

Item 16



Travis County Commissioners Court Agenda Request

Meeting Date: May 7, 2013

Prepared By/Phone Number: Deborah Lauder milk/(512) 854-9779

Elected/Appointed Official/Dept. Head: Leslie Browder *LB*

Commissioners Court Sponsor: Judge Samuel T. Biscoe

AGENDA LANGUAGE:

Consider and take appropriate action to approve a Securities Lending Agreement between Frost Bank and Travis County

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Memorandum is attached

STAFF RECOMMENDATIONS:

Staff recommends approval of Securities Lending Agreement between Frost Bank and Travis County. See attached memo.

ISSUES AND OPPORTUNITIES:

Attached

FISCAL IMPACT AND SOURCE OF FUNDING:

None

REQUIRED AUTHORIZATIONS:

Planning and Budget Office (854-9106)

County Attorney's Office (854-9415)

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to David Salazar in the County Judge's office, agenda@co.travis.tx.us by **Tuesdays at 5:00 p.m.** for the next week's meeting.



CASH AND INVESTMENT MANAGEMENT SERVICES
TRAVIS COUNTY, TEXAS

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DATE: May 2, 2013

TO: Samuel T. Biscoe, County Judge
Ron Davis, Commissioner, Precinct 1
Sarah Eckhardt, Commissioner, Precinct 2
Gerald Daugherty, Commissioner, Precinct 3
Margaret J. Gomez, Commissioner, Precinct 4

FROM: Deborah A. Laudermilk, Investment Manager *DL*

RE: Request for Approval of Securities Lending Agreement
Commissioners Court Voting Session on May 7, 2013

Proposed Motion:

Consider and take appropriate action to approve a Securities Lending agreement between Frost Bank and Travis County.

Summary:

Securities lending describes the common market practice by which securities are transferred temporarily from one party (the lender) to another (the borrower) with the borrower obligated to return them (or equivalent securities) either on demand or at the end of any agreed term. Usually the borrower collateralizes the transaction with cash or other securities of equal or greater value than the lent securities, in order to protect the lender against counterparty credit risk. The most common reason to borrow securities is to cover a short position in an investment transaction – the seller is obliged to deliver a security to a buyer, and will have to borrow it from a willing lender. At the end of the agreement, the seller will have to return an equivalent security to the lender. Borrowing securities in this manner can sometimes as part of an investor's trading strategy or can be used as a strategy to avoid the fees associated with a failed settlement.

On September 16, 2011, after careful consideration and discussion with our investment advisors, the Travis County Investment Advisory Board voted to add securities lending to the Travis County Investment Policy and Procedures. The Investment Advisory Board is composed of two Travis County Commissioners, the County Treasurer and six outside investment professionals who are very knowledgeable about the type of investing that Travis County is allowed to perform under State law. The amendment that included securities lending as an eligible investment in the Travis County Investment Policy and Procedures was approved by the Travis County Commissioners Court on September 27, 2011.

Securities lending was added as an eligible investment to provide Travis County investment managers with another avenue to obtain additional income for the investment portfolio with minimal risk. Under the terms of the agreement, the Travis County investment portfolio will be continuously evaluated by Frost Bank to determine if there are securities owned by Travis County that would be of interest to the list of approved investment brokers with whom Frost has signed lending agreements. The securities would be lent on a short-term basis and Travis County will always retain full ownership of the security. The security that is on loan can be called back at any time by Travis County and is fully collateralized by the borrower

with one of the eligible investments according to the Travis County Investment Policy. Travis County also retains sole access to the collateral until the security that was lent is returned. The additional income that Travis County can make from securities lending is derived from the fees that the borrower must pay on the collateral that is provided by the borrower. This program is monitored on a daily basis and all lending is evaluated on a daily basis also in order to limit any potential financial market changes from impacting the program.

