

## SECURITY AGREEMENT

This security agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **Pooled Money Investment Board**, Topeka, Kansas, hereinafter called "PMIB", and the \_\_\_\_\_, hereinafter called "depository bank," for the purpose of establishing a security interest in collateral pledged by depository bank or its agent, trustee, wholly-owned subsidiary, or affiliate bank having identical ownership, hereinafter called "affiliate."

WHEREAS, PMIB acknowledges and depository bank understands that the State of Kansas has deposited, and will in the future deposit, public funds in depository bank in amounts exceeding the amounts insured by the Federal Deposit Insurance Corporation (FDIC); and

WHEREAS, PMIB requires that the amounts of its deposits in excess of the amounts insured by the FDIC be secured by pledge of collateral as required by K.S.A. 75-4218, and amendments thereto; and

WHEREAS, depository bank or its affiliate desires to pledge collateral securities and undivided fractional interests therein (securities) to secure each and every deposit of public funds by the PMIB in depository bank; and

WHEREAS the parties desire to reduce their security agreement to writing.

NOW, THEREFORE, PMIB and depository bank agree as follows:

1. The depository bank or its affiliate shall pledge securities permitted by the PMIB's Investment Policy to secure deposits made by the PMIB. As of the execution of this security agreement, permitted securities include:

a. direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations, letters of credit and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds. (This includes only those mortgage-backed securities (MBS's) for which the issuing government agency has guaranteed the payment of principal and interest.);

b. Kansas municipal bonds that are general obligations of the municipality issuing the same;

c. revenue bonds of any agency or arm of the State of Kansas;

d. revenue bonds of any municipality within the State of Kansas except the following:

(1) bonds issued under the provisions of K.S.A. 12-1740 *et seq.*, and amendments thereto, unless such bonds are rated at least MIG-1 or Aa by Moody's Investors Service or AA by Standard & Poor's Corp., and

(2) bonds secured by revenues of a utility that has been in operation for less than three years;

e. temporary notes of any municipal corporation or quasi-municipal corporation within the State of Kansas that are general obligations of such corporation issuing the same;

f. warrants of any municipal corporation or quasi-municipal corporation within the State of Kansas, the issuance of which is authorized by the State Board of Tax Appeals and that are payable from the proceeds of a mandatory tax levy;

g. bonds of any municipal or quasi-municipal corporation of the State of Kansas that have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, or direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America. A copy of the escrow agreement shall be furnished to the state treasurer;

h. A letter of credit issued by a United States sponsored enterprise that under federal law may be accepted as security for public funds.

(1) The letter of credit (LOC) must be in the format acceptable to the Office of the State Treasurer.

(2) The Kansas State Treasurer must be designated as the irrevocable and unconditional beneficiary of the letter of credit.

(3) The issuer and the depository bank must notify the Office of the State Treasurer by certified or registered mail at least 45 days prior to cancellation or the non-renewal of a letter of credit;

(4) The issuer may not provide letters of credit for any one-depository bank in an amount, which exceeds ten percent of the issuer's capital and surplus.

PMIB reserves the right to revise the list of permitted securities at any time.

2. All of the above listed securities shall be current as to interest according to the terms thereof.

3. Whenever a bond is authorized to be pledged as a security under paragraph 1, above, such bond shall be accepted as a security if:

a. in the case of a certificated bond, it is assigned, delivered or pledged to the holder of the deposit for security;

b. in the case of an uncertificated bond, registration of a pledge of the bond is

authorized by the system and the pledge of the bond is authorized by the system and the pledge of the uncertificated bond is registered; or

c. in a form approved by the attorney general, which assures the availability of the bond proceeds pledged as a security for public deposits.

4. If the PMIB removes a security that has been pledged by the depository or its affiliate from the list of permitted securities in its Investment Policy, the depository bank shall have 30 days to provide permitted securities or to refund the full amount of the deposit.

