



MARLO M. OAKS
STATE TREASURER OF UTAH

UTAH HOMES INVESTMENT PROGRAM DEPOSIT AGREEMENT

This Deposit Agreement (“Agreement”) is made this ____ day of _____, 20____ by and between _____ (the “Depository”) and the Utah Office of State Treasurer (the “Treasurer”) (collectively, the “Parties”).

WHEREAS, the Treasurer offers the Utah Homes Investment Program (the “Program”) to financial institutions that are Utah qualified depositories under the Utah Money Management Act, Utah Code § 51-7-18(1), pursuant to the requirements in Utah Code § 51-12-201 and Utah Code § 51-12-202;

WHEREAS, the Depository seeks to be part of the Program;

WHEREAS, the Depository attests and has submitted documents to the Treasurer supporting that it meets all requirements required by the Program as written in Utah Code § 51-12-101, Utah Code § 51-12-201, and Utah Code § 51-12-202 to receive deposits from the Treasurer;

WHEREAS, the Depository attests and has submitted documents to the Treasurer supporting that it has extended a loan to a developer of a qualified project, as defined in Utah Code § 51-12-101, according to the terms outlined in Utah Code § 51-12-202 in an amount greater than or equal to the requested deposit; and

WHEREAS, the Depository attests and has submitted documents to the Treasurer supporting that it has received from the developer of the associated qualified project a draw request of no less than 5 percent of the deposit amount requested from the Treasurer;

NOW, THEREFORE, the Parties agree as follows:

1. DEPOSIT

The Depository hereby accepts a deposit from the State of Utah in the amount set forth in an Addendum attached hereto (Addendum A). The deposit and all interest earned thereon is hereinafter referred to as the “Deposit,” and credits the Deposit to account number _____ (the “Account”) upon receipt. The original deposit amount set forth in Addendum A will be limited to an amount that is equal to the amount of loan financing extended to the developer of a qualified project set forth in supporting documents submitted to the Treasurer by the Depository and may not exceed 50% of the Depository’s public funds allotment at the time of funding, as determined by the Utah Department of Financial Institutions in accordance with Utah Code § 51-7-18.1 and Rule 11 of the Money Management Act.

As a condition of receiving a deposit, the Depository shall comply with all terms and conditions of the Program set forth for the deposit of State of Utah funds established by the Treasurer, including the terms, conditions, and certifications outlined in this Agreement, any Addendum, and any application(s) submitted by the Depository and approved by the Treasurer. Any documents required in the application to the Treasurer used to support assertions of compliance to the terms of the Program (the “Supporting Documents”) will be incorporated into this Agreement and Addendum A and are attached to this Agreement as Addendum B. Any subsequent Supporting Documents shall be incorporated into Addendum B of this Agreement. If subsequently provided documents are material, they may change the terms of this Agreement set forth in Addendum A at the sole discretion of the Treasurer.

2. INTEREST RATE

NOTE INTEREST RATE: When submitting documentation to the Treasurer requesting participation in the Program, the Depository shall note the date of reference when determining the effective federal funds rate (EFFR) to be used in calculating the effective interest rate of the loan extended to a developer of a qualified project (the “Loan Origination Date”) along with the actual loan interest rate and interest rate reset dates extended to the developer.

Beginning on the Loan Origination Date, the Depository will calculate the interest rate based on the EFFR in effect plus no more than 1.50 percentage points (the “Margin”). The interest rate will never be less than 4.0%. The interest rate may change [insert frequency]. Beginning with the first Change Date, Depository will calculate the new interest rate based on EFFR in effect on the Change Date plus the Margin. The Accrual Method on this note is calculated on an Actual/365 day basis.

DEPOSIT INTEREST RATE: The Treasurer shall require the Depository to pay a rate of interest equal to the EFFR in effect on the Loan Origination Date minus a Margin of 2.00 percentage points. The interest rate will never be less than 0.500%. Interest on the deposit is calculated on an Actual/365 day basis. The interest rate may change quarterly. Beginning with the first Change Date, Depository will calculate the new interest rate based on EFFR in effect on the Change Date minus a Margin of 2.00 percentage points. Simple interest will be credited to the account quarterly. Interest paid by the Depository must be paid on the total outstanding deposits beginning on the day the deposit is credited to the Depository (the “Funding Date”) to, but not including, the date of withdrawal or transfer (the “Maturity Date”). Such rate will be included in Addendum A of this Agreement along with each contractual interest rate Change Date extended by contract to the developer.

3. INTEREST PAYMENT

All accrued interest shall be paid to the State of Utah with the return of the Deposit on the Maturity Date or a date of early withdrawal of the deposit.

4. WITHDRAWAL OF DEPOSIT

The Depository agrees that the Treasurer may withdraw a deposit in the event the Depository fails to comply with the requirements set forth herein or if any of the certifications set forth in the application are determined by the Treasurer to be substantially inaccurate or misleading. In addition, if the Depository at any time exceeds its public funds allotment as described in Utah Code Annotated § 51-7-18.1 and Rule 11 of the Rules of the Money Management Act, the Treasurer may elect to withdraw a portion or all of the deposit regardless of remaining time to maturity and without penalty by the Depository, if the Depository is unable to remedy the excess public funds deposits within two months. In lieu of withdrawal of the deposit, the Treasurer may require collateral with a market value of the full amount of deposit to be transferred to the custody of the State of Utah, according to the terms set forth in Rule 13 of the Rules of the Money Management Act.