Putting in place the Securities Lending Agreement with Frost Bank has the potential to add significant yield/ interest income to the Travis County investment portfolio. In today's low interest rate environment, every opportunity to safely increase the yield of the portfolio should be considered. Securities lending is a program that can be utilized when the financial markets have an increasing need for securities like Travis County holds.

Frost Bank as the lending agent would show the County's portfolio of securities to their short list of well-known approved brokers. These brokers have signed a Master Securities Loan agreement with Frost Bank, only after meeting strict financial requirements that are thoroughly analyzed by the bank. We have reviewed the firms on Frost Bank's approved list of brokers and they are all brokers that Travis County investment managers would have recommended for approval if they were to apply during our annual review process. These brokers may borrow securities for a variety of reasons that may include failed investment transactions, short sales, arbitrage strategies, options/hedging strategies, and broker financing. As indicated previously, the loans are short-term in nature and can be terminated at any time by either the lender or the borrower. The borrower must provide 102% in collateral for each loan and the collateral level is monitored by Frost Bank on a daily basis to make sure that the collateral remains above the 102% level. If the collateral is another security, it is held by Frost Bank for a fee on behalf of Travis County until the loaned security has been returned. If the collateral is cash, then the cash is invested in short-term money market instruments. In this investment environment, it is unlikely that cash collateral would be used by the borrower as collateral. Frost Bank has proposed a sharing of all revenues earned by lending Travis County's securities in a 40/60 split, with Travis County receiving 60% of the revenues earned.

Issues:

As in nearly every financial transaction there is risk. The three types of risk are operational risk, borrower/broker risk and investment risk. As indicated previously, these risks are minimal and Travis County investment managers will be working closely with Frost Bank to monitor market conditions and broker status. In addition, a key condition under the agreement is that Travis County retains sole access to the collateral until the security that was lent is returned.

Operational risk is the risk that loaned securities might not be returned to the lender in time to make delivery for sale. This is unlikely to occur since Travis County rarely sells a security before it matures or is called by the issuer. The risk of missing a corporate action/income payment is mitigated by Frost Bank's integrated securities lending, custody and depository environment, comprehensive management reporting and reallocation capabilities.

Broker risk is the possibility of default while the loan is outstanding. This is mitigated by the rigorous financial review of each broker, as well as the excess collateralization requirements under the proposed agreement.

Investment risk consists of credit risk, interest rate risk and liquidity risk. These risks are mitigated by accepting only those assets as collateral that are of the highest rating and diversification/concentration limits. Other mitigation techniques include performing stress tests on the portfolio, as well as gap analysis. Finally, managing the weighted average maturity to stay within 90 days and keeping the maximum maturity of a single issue at less than 13 months addresses liquidity objectives.

Budgetary:

All revenues will be shared by Frost Bank and Travis County. There would be no budgetary impact from this agreement.

Recommendation:

Approve Securities Lending Agreement between Frost Bank and Travis County, as presented, to become effective upon approval by Travis County Commissioners Court.

Attachment:

A – Agreement Authorizing Frost Bank to Act as Lender's Agent in Lending Securities

cc:

Leslie Browder, County Executive, Planning & Budget
Cyd Grimes, Purchasing Agent
Dolores Ortega-Carter, County Treasurer
Nicki Riley, County Auditor
Jessica Rio, Budget Director
Barbara Wilson, County Attorney's Office
Investment Advisory Committee

Attachment A



**AGREEMENT AUTHORIZING FROST BANK
TO ACT AS LENDER'S AGENT IN LENDING SECURITIES**

This Agreement is made this 26th day of March, 2013, (this "Agreement") between **Frost Bank** (hereinafter sometimes referred to as "Lender's Agent") and **Travis County, Texas**, (hereafter referred to as "Lender"), sets out the terms under which Lender's Agent is authorized to act as agent for Lender in connection with loans of securities held in accounts of Lender at the Federal Reserve and or a designated custodian identified to Lender's Agent by Lender.