5. Depository bank hereby grants to the State of Kansas a security interest in securities pledged to secure payment of deposits made by the PMIB in depository bank. Depository bank shall obtain and provide to the PMIB and the State Treasurer a written agreement from its affiliate that the affiliate grants a security interest to the State of Kansas in securities owned by the affiliate which are pledged on behalf of the depository bank to secure payment of deposits made with the depository bank. Such agreement shall be in a form approved by the PMIB. Such agreement shall be approved by the board of directors of the affiliate and reflected in its minutes. A copy of such minutes shall be provided to the PMIB. From the time of execution of such agreement, the agreement shall remain continuously an official record of the affiliate. Any such deposit of securities, except with the State Treasurer, shall have a joint custody receipt which shall constitute a perfected security interest taken therefore with one copy going to the State Treasurer and one copy going to such affiliate.

6. Depository bank shall take such action as is necessary to perfect the security interest herein granted. Depository bank shall furnish satisfactory proof thereof to the State Treasurer.

7. The parties agree that the State Treasurer is the person responsible for approving exchanges of pledged securities.

8. Depository bank shall pledge collateral on a market value basis. The collateral requirement is defined as the total deposits of public funds in depository bank, including accrued interest, less the amounts of such deposits which are insured by the FDIC. The aggregate market value of collateral must be no less than:

a. 100% of the collateral requirement for the following security types having final maturities of five years or less: U.S. Treasury or government agencies securities, excluding Collateralized Mortgage Obligations (CMO's) and mortgaged-backed securities (MBS's).

b. 105% of pledge requirement for all other acceptable collateral.

9. Depository bank shall transfer or deposit the pledged securities to or with the State Treasurer, the Federal Reserve Bank of Kansas City, Missouri, the Federal Home Loan Bank of Topeka, Kansas, or a custodial bank having adequate modern facilities for the safekeeping of securities which shall have received the prior approval of the PMIB. Any such custodial bank receiving securities for safekeeping shall be liable to the state for any loss suffered by the State of Kansas in the event such custodial bank relinquishes the custody of any such securities contrary to

the provisions of the state moneys law (K.S.A. 75-4201 *et seq.*) or any rules and regulations adopted by the State Treasurer or the PMIB.

10. A "custodial agreement" among depository bank, PMIB and a custodial bank shall be executed by an authorized representative of each party and be retained in the records of depository bank. Custodial bank shall issue a joint custody receipt to depository bank and the State Treasurer for each specific security held by it under the terms of the agreement. The agreement shall authorize transfer of the securities only on joint written authorization of the State Treasurer and the depository bank, except as provided below.

If securities are pledged to the Federal Reserve Bank of Kansas City, Missouri, or to the Federal Home Loan Bank of Topeka, Kansas, a custodial agreement will not be executed but the parties acknowledge and understand that all transfers of securities by the Federal Reserve Bank or the Federal Home Loan Bank are subject to the then applicable rules, procedures and operating letters of such Federal Reserve Bank or such Federal Home Loan Bank.

11. Depository bank represents and warrants to the State of Kansas and to the PMIB that:

a. it or its affiliate is the sole legal and equitable owner of the securities transferred to secure the deposits made by the PMIB in depository bank;

b. no security interest in the securities pledged has been or will be granted by it or its affiliate other than that granted herein to secure deposits made by the PMIB with depository bank or which has been or may be granted in an undivided fractional interest in securities not pledged to State Treasurer;

c. deposits made by the State of Kansas in depository bank are insured by the Federal Deposit Insurance Corporation (FDIC) in the amount of the deposit or deposits up to the maximum deposit insurance amount for one depositor at one financial institution as determined by the FDIC;

d. it and its affiliate have received value by virtue of the operation of this agreement and the deposit of public funds in depository bank by the PMIB.

e. depository bank is duly authorized to execute this agreement; that this agreement has been approved and authorized by the board of directors of depository bank; and that this agreement is reflected in the minutes of said board and in the records of depository bank and shall remain continuously throughout its term an official record of such bank; and depository bank shall furnish certified copies of such minutes to the PMIB.

12. Depository bank shall be permitted to release or substitute securities pledged hereunder at any time pursuant to prior written authorization by the State Treasurer. On substitution of securities, written notice stating the CUSIP and pool number, if applicable, par value, interest rate, maturity date and market value of the withdrawn securities and of the substituted securities will be sent to the State Treasurer by depository bank within three days of any substitution. Depository bank, at least monthly, and at any time on demand by the State Treasurer or the PMIB, shall furnish to the State Treasurer or the PMIB a statement describing by CUSIP and pool number, par value,

interest rate, maturity date and current market value of the securities pledged by depository bank.

