

SECURITY AGREEMENT

This Security Agreement ("Agreement") made and executed this [] day of [], 20____, by and between [] (the "Depository", the "Bank"), a duly organized banking or other type of financial institution in the State of North Carolina, and the State Treasurer of North Carolina (the "State Treasurer", "Public Depositor", and "Public Depositors"), having an address as [], on his/her own behalf and/or on behalf of other Public Depositors, whose funds are required to be collateralized in accordance with the North Carolina General Statutes §§ 147-79, 147-69, and Title 20, Chapter 7 of the North Carolina Administrative Code (20 NCAC 07).

WHEREAS, the Bank is a qualified depository as defined in Title 20, Chapter 7 of the North Carolina Administrative Code ("State Regulations"); and

WHEREAS, Public Depositors, as defined in 20 NCAC 07, from time to time makes deposits in Deposit Account, as said term is defined in State Regulations, in the Depository, which Public Deposits, as said term is also defined in State Regulations, shall from time to time aggregate in excess of Two Hundred Fifty Thousand Dollars (\$250,000), or the insurance limit provided by the FDIC; and

WHEREAS, the Public Depositors desires to have its Public Deposits secured by collateral in the amounts required by State Regulations; and

WHEREAS, the Depository is required by North Carolina General Statutes and State Regulations to collateralize the uninsured Public Deposits of the Public Depositors, and has elected to do so through the Pooling Method as specified in 20 NCAC 07; and

WHEREAS, the Depository desires to be and/or remain an official depository of public funds deposited by the Public Depositors; and

WHEREAS, the Depository has agreed to secure the Public Depositors' Public Deposits by granting to the State Treasurer a security interest in certain collateral that satisfy the requirement under 20 NCAC 07 .0201 ("Eligible Securities", "Eligible Collateral"), and is owned by the Depository, which collateral meets the requirements described in the North Carolina General Statute §§ 147-79, 147-69, 20 NCAC 07, and as permitted by 12 U.S.C. § 90 and State Regulations; and

WHEREAS, each party desires to be in compliance with the Federal Deposit Insurance Corporation's Policy Statement dated March 23, 1993¹, regarding the collateralization of Public Deposits (See also 58 Fed. Reg. 16833-02):

NOW THEREFORE, in consideration of the Public Depositors depositing its Public Deposits as herein described, and for other goods and valuable consideration, hereby acknowledged as received, it is hereby agreed between the Public Depositor and the Depository as follows:

Subject to North Carolina Administrative Code

1. All uninsured deposits shall be collateralized in accordance with the provisions of 20 NCAC 07. The Depository is required to submit all forms referred to in 20 NCAC 07 .0105 and any other pertinent forms required pursuant to 20 NCAC 07 to the State Treasurer. Collateral Forms are incorporated herein by reference as amended from time to time.

Security Interest

2. In order to secure the Public Depositors' Public Deposits, the Depository hereby pledges, assigns, transfers and grants in favor of the State Treasurer a lien and continuing security interest, in addition to a perfected first priority security interest, in any: securities pledged to the State Treasurer from time to time, all interest, dividends, distributions and sums distributed or payable therefrom, all other rights and privileges incident to such securities, Escrow/Custody Account (as defined in Sections 6 below) and any and all investment property and security entitlements from time to time held in, by, or for the benefit of the Escrow/Custody Account, and all proceeds and profits of any of the foregoing ("Collateral") as collateral security for all deposits maintained from time to time by

¹ Last updated April 20, 2014.

the Public Depositors with the Depository. The Depository shall take all necessary steps to perfect this security interest pursuant to the North Carolina Uniform Commercial Code. If at any time the ratio of the market value of the Eligible Collateral to the Public Depositors' Public Deposits, plus accrued interest, is less than required by State Regulations, the Depository shall immediately, within no more than 24 hours, make such additions to the Eligible Collateral in such amounts such that the ratio of the market value of the Eligible Collateral to the Public Depositors' Public Deposits, plus accrued interest, shall be at least equal to that required by State Regulations. Such additions to the Eligible Collateral shall constitute an assignment, transfer, pledge, and grant to the State Treasurer a security interest in such additional Eligible Collateral pursuant to this Agreement and State Regulations.