1. Securities Loan Agreements; Loans of Securities Thereunder; Other Definitions.

(a) Lender hereby authorizes Lender's Agent, as agent for Lender, to enter into and perform a securities loan agreement (or to utilize an existing securities loan agreement) with any one or more of the Borrowers listed on Annex A hereto (as such Annex may be amended in writing signed by Lender and Lender's Agent from time to time). Each such agreement is herein called a "Securities Loan Agreement" and shall be substantially in the form of Annex B hereto, with only such changes thereto as Lender's Agent in good faith believes to be in Lender's best interest and compliant with the Texas Public Funds Investment Act (the "PFIA"). Lender also hereby authorizes Lender's Agent, as agent for Lender, to enter into and perform transactions under Securities Loan Agreement under which securities of Lender are loaned for a period of one year or less against the delivery of collateral, all in strict compliance with the PFIA, including in particular section 2256.0115 thereof, which is restated in Annex E. Lender's Agent shall have the right to decline to make any loans of securities under any such Securities Loan Agreement and to discontinue lending under any such Securities Loan Agreement in Lender's Agent's discretion and without prior notice to Lender.

(b) Certain terms used herein and in the Securities Loan Agreements, each of which is capitalized, are defined in Paragraph 13 hereof or Section 25 of the form of the Securities Loan Agreement attached hereto as Annex B. All capitalized terms used herein that are not defined herein shall have the same meaning as they have in Annex B. References herein to a Section of a Securities Loan Agreement refer to the section thereof corresponding to the referred section of Annex B.

2. Selection and Delivery of Loan Securities; Receipt of Collateral.

Lender's Agent may, as more fully provided below and subject to Section 1(a) of this Agreement:

(a) from time to time deliver to the Borrower named in any Securities Loan Agreement such securities held in Lender's account as Lender's Agent may, in its discretion, select, it being understood that in each case Lender's Agent will give prompt notice thereof to the Lender or such other party as Lender may designate; and

(b) receive from the Borrower such Collateral as is described in section 2256.0115(b)(3) of the PFIA and Lender's Agent may require having a market value in an amount at least equal to the Margin Percentage (as referred to in Annex B, paragraph 25.37) of the market value of the securities so loaned to such Borrower, and that Margin Percentage shall not be less than 102% of the Market Value of the Loaned Securities plus accrued income at the onset of any loan and 100% of the Market Value of the Loaned Securities at any time during the tenure of any loan as required by section 2256.0115(b)(1) of the PFIA. In the event the Market Value of the Collateral for any individual loan falls below 102% of the Market Value of the Loaned Securities, Lender's Agent shall request additional eligible Collateral to bring the Market Value of the Collateral back to 102% of the Market Value of the Loaned Securities.

3. Obligation of Lender's Agent to Deliver Distributions on and Return Loaned Securities.

(a) Whether or not the Borrower under any Securities Loan Agreement pays and delivers Distributions on Loaned Securities (or the equivalent of such Distributions) as provided in such Securities Loan Agreement, Lender's Agent agrees to obtain and deliver the same to Lender.

(b) Lender's Agent is authorized to use a money market sweep for Revenue in its possession until the Revenue can be reconciled and operationally posted to Lender's account. Lender's Agent is entitled to retain any amount generated by the use of such a money market sweep. Lender's Agent will credit to Lender's account Lender's share (determined in accordance with Annex D) of all Revenue actually received by Lender's Agent from the Borrower for the account of Lender as soon as practicable and in any event within 10 business days following the month end of receipt, subject to Section 8 hereof.

(c) Lender's Agent will, and is hereby exclusively authorized, (i) to hold and dispose of all securities pledged under each Securities Loan Agreement in accordance with the provisions of Section 13.1(b) of such Securities Loan Agreement and (ii) to make all drawings permitted by all letters of credit held under each Securities Loan Agreement and apply the proceeds thereof in accordance with the provisions of Section 13.1(c) of such Agreement, to the satisfaction of Borrower's liabilities thereunder.