13. Depository bank or its affiliate pledging securities for depository bank shall be in default and the State of Kansas shall be entitled to foreclose on the security interest in securities pledged pursuant to this agreement by depository bank or its affiliate bank on the occurrence of any of the following:

a. depository bank fails to pay all or any part of a matured certificate of the State of Kansas, including earned interest;

b. depository bank fails to pay any check, draft or warrant drawn by the State Treasurer and Director of Accounts and Reports which is properly payable and there are sufficient funds on deposit for its payment;

c. depository bank fails to account for any check, draft, warrant, order or certificate of deposit or any money entrusted to such bank by the State Agency; or

d. a conservator or receiver is appointed for depository bank.

14. In the event of a default, securities pledged by depository bank or its affiliate and held by the State Treasurer, the Federal Reserve Bank of Kansas City, Missouri, Federal Home Loan Bank of Topeka, Kansas, or a custodial bank shall be subject to sale pursuant to the laws of the state of Kansas to satisfy the obligations of depository bank to the PMIB and the State of Kansas.

15. In all cases wherein it appears to the State Treasurer or the PMIB that the securities pledged by depository bank have become inadequate, it shall be the duty of the State Treasurer to immediately notify depository bank and demand that additional security be pledged to make good such inadequacy. In default of such additional security being promptly furnished the PMIB shall close the account.

16. The State of Kansas and the PMIB shall be entitled to either: (a) withdraw any and all funds, including accrued interest, from depository bank without penalty if the deposit exceeds seven days; or (b) convert this agreement to a repurchase agreement for up to the full amount of any funds, including accrued interest and without penalty, if the deposit exceeds seven days, if any one of the following events occur:

a. capital, surplus and undivided profits as shown on the balance sheet portion of the quarterly call report fall below the minimum regulatory guidelines;

b. tier I and tier II risk based capital as shown on the risk based capital schedule of the quarterly call report shall fall below the minimum regulatory guidelines;

c. the capital accounts of the depository bank deteriorate to levels indicated in a or b, above, for any reason between quarterly call reports; or

d. a conservator or receiver is appointed for depository bank's trustees or affiliate

banks having identical ownership.

Depository bank shall notify the PMIB (Director of Investments, Pooled Money Investment Board, 900 SW Jackson, Suite 209, Topeka, KS 66612) and the State Treasurer (900 SW Jackson, Suite 201, Topeka, KS 66612) in writing within 48 hours when any of the above mentioned events of default occur.

17. In the event of insolvency or dissolution of depository bank, as a result of any cause, the PMIB shall be entitled to file a claim for the full amount of such account and the State Treasurer shall retain or collect dividends or interest on securities pledged by depository bank or its affiliate until the amount of the dividends and interest added to the amount realized from sale of any securities so pledged to the state equals the amount of the account.

18. The State Treasurer shall be responsible to depository bank for the safe return of any securities deposited in the state treasury pursuant to this agreement.

19. Depository bank shall provide copies of its most recent call reports, directors' examination reports and such other additional financial information as may be requested by the State Treasurer or the PMIB, to the extent allowed by applicable law.

20. The PMIB shall be entitled to withdraw any and all funds, including accrued interest, without penalty from depository bank, if:

a. depository bank fails to pledge securities in accordance with paragraphs 8 and 12 above; or

b. depository bank fails to abide by paragraph 11 and its subparts above.

21. This security agreement may not be assigned in whole or in part and is binding on the parties, their successor and assigns.

22. If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected, and each provision of this contract shall be enforced to the fullest extent permitted by law.

23. Depository bank and PMIB agree and understand that the State Treasurer is a third party beneficiary to this agreement.

24. This agreement may be modified by written agreement of the parties and with notice of such modification to the State Treasurer.

25. This agreement shall be governed by the laws of the State of Kansas, and incorporates by reference Kansas statutes and administrative regulations relevant to the subject matter of this agreement, and any amendments thereto are likewise incorporated herein without further action or acknowledgment by the parties.

26. Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by the State Treasurer, PMIB or the State of Kansas shall not constitute a waiver.

27. The rights and remedies of the State Treasurer, the PMIB or the State of Kansas provided for in this agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

**Participating Bank**

Bank: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Pooled Money Investment Board (PMIB)**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*Joel N. Oliver, Director of Investments*