3. The security interest granted herein (as described in Section 2 above) shall secure not only such Public Deposits and accrued interest of the Public Depositor as are held by the Depository at the time of this Agreement, but also any and all subsequent Public Deposits made by the Public Depositors in the Depository regardless of the accounts in which such funds may be held or identified by the Depository.
4. The pledge of Collateral by the Depository shall be in addition to, and shall in no way eliminate or diminish, any insurance coverage to which the Public Depositor may be entitled under the rules and regulations of the Federal Deposit Insurance Corporation or any private insurance carried by the Depository for the purpose of protecting the claims and rights of its depositors.
5. The Public Depositor is under no obligation to maintain its deposits with the Depository and may withdraw them at any time, without notice. It is agreed that when the Depository shall have paid out and accounted for all or any portion of the Public Depositors' Public Deposits, any Collateral pledged under this Agreement to secure such paid out Public Deposits shall be released from the security interest created hereunder.

Pledging Eligible Securities

6. The Depository agrees to deposit with an eligible third-party escrow agent, as discussed further in this section, the required Collateral at all times as specified in 20 NCAC 07. Therefore, the Depository agrees to place the Eligible Securities with Federal Reserve Bank or a Federal Home Loan Bank, or a bank which is not an affiliate of the depository pursuant to and as described in 20 NCAC 07 .0300 (the "Escrow Agent", "Custodian"), to hold in a custody account (the "Escrow Account" and/or "Custody Account") for the benefit of the Public Depositor, as required by State Regulations. Any such commercial bank or trust company shall be a securities intermediary that in the ordinary course of its business regularly maintains securities accounts for its customers. The Depository shall execute an Escrow Agent Agreement with the Custodian ("Escrow Agent Agreement", Form "COLL-93B", or "Custodial Trust Agreement") for the custody of the Eligible Securities consistent with the terms of this Agreement. COLL-93B is incorporated herein by reference as amended from time to time. The Escrow Agent Agreement shall contain the Custodian's agreement to hold all Collateral in the Custody Account for the benefit of the Public Depositor and subject to the Public Depositor's direction and control and to comply with entitlement orders originated by the Public Depositor without the Depository's further consent. The executed Escrow Agent Agreement is attached hereto as **Exhibit B**. The execution by the Depository of the Escrow Agent Agreement shall in no way relieve the Depository of its duties or obligations hereunder or under State Regulations.

7. Upon the initial transfer of Eligible Securities under this Agreement and monthly thereafter, the Depository shall cause the Escrow Agent to report to the Public Depositor specifying the type and market value of Eligible Securities being held in the Custody Account for the benefit of the Public Depositor.
8. The Depository has heretofore or will immediately hereafter deliver to the Escrow Agent, for immediate deposit in the Custody Account, Eligible Securities of sufficient value to meet the terms of this Agreement. Said Eligible Securities or substitute collateral, as herein provided for, shall be retained by the Escrow Agent in the Custody Account so long as the Depository holds deposits of the Public Depositor.

Release and Substitution of Securities

9. At any time that the Depository is not in default under this Agreement, the Depository shall have the right to seek approval of the State Treasurer to substitute Eligible Securities of equal or greater value and of eligible types, and provided that the total market value of Eligible Securities held in the Custody Account shall meet the requirements of State Regulations and this Agreement.
10. The Depository shall provide the State Treasurer with a statement of the respective values of the Eligible Securities to be replaced and the Eligible Securities to be substituted, and the State Treasurer shall have approved such actual substitution or substitution process and all documentation relating to such substitution before it becomes effective. No Collateral, except for normal income and principal distributions (not including proceeds of maturities), if applicable, may be released and/or substituted without the prior written approval of the State Treasurer.
11. Any additional pledge of Collateral hereunder, substitution of Collateral, or release of Collateral shall be approved by an officer of the Depository duly authorized by resolution of the financial institution's Board of Directors, or Loan Committee, to approve such additional pledges, substitutions, or releases of Collateral under this Agreement.