(d) Upon termination of all Loans pursuant to Section 6 of any Securities Loan Agreement, Lender's Agent agrees to transfer or pay to Lender, in good deliverable form, certificates for all the Loaned Securities under such Agreement as of the time of such termination (or certificates for identical or equivalent securities) and any Distribution (or the equivalent thereof) which would have been delivered to Lender on or with respect to such Loaned Securities if they had not become Loaned Securities and which is not otherwise so delivered. Such transfer and any such payment shall be made as soon as practicable after such termination and the making of payment due Lender's Agent under the Securities Loan Agreement.

(e) All incremental transaction costs, overdraft collection expenses, damages, liabilities or other claims incurred by Lender as a result of the failure of Lender's Agent to secure the timely return of Loaned Securities pursuant to any Securities Loan Agreement effected pursuant hereto shall be borne by Lender's Agent, provided that such costs, expenses, damages, liabilities or claims are not the result of Lender's failure to give timely notice to Lender's Agent regarding a pending trade or capital change involving the Loaned Security.

4. Indemnification and Subrogation.

(a) If the Borrower in respect of any loan of securities effected pursuant hereto causes a Default under Section 12 of any Securities Loan Agreement or the Borrower has failed to transfer amounts in respect of a Distribution with respect to some or all of the loaned securities, then Lender's Agent shall at its expense (subject to Paragraph 4(c) hereof) as soon as practicable after the Due Date, undertake the following: (i) with respect to Distributions in the form of cash, Lender's Agent shall credit to Lender's account the full amount of such Distributions but not more than 30 days after the Distribution and (ii) with respect to Distributions in the form of securities, Lender's Agent shall, at its option, either purchase replacement securities (of an equal amount of the same issue, class, type or series as the Distribution on the Due Date) or credit Lender's account with the market value of the Distribution not more than 30 days after the Distribution.

(b) If the Borrower in respect of any loan of securities effected pursuant hereto causes a Default under Section 12 of any Securities Loan Agreement with respect to some or all of the Loaned Securities by not returning such Loaned Securities to Lender's Agent for Lender's account when due (the "Return Date") in accordance with such Securities Loan Agreement, then Lender's Agent shall, at its option and its expense (subject to Paragraph 4(c) hereof), as described in Paragraph 3 hereof, either purchase replacement securities (of an equal amount of the same issue, class, type or series as the loaned securities) on the principal market in which such securities are traded or credit Lender's account with the Market Value of such Loaned Securities on the Return Date.

(c) If, as the result of the occurrence of any event as specified in paragraph (a) or (b) above, Lender's Agent effects any purchase of securities for, or delivery to, Lender's account at the Federal Reserve or designated custodian in respect of a loan of securities, Lender agrees that, upon delivery of such purchased securities to Lender, Lender's Agent shall be subrogated to, and Lender shall assign and be deemed to have assigned to Lender's Agent, all of Lender's rights in, to and against the Borrower (and any guarantor thereof) in respect of such loan, any Collateral pledged by the Borrower in respect of such loan (including any letters of credit and the issuers thereof), the Distributions (in the case of Paragraph (a) above), and all proceeds of such Collateral and such Distributions, and contemporaneous with Lender's Agent effecting any purchase of Securities for, or delivery to, Lender's account at the Federal Reserve or designated

custodian, as aforesaid, Lender agrees that Lender's Agent shall have the right, among other things to sell, dispose or otherwise liquidate in any manner deemed reasonable by Lender's Agent any or all of such Collateral (including drawing upon any such letter of credit). In the event that Lender receives or is credited with any payment, benefit or value from or on behalf of the Borrower in respect of rights to which Lender's Agent is subrogated as provided herein, Lender agrees to remit promptly or pay the same to Lender's Agent.

