations – Collateral, 4900 Tiedeman Road, Brooklyn, OH 44114 or at such other offices as the Bank may from time to time designate in writing.
- f. Any notice or other instrument in writing authorized or required by this Agreement to be given to the Third-Party Custodian shall be sufficiently given if sent by regular mail to the Third-Party Custodian at its most recent address as provided to the Local Government by the Bank in writing.
- g. In case any provision in, or obligation under, this Agreement shall be found to be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and unenforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons or circumstances.
- h. This Agreement may not be amended or modified in any manner except by written agreement executed by all of the parties hereto.
- i. This Agreement shall extend to and be binding upon the parties hereto, and their respective successors and assigns, provided however, that this Agreement shall not be assignable by any party without the written consent of the other parties.
- j. This Agreement shall be construed in accordance with the laws of the State of New York without regard to conflict of law principles thereof.
- k. This Agreement supersedes and completely replaces all previous agreements, if any, between the Bank (including all entities which have merged into the Bank) and the Local Government with respect to the subject matters contained herein.
- l. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

9. Definitions.

Whenever used in this Agreement the following terms shall have the following meanings:

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- a. "Account" shall mean the custodial account established by the Bank containing all the Pool Assets held for the benefit of all Participating Local Governments as secured parties in accordance with this Agreement and agreements between the Bank and other Participating Local Governments;
- b. "Book Entry System" shall mean the Federal Reserve/Treasury Book Entry System for receiving and delivering government securities;
- c. "Business Day" shall mean any day on which the Bank and the Book Entry System are open for business;
- d. "Deposits" shall mean all deposits made by the Local Government or other Participating Local Governments in the Bank that are available for all uses generally permitted by the Bank to the Local Government or other Participating Local Governments for actually and finally collected funds under the Bank's account agreement or policies. Deposits include collected funds finally posted to demand, savings, or time deposit accounts established and maintained by the Local Government or other Participating Local Governments with the Bank;
- e. "Eligible Securities" shall mean eligible securities as defined in GML § 10(1)(f);
- f. "Market Value" shall mean, with respect to any Eligible Security held in the Account, the market value of such Eligible Security as made available to the Bank by a generally recognized source selected by the Bank or the most recently available closing bid quotation from such source plus, if not reflected in the market value, any accrued interest thereon, or, if such source does not make available a market value or a closing bid price for a particular security, the market value shall be as determined by the Bank in its sole discretion based on information furnished to the Bank by one or more brokers or dealers or based on other information that is commercially reasonable to use. The Market Value of Eligible Securities will be adjusted by the Bank to the extent required by GML § 10 and the term "Market Value" as used in this Agreement shall mean Market Value as so adjusted;
- g. "Participating Local Government" shall mean a local government, as defined in Section 10(1)(a) of the GML, within the State of New York that has duly elected to accept a pledge by the Bank of a pro rata share of a pool of Eligible Securities as security for its Deposits with the Bank, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act, and has entered into an agreement with the Bank that is the same as, or similar to, this Agreement;
- h. "Pool Assets" shall mean a single group or aggregation of Eligible Securities to be pledged on a pro rata basis by the Bank to Participating Local Governments to secure Deposits made by such local governments in the Bank in excess of the amount insured under the provisions of the Federal Deposit Insurance Act;

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- i. "Substitute Securities" shall have the meaning set forth in Paragraph f of Section 2 of this Agreement;
- j. "Third-Party Custodian" shall be The Bank of New York Mellon or other national bank, state-chartered bank, trust company, or banking institution selected by the Bank to serve as custodian to hold the Pool Assets. The Third-Party Custodian will initially be The Bank of New York Mellon whose address is Institutional Custody Group, One Wall Street – 25th Floor, New York, NY 10286. If the Bank selects a different Third-Party Custodian, it shall notify the Local Government in writing;
- k. "Total Market Value of the Pool Assets" or "Total Market Value of the Eligible Securities" shall mean the total amount of the Market Value of all Eligible Securities that comprise the Pool Assets;
- l. "Uninsured Deposits" shall mean that portion of the Deposits which exceeds the insurance coverage available from the Federal Deposit Insurance Corporation.

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IN WITNESS WHEREOF, the Local Government and the Bank have caused this Agreement to be executed by their duly authorized representatives as of the dates listed below.

KEYBANK NATIONAL ASSOCIATION

(Bank)

By: _____
(Signature)

_____ (Local Government)

By: _____
(Signature)

DEPOSITORY COLLATERAL PLEDGE AGREEMENT (NY)

(Name)
Designated Signer

(Title)

(Date)

(Name)

(Title)

(Date)