Depository Representations and approval by Board of Directors or Loan Committee of the Depository

12. The Depository hereby represents that (i) it is a bank duly organized and validly existing, or authorized, under the laws of the State of North Carolina; (ii) it is a qualified Depository as defined by State Regulations.
13. The Depository hereby also represents that by accepting Public Deposits, the Depository assumes the duty and responsibility of maintaining adequate collateral as provided by law and in accordance with the State Regulations, for all uninsured deposits.
14. The Depository represents and warrants that it is the true and legal owner of all Collateral pledged under this Agreement, that the Collateral is and will remain free and clear of any and all security interests, liens and claims of any other person, except for the security interest granted hereunder to the State Treasurer, and that no other person or entity has any right, title or interest therein, and that the Collateral has not been pledged or assigned for any other purpose. Should an adverse claim be placed on any pledged Collateral, the Depository shall immediately substitute unencumbered Collateral of equivalent value that is free and clear of all adverse claims. The Depository shall be deemed to repeat such representation with respect to Collateral delivered in addition to or in substitution of the existing Collateral.
15. The State Treasurer's sole obligation to the Depository with respect to Collateral is to return or cause the return of the Collateral to the Depository at the termination, and full performance by the Depository of, its obligations with respect to all deposits of the Public Depositors secured hereunder.

16. The Depository also represents that (i) it is duly authorized by resolution of the Depository's Board of Directors or the Loan Committee of the Depository to have full right, power and authority, to execute and deliver this Agreement; (ii) it has, or will have as of the time of delivery of any securities as Collateral under this Agreement, the full right, power and authority to pledge and grant a security interest therein with priority over any other rights or interests therein; (iii) the execution and delivery of this Agreement and the pledge of securities as Collateral hereunder have been approved by resolution of the Depository's Board of Directors or the Loan Committee of the Depository at its meeting of [REDACTED] [date], and the approval of the Board of Directors is reflected in the minutes of that meeting, which certified copy of the authorizing resolution and relevant portion of the minutes of said meetings have been furnished by Depository and are attached hereto as **Exhibit A** and made a part hereof; (iv) the execution and delivery of this Agreement and the pledge of securities as Collateral hereunder will not violate or be in conflict with the Articles of Incorporation or By-laws of the Depository, any agreement or instrument to which the Depository may be a party, any rule, regulation or order of any banking regulator applicable to the Depository, or any internal policy of the Depository adopted by its Board of Directors.
17. The Depository further represents that it will immediately upon execution keep and continuously maintain, as part of its official records, an executed copy of this Agreement, certified copy of the authorizing resolution and minutes, and such other customary writings and records sufficient to identify those securities which have been pledged to the State Treasurer.

Rights Upon Default

18. In the event of a default by the Depository, pursuant to 20 NCAC 07, the State Treasurer shall have all the rights and remedies of a secured party under the North Carolina Uniform Commercial Code with respect to the Collateral, including without limitation the right upon default to collect, liquidate, sell or dispose of the same and apply the proceeds thereof (after deducting therefrom all costs and expenses relating to collection, liquidation, sale or disposition), to the payment of any deposit arising out of or as a result of the default of the Depository, with the Depository to remain liable for any deficiency, and with the Depository being entitled to any surplus which may result.
19. In the event the Depository shall (a) fail to pay the Public Depositor any funds which the Public Depositor has on deposit, (b) fail to pay and satisfy when due, any check, draft, or voucher lawfully drawn against any deposit of the Public Depositor, (c) fail to fulfill its statutory duties to honor timely requests for withdrawals (d) fail or suspend active operations, (e) become insolvent, or (f) fail to maintain adequate Collateral as required by this Agreement, the Depository shall be in default, the Public Depositors' Public Deposits in such Depository shall become due and payable immediately. The State Treasurer shall have the right to unilaterally direct the Escrow Agent to liquidate the Collateral held in Custody Account and pay the proceeds thereof to the Public Depositor and to exercise any and all other security entitlements with respect to the Custody Account and the other Collateral, to withdraw the Collateral, or any part thereof, from the Custody Account and deliver such Collateral to the Public Depositor, or to transfer the Collateral or any part thereof into the name of the Public Depositor or into the name of the Public Depositor's nominee, and ownership of the Collateral shall transfer to the Public Depositor. The Depository authorizes the release, withdrawal and delivery of the Collateral to the Public Depositor upon default by the Depository, and authorizes the Escrow Agent to rely without verification on the written statement of the Public

Depositor as to the existence of a default and to comply with entitlement orders originated by the Public Depositor without further consent of the Depository.