5. Marks to Market. Lender's Agent shall price each Loan Security daily using the closing valuation as of the prior business day. The Lender's Agent shall use a pricing service to obtain market valuation. If the Market Value of the given collateral falls below 102% of the Market Value of the Loan Security plus accrued interest (to the extent not included in Market Value), the Lender's Agent shall request additional collateral from the Borrower to bring the collateralization back to 102% of the Market Value of any securities loaned. Lenders Agent shall exercise the rights afforded to Lender under Section 9 of the Securities Loan Agreement.

6. Investment and Disposition of Collateral.

(a) Lender gives Lender's Agent exclusive authority and discretion to take or refrain from taking any and all actions which Lender, Lender's Agent, or any other agent of Lender might take under or with respect to any Securities Loan Agreement entered into by Lender's Agent or any subject matter of such Agreement, except that Lender's Agent agrees to give any notice of termination pursuant to Section 6 of such Agreement which Lender requests Lender's Agent to give.

(b) Cash Collateral may be invested by Lender's Agent, in any one or more of the types of investments described in Annex C hereto in compliance with the PFIA, section 2256.0115, as amended, in the discretion of Lender's Agent. In making such investments, Lender's Agent may commingle the Collateral received from any Borrower with Lender's own assets or with Collateral received on behalf of Lender from other Borrowers under other Securities Loan Agreements, but Lender's Agent may not commingle the Collateral received on behalf of Lender with Lender's Agent's own assets or other lender's assets or with the Collateral received by Lender's Agent on behalf of other lenders under other securities loan agreements except when Lender's Loans are part of larger Loan transactions to realize economies of scale. In the event of such commingling, records and accounts shall be maintained which shall at all times reflect the proportion applicable to each loan and Lender's assets in the commingled investments and Collateral. Such interests of Lender may not be assigned or transferred except in accordance with this Agreement and the Securities Loan Agreements. Nothing in this paragraph shall prohibit the deposit or investment of Lender's assets or Cash Collateral with the Federal Reserve or other depositories, banks, or custodians together with Lender's Agent's or its customers funds, provided that Lender's Agent maintains strict records of each such deposit or investment credited to the account of Lender.

(c) Lender's Agent agrees to give Lender notice as promptly as practicable of any termination of any Loans pursuant to any Securities Loan Agreement.

7. Payment of Fees. Lender's Agent is authorized to pay on behalf of Lender any Cash Collateral Fees due to the Borrower under Section 5 of any Securities Loan Agreement, in respect of loans made by Lender's Agent on behalf of Lender.

8. Lender's Agent's Compensation. Lender's Agent shall be entitled to retain for its own account the portion of Revenue earned under the Securities Loan Agreements and on Cash Collateral applicable thereto that is identified in Annex D hereto as Lender's Agent's share in addition to the amounts which it may retain in accordance with Section 3(b) above. Lender's Agent shall receive no other compensation from Lender for the services of Lender's Agent provided hereunder.

9. Recourse for Lender Payments; Lien on Lender's Collateral. All amounts that Lender's Agent believes to be payable by Lender to Lender's Agent under Section 15 hereof may be retained from the gross revenue received by Lender's Agent for the benefit of Lender under the Securities Loan Agreements that is remitted or otherwise credited to Lender hereunder until the amount payable is agreed upon or any dispute is resolved and, until such time, Lender's Agent shall hold such amounts in trust. Under no circumstance shall the total amounts payable by Lender to Lender's Agent hereunder in any fiscal year of Lender exceed the gross revenue received by Lender's Agent for the benefit of Lender under the Securities Loan Agreements in such fiscal year, and all recourse of Lender to Lender's Agent hereunder shall be limited to such gross revenue.

10. Compliance with Regulation U; Form U-1. If requested by Lender's Agent, Lender shall furnish a Federal Reserve Form U-1, properly completed and conforming to the requirements of such Regulation U, relating to the use of the Collateral.

11. Lender's Agent as Creditor, etc. Lender's Agent shall not enter into any relationship with any Borrower or any broker-dealer or creditor or customer of any Borrower that conflicts with its fiduciary duties to Lender under this Agreement. As long as it does not and will not conflict with its fiduciary duties to Lender under this Agreement, Lender's Agent may, through its commercial, trust or other departments, be a creditor for its own account of, or represent in a fiduciary or any other capacity, any Borrower, any other broker-dealer, or any other creditors or customers of any of the foregoing.

