

## DEPOSIT AGREEMENT

The items set forth in this form of Deposit Agreement must be included in any agreement submitted for this Department's approval pursuant to Banking Law Sections 591 (4) or 591-a. Any changes, additions or deletions from this form must be clearly marked on a copy of the agreement.

**DEPOSIT AGREEMENT** dated , \_\_\_\_\_ 20 \_\_\_\_\_  
(the "Agreement") between \_\_\_\_\_ (the "Depository"), and  
\_\_\_\_\_  
\_\_\_\_\_  
(the "Licensed Mortgage Banker" or the  
"Registered Mortgage Broker").

### **WITNESSETH: WHEREAS, /RECITALS---/**

**NOW, THEREFORE**, the Licensed Mortgage Banker or Registered Mortgage Broker and the Depository hereby agree as follows:

1. Under the terms of the Agreement, the Depository agrees to accept deposits of securities, funds and other assets from the Licensed Mortgage Banker or Registered Mortgage Broker, as the case may be, from time to time until termination of the Agreement as hereinafter provided. No deposit by the Licensed Mortgage Banker or Registered Mortgage Broker with the Depository shall be made pursuant to this Agreement until approval of the Agreement by the Superintendent of Financial Services ("Superintendent") has been obtained.

2. All securities, funds and other assets so deposited by the Licensed Mortgage Banker or Registered Mortgage Broker with the Depository, and any other securities, funds and other assets deposited by the Licensed Mortgage Banker or Registered Mortgage Broker with the Depository in exchange for or in addition to such securities, funds and other assets shall be held by the Depository as a special deposit free of any lien, charge, right of set-off, credit or preference in connection with any claim of the Depository against the Licensed Mortgage Banker or Registered Mortgage Broker. The Depository shall not accept, as a deposit by the Licensed Mortgage Banker or Registered Mortgage Broker pursuant to the Agreement, any asset that is not accompanied by the documentation necessary to facilitate the transfer of title.

3. The securities, any proceeds therefrom, the funds and other assets deposited pursuant to this Agreement shall constitute a trust fund to be used exclusively by the Superintendent to reimburse consumer fees or other charges determined by the Superintendent to be improperly charged or collected and to pay past due Department of Financial Services' examination costs and assessments charged to the Licensed Mortgage Banker or Registered Mortgage Broker, unpaid penalties, or other obligations of the Licensed Mortgage Banker or Registered Mortgage Broker in the event of the insolvency, liquidation or bankruptcy of such Licensed Mortgage Banker or Registered Mortgage Broker, or the surrender,

expiration or revocation of such mortgage banker's license or mortgage broker's registration, or where the Superintendent takes possession of such Licensed Mortgage Banker or Registered Mortgage Broker. In the event of the bankruptcy, insolvency or liquidation of the Licensed Mortgage Banker or Registered Mortgage Broker, or the surrender, expiration or revocation of such mortgage banker's license or mortgage broker's registration, or where the Superintendent takes possession of such Licensed Mortgage Banker or Registered Mortgage Broker, the Depository shall, upon the order of the Superintendent, forthwith deliver the securities, any proceeds therefrom, the funds and other assets held by it pursuant to this Agreement to the Superintendent for disposition in accordance with the applicable provisions of the Banking Law.

4. The Depository shall furnish to the Licensed Mortgage Banker or Registered Mortgage Broker, upon the deposit of any securities, funds and other assets by the Licensed Mortgage Banker or Registered Mortgage Broker under the Agreement, a receipt or statement evidencing such deposit, and shall promptly transmit to the Superintendent a copy thereof. Such receipt or statement shall identify the deposit as having been made under the Agreement by the Licensed Mortgage Banker pursuant to subdivision 4 of Section 591 of the Banking Law or pursuant to Section 591-a of the Banking Law for a Registered Mortgage Broker, and shall specify, with respect to each security so deposited, the complete title thereof, interest rate, series, serial number (if any), maturity date, call date and principal amount of each such security, and shall specify the aggregate principal amount of all such securities.