20. In the event of default as described in Sections 18-19, the State Treasurer shall also have the right to sell Collateral at any public or private sale at its option without advertising such sale, upon not less than three (3) business days notice to the Depository and Escrow Agent. In the event of such sale, the State Treasurer, after deducting all legal expenses and other costs, including reasonable attorney's fees, from the proceeds of such sale, shall apply the remainder on any one or more of the liabilities of the Depository to the Public Depositor, including accrued interest, and shall return the surplus, if any, to the Depository, or its receiver or conservator.

Authority of Public Depositor's Designated Officer

21. During the term of this Agreement, the Public Depositor will, through appropriate action, designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of the Public Depositor in any and all matters arising under this Agreement.

Collateral Forms (COLL)

22. All parties to this Agreement agree to execute the Collateral Forms (COLL) required pursuant to State Regulations and any additional documents that may be reasonably required to effectuate the terms, conditions, and intent of this Agreement. (See 20 NCAC 07). Collateral Forms are incorporated herein by reference as amended from time to time.

Successors and Assigns

23. This Agreement is continuing and binding upon the Depository, its successors and assigns, and shall inure to the benefit of the Public Depositor and his/her successors and assigns.

Governing Laws

24. This Agreement shall be governed by and construed in accordance with the laws and regulations of the State of North Carolina and the United States, and it supersedes any and all prior agreements, arrangements or understandings with respect to the subject matter hereof. In the event that any conflict of law issue(s) should arise in the interpretation of this Agreement, the parties agree that when North Carolina State law is not preempted by laws of the United States, North Carolina State law shall govern.

Venue and Jurisdiction

25. The parties hereby agree that any action, dispute or proceeding that may arise relating to this Agreement shall be brought in either state or federal court in and for Wake County, North Carolina, provided that the foregoing shall not be construed as a waiver of the right to remove to the U.S. District Court for the Eastern District of North Carolina.

Termination

26. Public Depositor may terminate with notice this Agreement, in whole or in part, with or without cause, at any time, for Public Depositor's convenience. Any termination of this Agreement shall not affect Depositor's obligation with respect to actions and activities taken prior to such termination.

Waiver

27. The waiver by any of the parties to this Agreement of the performance of any provision of this Agreement shall not invalidate this Agreement, nor does it constitute a waiver of any other provision in any way.

Severability

28. If any provision of this Agreement is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair the remaining provisions of this Agreement, and the Agreement shall be construed and enforced as if such provision had not been included.

Amendment

29. No modifications or amendment of or supplement to this Agreement shall be valid or effective unless the same is in writing and signed by all the parties hereto.

Notices

30. To the extent permitted by law, any notice that must be given under this Agreement shall be given in writing and sent by certified mail, return receipt, requested or third party overnight priority mail carrier to the address set forth herein or such other place as may be designated by written notice in the same manner from one party to the other. Bank's address: _____, Attn: _____.

Public Depositor's address: North Carolina State Treasurer 3200 Atlantic Ave., Raleigh, NC 27604, Attn: SBU Collateral

Entire Agreement

31. The rights and obligation of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, which supersedes any other understandings, previous discussions, proposal, or agreements, whether oral or in writing between or among the parties. In the event of any conflict between a provision set forth in this Agreement and a provision contained in an attachment or other agreements, this Agreement shall prevail.

Access to Records

32. During and after the term hereof, the State Auditor and Public Depositor's internal auditors shall have access to persons and records related to this Agreement and as provided in N.C.G.S. § 143-49(9) and 20 NCAC 07.

Headings

33. The headings in this Agreement are for convenience and reference purposes only. The headings do not constitute a part of this Agreement, and shall not be used for construction or interpretation of any provisions hereof.

In witness thereof, the parties have executed this Agreement in duplicate originals, one of which is retained by each of the parties.

ACCEPTED:

Depository/Bank Name: _____

State Treasurer

By: (Signature) _____

By: (Signature) _____

Print Name: _____

Print Name: _____

Bank Officer Title: _____

Title: _____