12. Reports. Lender's Agent shall provide to Lender monthly reports and such reports regarding its securities lending activities on behalf of Lender, as Lender shall reasonably request.

13. Definitions. For the purposes hereof.

“Available Securities” shall mean the securities of Lender that are available for loans pursuant to Section 3 hereof.

“Borrower” shall mean a broker-dealer listed in Annex A hereto (as such Annex may be amended in writing from time to time and signed by Lender and by Lender’s Agent) which has entered into a Securities Loan Agreement with Lender’s Agent.

“Distribution” shall mean all dividends and other distributions made on or with respect to any Loaned Securities, or any securities which, at the time of such dividend or distribution, constitute Collateral, under a Securities Loan Agreement, including cash, stock or property dividends or distributions, securities received as a result of split-ups of Loaned Securities and distributions in respect thereof, interest payments and subscription rights and, if a record date is established for any such dividend or distribution on any Loaned Security and the certificate for such Loaned Security (or an identical security) has been delivered and returned under such Securities Loan Agreement under circumstances whereby Lender’s Agent or its nominee does not become the record holder of such certificate as of such record date, all dividend and distributions that Lender’s Agent would have received if it had been such record holder.

“Due Date” shall mean the date on which a trade in the Loaned Security which is the subject of a loan would ordinarily settle.

“Lender” shall mean each of the separate subsidiaries and affiliates of Travis County , Texas that are listed in Appendix A, and such additional entities as may be agreed upon in writing from time to time. Each entity is deemed to be a separate Lender for purposes of this Agreement.

“Lender’s Agent” shall mean Frost Bank, in its capacity as agent for Lender. Whether or not expressly provided in a Securities Loan Agreement in compliance with this Agreement, all rights and powers of Lender provided for therein or by law with respect to any part of such Securities Loan Agreement may be exercised by Frost Bank as such Lender’s Agent.

“Revenues” shall have the meaning stated in Annex D hereto.

14. Term and Termination.

(a) The term of this Agreement commences on the date when executed by both parties and terminates one year after that date, provided, however, that the term of this Agreement shall be extended for an additional year on each anniversary of such execution unless then terminated by either Lender or Lender’s Agent by written notice given to the other party at least 30 days prior to such anniversary.

(b) This Agreement may be terminated at any time by either party hereto by delivering to the other party not later than 10:00 a.m. on any Business Day a written notice of termination at least five Business Days' prior to the effective date of termination. If any such notice of termination is delivered, Lender's Agent agrees to give the Borrower under each Securities Loan Agreement notice terminating such Agreement and, if directed by Lender, terminate any loans outstanding under such Agreement with respect to Lender at the same time this Agreement will terminate. The sole effects of any termination shall be that Lender's Agent will make no further Loans on behalf of Lender under any Securities Loan Agreement, and this Agreement will continue in full force and effect in all other respects as long as there are Loans made before termination that are subsisting or for which Default has not been cured or remedied by Lender's Agent. Thereafter this Agreement shall terminate in full.

(c) Lender's Agent agrees to give notice as promptly as practicable to Lender if, other than pursuant to the request of Lender, Lender's Agent gives, or if Lender's Agent receives, notice of termination of any Securities Loan Agreement.