5. Until receipt by the Depository of an Order of the Superintendent revoking such authority, the Depository may pay to or upon the order of the Licensed Mortgage Banker or Registered Mortgage Broker any interest and/or dividends earned from the securities, funds or other assets deposited by the Licensed Mortgage Banker or Registered Mortgage Broker under this Agreement, as such interest or dividends may be received or collected by the Depository, and for such purpose may detach maturing coupons and forward such coupons to the Licensed Mortgage Banker or Registered Mortgage Broker, or collect the proceeds of such coupons and pay or credit the same to the account of the Licensed Mortgage Banker or Registered Mortgage Broker with the Depository, as the Licensed Mortgage Banker or Registered Mortgage Broker and the Depository may agree.

6. The Depository shall release to the Licensed Mortgage Banker or Registered Mortgage Broker from time to time upon receipt of the certificate of the Licensed Mortgage Banker or Registered Mortgage Broker, which certificate shall be accompanied by a written Order of consent of the Superintendent, any of the securities, funds and other assets previously deposited by the Licensed Mortgage Banker or Registered Mortgage Broker under the Agreement, provided the Licensed Mortgage Banker or Registered Mortgage Broker shall, at the time of such release, deposit with the Depository, subject to the Agreement, other funds, securities or other assets of an aggregate amount (based in the case of such securities upon principal amount or market value, whichever is lower) of not less than the aggregate amount similarly computed of the securities or funds so withdrawn. Said certificate shall specify (a) the complete title of each security being withdrawn, (b) the complete title of each security being deposited in

place thereof, (c) the interest rate, series, serial number (if any), face value, maturity date, call date, principal amount and market value of each replacement security, (d) the aggregate principal amount of all such replacement securities, and (e) the amount, if any, of the funds being withdrawn or deposited. In addition, the certificate shall certify to the Depository that any securities or other assets being deposited in exchange for securities or other assets being withdrawn comply as to type with the provisions of subdivision 4 of Section 591 of the Banking Law for a Licensed Mortgage Banker or Section 591-a of the Banking Law for a Registered Mortgage Broker and that, after giving effect to the exchange, the aggregate amount of all securities, funds and other assets remaining on deposit by the Licensed Mortgage Banker or Registered Mortgage Broker, based in the case of such securities upon the principal amount or market value, whichever is lower, is at least equal to \$ \_\_\_\_\_.<sup>1</sup> The Licensed Mortgage Banker or Registered Mortgage Broker hereby agrees to immediately furnish to the Superintendent a copy of its receipt to the Depository for securities, funds or other assets released by the Depository pursuant to this Paragraph 6. The right to exchange securities or other assets herein provided may be suspended or terminated by order of the Superintendent.

7. Notwithstanding the provisions of Paragraph 6, the Depository is authorized, by written Order of the Superintendent, to release to the Licensed Mortgage Banker or Registered Mortgage Broker such part of the securities, funds or other assets deposited by it as such Order may specify, without requiring as a condition to such release the deposit by the Licensed Mortgage Banker or Registered Mortgage Broker of any other securities, funds or other assets, except as such Order may provide.

8. Except as provided below, the Depository shall hold the securities deposited by the Licensed Mortgage Banker or Registered Mortgage Broker under the Agreement separate and apart from all other securities and shall permit examination and comparison thereof from time to time by duly designated representatives of the Licensed Mortgage Banker or Registered Mortgage Broker or of the Superintendent. The depository may register any security held by it in its own name or in the name of a nominee or in bearer form and may utilize a central depository, clearing corporation or book entry system to hold securities deposited pursuant to an Agreement provided that the records of the central depository, clearing corporation or book entry system show that the securities are held for the Depository as principal or as custodian of its customers. The Depository shall maintain adequate records to demonstrate the disposition of such book entry deposits.

9. The Depository hereby agrees to give to the safekeeping, handling and shipment of securities deposited with it by the Licensed Mortgage Banker or Registered Mortgage Broker the same degree of care given by the Depository to the safekeeping, handling and shipment by the Depository of its own securities.