5. DEPOSITORY ASSURANCES

The Depository agrees that all covenants, representations, and warranties herein made by the Depository and any document or agreement executed pursuant to or in connection with this Agreement are accurate.

6. DATE OF DEPOSIT WITHDRAWAL

If the Depository is not in breach of any condition set forth in the previous paragraph, the Treasurer shall keep the deposit with the Depository until the Maturity Date set forth in Addendum A, which will be set at exactly 24 months from the Funding Date or June 30, 2027, whichever is sooner.

Notwithstanding the Maturity Date, the deposit must be returned immediately to the Treasurer with all applicable interest due and accrued if either of the following conditions apply:

- The Depository receives repayment in full of the loan made to the developer of a qualified project that allows the Depository participation in the Program; or
- The Depository becomes aware that the developer of the qualified project has sold the last home constructed within the area of the qualified project.

7. ATTESTATIONS

This Agreement shall incorporate the Depository's fully executed attestations, which is attached hereto in Addendum B.

8. RECORDS & REPORTS

All funds transferred to the Depository noted in Addendum A of this agreement shall be promptly accounted for by the Depository. The Depository shall provide a written account

statement detailing activity and balances of the Account to the Treasurer, including the amount of accrued interest monthly.

9. TRANSFER OF FUNDS

Upon the request of either party, the Treasurer and the Depository shall execute all necessary documentation to electronically transfer funds to or from the Account to another financial institution if necessary. The Treasurer will provide instructions for all transfers.

10. ASSIGNMENT

Each term and provision of the Agreement is binding and enforceable against and inures to the benefit of any successors of the Treasurer and any successors of the Depository, but neither the Agreement nor any of the rights or obligations under this Agreement may be transferred or assigned without the Treasurer's prior written consent. Any attempt by the Depository or its affiliate, if applicable, to transfer or assign any rights or obligations related to the Agreement without the prior written consent of the Treasurer shall render the Agreement voidable by the Treasurer. The Treasurer may unilaterally bind any successor of the Depository to the terms and conditions of the Agreement.

11. UNAUTHORIZED TRANSACTIONS

The Depository hereby acknowledges that the Depository shall be liable for all unauthorized transactions affecting the Account to the fullest extent permitted by any applicable federal or state law, rule, or regulation.

12. APPLICABLE LAW & PENALTIES

The Depository shall comply with all applicable laws and regulations now or hereinafter in effect including the Utah State Money Management Act, Utah Code § 51-7, and Utah Code § 51-12. Failure of the Depository to comply with any of these laws or the terms of this Deposit Agreement will result in immediate disqualification from subsequent participation in the Program and early withdrawal of the Deposit.

13. CONFIDENTIALITY

This Section shall survive the termination of this Agreement.

13.1 Confidential Information

The Depository shall be prohibited from using or disclosing information received in the course of fulfilling its obligations pursuant to this Agreement ("Confidential Information"), except in the performance of its internal responsibilities and normal functions. Confidential Information includes all information, with the exception of the following:

- A. Information already known or independently developed by the recipient;
- B. Information required to be released by law, Federal or state agencies, or the Financial Industry Regulatory Authority;
- C. Information in the public domain through no wrongful act of the recipient; and

D. Information received from a third party who was free to disclose it.

13.2 Use of Confidential Information by Employees and Agents of the Depository

The requirement of confidentiality under this Agreement also applies to the employees and agents of the Depository. The Depository shall use its best efforts to ensure that its employees and agents adhere to the confidentiality requirements set forth herein. Use by and disclosure to the Depository's employees and agents of Confidential Information to the extent necessary to carry out the terms and purposes of this Agreement is acceptable.

13.3 Protection of Confidential Information

The Depository represents, warrants, and covenants that it has implemented and will maintain an information security program reasonably designed to protect Confidential Information, including applicant information, which program includes administrative, technical, and physical safeguards to ensure the security and confidentiality of all applicant information, to protect against anticipated threats or hazards to the security or integrity of such applicant information, and to protect against unauthorized access to or use of such applicant information.

13.4 Privacy Policy

The Depository will comply with any applicable federal or state laws or regulations, as well as any privacy policy developed by the Treasurer. The Depository further agrees to establish, maintain, and comply with a privacy policy with respect to the Services that meets the requirements of applicable law.

13.5 Program Lists

The Depository specifically agrees that it shall not, and shall cause its affiliates not to, sell, provide, or otherwise disclose information from any program list to any third party, unless otherwise directed to or approved by the Treasurer or required by applicable law.

14. LIABILITY

The Depository understands the Treasurer does not assume any liability for acts or omissions of the Depository. This liability rests solely with the Depository. The Depository shall be liable to the Treasurer for actual and compensatory damages that are available to the Treasurer in law or remedies in equity.