15. Standard of Care. Subject to the requirements of applicable law, including the PFIA, Lender's Agent shall not be liable for any loss or damage, including reasonable counsel fees and court costs, unless the loss or damage arises out of Lender's Agent's own negligence, willful misfeasance or breach of fiduciary duty. Except for any liability, loss, or expense arising from or connected with Lender's Agent's own negligence, willful misfeasance or breach of fiduciary duty, the Lender bears the risk of and agrees, to the extent permitted by law, to reimburse and hold Lender's Agent harmless from and against any liability, loss and expense, including counsel fees and expenses and court costs, arising in connection with this Agreement or any loan of securities or arising from or connected with claims of any third parties, including any Borrower, or from and against all taxes and other governmental charges. Without limiting the generality of the foregoing, Lender agrees: (i) that Lender's Agent shall not be responsible for any statements, representations or warranties which any Borrower makes in connection with any Loans hereunder if Lender's has not repeated those statements or has made it clear at the time of repeating them that they are the Borrower's statements and not those of Lender's Agent, or for the performance by any Borrower of the terms of any Loan, or any agreement related thereto, except as otherwise expressly provided in this Agreement and (ii) that Lender's Agent shall be fully protected in acting in accordance with the oral or written instructions of any person that Lender's governing body has authorized to execute or implement this Agreement on behalf of Lender.

The Lender acknowledges that Lender's Agent administers securities lending programs for other clients of Lender's Agent. Lender's Agent will allocate securities lending opportunities among its clients, using reasonable and equitable methods established by Lender's Agent from time to time. Lender's Agent does not represent or warrant that any amount or percentage of securities of Lender will in fact be loaned to the Borrowers. Lender agrees that neither it nor the entities for which it is acting as agent, if any, shall have a claim against Lender's Agent and Lender's Agent shall have no liability

arising from, based on, or relating to, loans made for other clients of Lender's Agent, or loan opportunities refused hereunder, whether or not Lender's Agent has made fewer or more loans for any other client, and whether or not any loan for another client, or the opportunity refused, could have resulted in loans made under this Agreement.

16. Amendments. This Agreement, including the Appendix and Annexes to it, may be amended only pursuant to a written agreement executed by both parties hereto.

17. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Texas, without giving effect to the conflict of laws provisions thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

LENDER:

TRAVIS COUNTY, TEXAS

By _____

LENDER'S AGENT:

FROST BANK, in its
individual capacity as Lender's Agent

By Paul F. Grimm
Paul F. Grimm, Manager Securities Lending

APPENDIX A

LENDING ENTITIES

Travis County, Texas

ANNEX A
APPROVED BORROWERS

Banc of America Securities LLC

Barclays Capital Inc.

Citigroup Global Markets Inc.

Credit Suisse Securities (USA) LLC

Goldman, Sachs & Co., Inc.

ING Financial Markets LLC

J.P. Morgan Securities Inc.

Merrill Lynch Government Securities Inc. and/or Merrill Lynch, Pierce, Fenner and Smith Inc.

Mizuho Securities USA Inc.

Morgan Stanley & Co., Inc.

RBC Capital Markets, LLC

UBS Securities LLC

ANNEX B
SEE ATTACHED



Master Securities Loan Agreement

2000 Version

Dated as of: _____

Between: _____

and _____

1. Applicability.

From time to time the parties hereto may enter into transactions in which one party ("Lender") will lend to the other party ("Borrower") certain Securities (as defined herein) against a transfer of Collateral (as defined herein). Each such transaction shall be referred to herein as a "Loan" and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in an Annex or Schedule hereto and in any other annexes identified herein or therein as applicable hereunder. Capitalized terms not otherwise defined herein shall have the meanings provided in Section 25.

2. Loans of Securities.

2.1 Subject to the terms and conditions of this Agreement, Borrower or Lender may, from time to time, seek to initiate a transaction in which Lender will lend Securities to Borrower. Borrower and Lender shall agree on the terms of each Loan (which terms may be amended during the Loan), including the issuer of the Securities, the amount of Securities to be lent, the basis of compensation, the amount of Collateral to be transferred by Borrower, and any additional terms. Such agreement shall be confirmed (a) by a schedule and receipt listing the Loaned Securities provided by Borrower to Lender in accordance with Section 3.2, (b) through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing. Such confirmation (the "Confirmation"), together with the Agreement, shall constitute conclusive evidence of the terms agreed between Borrower and Lender with respect to the Loan to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any inconsistency between the terms of such Confirmation and this Agreement, this Agreement shall prevail unless each party has executed such Confirmation.