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<sup>1</sup> The required amount of the deposit is based on the volume of business of the licensee or registrant, as set forth in Section 410.9 for mortgage bankers or Section 410.15 for mortgage brokers of Part 410 of the Superintendent's Regulations.

10. The Superintendent shall not be required to pay for any services rendered or any expenses incurred by the Depository or the Licensed Mortgage Banker or Registered Mortgage Broker under or in connection with the Agreement.

11. The Licensed Mortgage Banker or Registered Mortgage Broker or the Depository may terminate the Agreement by giving the other party thereto at least sixty (60) days written notice of such termination, or such shorter notice as the Superintendent may approve, provided, that no termination by the Licensed Mortgage Banker or Registered Mortgage Broker or the Depository shall be effective until (a) another depository has been designated by the Licensed Mortgage Banker or Registered Mortgage Broker; (b) such other depository has been approved by Order of the Superintendent; (c) a deposit agreement has been executed in a form acceptable to the Superintendent; and (d) the Depository has released to the Licensed Mortgage Banker or Registered Mortgage Broker all securities, funds or other assets on deposit in accordance with written instructions from the Licensed Mortgage Banker or Registered Mortgage Broker, approved by Order of the Superintendent.

12. If the conditions provided in clauses (a), (b), (c) and (d) of Paragraph 11 hereof are not met within sixty (60) days after the giving of written notice of termination, or such shorter period as the Superintendent has by Order approved, the Superintendent may order the Depository to release such securities or funds on such terms as may be specified in such Order, and in such case shall furnish a copy of such Order to the Licensed Mortgage Banker or Registered Mortgage Broker. The depository shall in such case release the securities and funds upon the terms so specified, and the Agreement shall terminate upon such release.

13. For the purposes of the Agreement an "Order of the Superintendent" shall mean any written communication with the seal of the New York State Department of Financial Services affixed thereto and signed (a) by the Superintendent or (b) by any Deputy Superintendent of Financial Services of the State of New York or (c) jointly by any two employees of the New York State Department of Financial Services who may be designated to the Depository or the Licensed Mortgage Banker or Registered Mortgage Broker (whichever is the addressee of such communication) from time to time in writing for such purpose by the Superintendent.

14. The Depository shall furnish the Licensed Mortgage Banker or Registered Mortgage Broker, at least once in each calendar month, a statement in writing, with a copy thereof to the Superintendent. Intermediate statements shall be furnished by the Depository to the Superintendent upon his/her request, setting forth (a) such items of information relating to all the securities or other assets being held by the Depository under the Agreement as are specified in Paragraph 4 of the Agreement, (b) the dollar amount of all funds on deposit with the Depository under the Agreement and (c) a complete description of any other assets.

15. The Superintendent may by Order relieve the Licensed Mortgage Banker or Registered Mortgage Broker or the Depository from compliance with any term or condition of the Agreement if he/she

shall find such action necessary or proper to effectuate the purposes of subdivision 4 of Section 591 or Section 591-a of the Banking Law.

16. All written communications provided for hereunder, if to the Depository shall be mailed or delivered to it at ; if to the Licensed Mortgage Banker or Registered Mortgage Broker to ; and if to the Superintendent, to the Mortgage Banking, New York State Department of Financial Services, One State Street, New York, New York 10004-1511.

17. The Agreement has been made and is to be performed in the State of New York and is governed by the laws of said State. The Agreement may not be modified or waived orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought and the Superintendent.

**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.**

**Name of Licensed Mortgage Banker or Registered Mortgage Broker**

**BY** \_\_\_\_\_  
**Name of Officer & Title**

**Name of Depository** \_\_\_\_\_

**BY** \_\_\_\_\_  
**Name of Officer & Title**

**The above Deposit Agreement is satisfactory in form to the Superintendent of Financial Services of the State of New York and is approved as the Depository hereunder.**

**Superintendent of Financial Services of the State of New York**

**By** \_\_\_\_\_  
**Rholda L. Ricketts, Deputy Superintendent**

**Dated** \_\_\_\_\_