15. INDEMNIFICATION

The Depository shall indemnify and hold the Treasurer harmless from and against any and all losses, including but not limited to, losses due to the Depository's negligent acts or omissions or willful misconduct of the Depository, its employees, or its agents.

16. ACCESS TO INFORMATION

During the term of this Agreement, and thereafter, for seven (7) years after the termination of this Agreement, the Depository shall promptly provide the Treasurer, upon request, access to all

files, records, documents, data, copies of instruments, reports, and records, and any other information maintained pursuant to this Agreement, regardless of how that information is stored. The information shall be provided in a form acceptable to the Treasurer.

17. DUE AUTHORIZATION

This Agreement is entered into pursuant to due authorization by the Board of Directors of said Depository.

18. CERTIFICATE OF INCUMBENCY

The Depository shall provide the Treasurer with an executed certificate of incumbency, in the general form set forth in the application to this Agreement:

- (i) at the execution of this Agreement, and
- (ii) (ii) at any time the authorized persons designated to take action on behalf of the Depository pursuant to this Agreement are changed by the Depository.

19. NOTICES

All notices, demands, consents, or other communications hereunder shall be in writing, and shall be deemed effective when delivered personally or sent by email, or seven (7) business days after being sent by registered or certified mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses or to such other parties as may be specified in writing by the Parties:

Office of the Utah State Treasurer
Attn: Chad Rogers, Accountant
350 N. State Street, Suite 180
Salt Lake City, Utah 84074

20. AFFILIATES DEPOSITORY

The Depository and its affiliates will perform the necessary functions to provide the services covered under this Agreement to the same extent that the Depository uses such affiliates to provide services to its customers generally; provided however, that the Depository agrees that it shall remain the named depository bank or lender on any acts or omissions of any affiliate under this Agreement to the same extent as the Depository would be responsible for such acts or omissions under the Agreement if the Depository itself had so acted or failed to act. The Depository's use of affiliates shall not relieve the Depository of its obligations or responsibilities under the Agreement.

21. RECORD RETENTION AND AUDIT

The Depository shall maintain books, records, and supporting documents related to this Agreement or needed for the state to conduct an audit, including those necessary to verify the qualifications for participation in the Program, amounts, recipients, and uses of all disbursements of funds, for a minimum of seven (7) years from the last action on the Agreement. All books,

records, and supporting documents shall be available for review and audit by the State Auditor and the Treasurer. The Depository agrees to cooperate fully with any audit conducted by the State Auditor or the Treasurer and to provide full access to all materials requested. If any litigation or claim involving this Agreement has been filed or any audit commenced before the expiration of the seven (7) year period, the Depository shall maintain the records required by this Section until completion of the litigation or claim and resolution of all issues that arise from it or until the end of the seven (7) year period, whichever is later. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the Treasurer for the recovery of any calculated subsidy provided to the Depository by the State of Utah in the terms of this deposit agreement as determined by the Treasurer.

22. NO RECOURSE

For any obligation or liability arising pursuant to this Agreement, no recourse may be had for such obligation or liability of the Treasurer of the State of Utah or any employee or official of the Treasurer or the State in his or her personal or individual capacity. The Depository hereby waives all such obligations and liabilities of the Treasurer of the State of Utah and any such employee or official.

23. NOTICE OF ENFORCEMENT ACTION OR REGULATORY PROCEEDING

The Depository hereby agrees to give the Treasurer notice if at any point during the term of the Agreement, Depository, or its officer(s) or principal(s), acting within the scope of their employment, become subject to a consent order, penalty, or receive any other finding of fault as a result of any publicly disclosed enforcement action or other regulatory proceeding by any of the following entities, including any divisions thereof: Securities and Exchange Commission, Department of Justice (including any United States Attorneys' Office), Consumer Financial Protection Bureau, U.S. Department of the Treasury, Federal Deposit Insurance Corporation, any State Attorney General, or the Federal Reserve System. The Depository shall provide the Treasurer such notice within five (5) business days of when the Depository knows or reasonably should have known of the consent order, penalty or finding of fault. The Depository's delivery of notice pursuant to this Section or failure to provide the required notice shall give the Treasurer reason to withdraw the Deposit at any time prior to the Maturity Date without penalty.

24. GOVERNING LAW

This Agreement is governed in all respects by the laws of the State of Utah without regard to conflicts of law principles. Any action by the Depository against the Treasurer can only be brought in a Utah District Court.

25. SEPARATE COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be considered to be one and the same agreement, binding on the Parties hereto, notwithstanding that Parties are not signatories to the same counterpart. The parties agree that an emailed authorized original signature shall be deemed an original and binding on the Parties.

26. ENTIRE AGREEMENT

All Addendums attached hereto are hereby incorporated herein. This Agreement contains the entire agreement of the parties. This Agreement may be changed only by a written amendment signed by both parties.

27. SEVERABILITY

If any provision, or portion thereof, of the Agreement is, or becomes, invalid under any applicable statute or rule of law, it is to be deemed stricken and the rest of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Treasurer and the Depository have executed this Agreement as of the date first above written.

**OFFICE OF THE UTAH STATE
TREASURER**

NAME OF DEPOSITORY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____