2.2 Notwithstanding any other provision in this Agreement regarding when a Loan commences, unless otherwise agreed, a Loan hereunder shall not occur until the Loaned Securities and the Collateral therefor have been transferred in accordance with Section 15.

3. Transfer of Loaned Securities.

- 3.1 Unless otherwise agreed, Lender shall transfer Loaned Securities to Borrower hereunder on or before the Cutoff Time on the date agreed to by Borrower and Lender for the commencement of the Loan.
- 3.2 Unless otherwise agreed, Borrower shall provide Lender, for each Loan in which Lender is a Customer, with a schedule and receipt listing the Loaned Securities. Such schedule and receipt may consist of (a) a schedule provided to Borrower by Lender and executed and returned by Borrower when the Loaned Securities are received, (b) in the case of Securities transferred through a Clearing Organization which provides transferors with a notice evidencing such transfer, such notice, or (c) a confirmation or other document provided to Lender by Borrower.
- 3.3 Notwithstanding any other provision in this Agreement, the parties hereto agree that they intend the Loans hereunder to be loans of Securities. If, however, any Loan is deemed to be a loan of money by Borrower to Lender, then Borrower shall have, and Lender shall be deemed to have granted, a security interest in the Loaned Securities and the proceeds thereof.

4. Collateral.

- 4.1 Unless otherwise agreed, Borrower shall, prior to or concurrently with the transfer of the Loaned Securities to Borrower, but in no case later than the Close of Business on the day of such transfer, transfer to Lender Collateral with a Market Value at least equal to the Margin Percentage of the Market Value of the Loaned Securities.
- 4.2 The Collateral transferred by Borrower to Lender, as adjusted pursuant to Section 9, shall be security for Borrower's obligations in respect of such Loan and for any other obligations of Borrower to Lender hereunder. Borrower hereby pledges with, assigns to, and grants Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Securities by Lender to Borrower and which shall cease upon the transfer of the Loaned Securities by Borrower to Lender. In addition to the rights and remedies given to Lender hereunder, Lender shall have all the rights and remedies of a secured party under the UCC. It is understood that Lender may use or invest the Collateral, if such consists of cash, at its own risk, but that (unless Lender is a Broker-Dealer) Lender shall, during the term of any Loan hereunder, segregate Collateral from all securities or other assets in its possession. Lender may Retransfer Collateral only (a) if Lender is a Broker-Dealer or (b) in the event of a Default by Borrower. Segregation of Collateral may be accomplished by appropriate identification on the books and records of Lender if it is a "securities intermediary" within the meaning of the UCC.
- 4.3 Except as otherwise provided herein, upon transfer to Lender of the Loaned Securities on the day a Loan is terminated pursuant to Section 6, Lender shall be obligated to transfer the Collateral (as adjusted pursuant to Section 9) to Borrower no later than the Cutoff Time on such day or, if such day is not a day on which a transfer of such Collateral may be effected under Section 15, the next day on which such a transfer may be effected.
- 4.4 If Borrower transfers Collateral to Lender, as provided in Section 4.1, and Lender does not transfer the Loaned Securities to Borrower, Borrower shall have the absolute right to the return of the Collateral; and if Lender transfers Loaned Securities to Borrower and

Borrower does not transfer Collateral to Lender as provided in Section 4.1, Lender shall have the absolute right to the return of the Loaned Securities.

- 4.5 Borrower may, upon reasonable notice to Lender (taking into account all relevant factors, including industry practice, the type of Collateral to be substituted, and the applicable method of transfer), substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall (a) consist only of cash, securities or other property that Borrower and Lender agreed would be acceptable Collateral prior to the Loan or Loans and (b) have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral for Loans in which the party substituting such Collateral is acting as Borrower, shall equal or exceed the agreed upon Margin Percentage of the Market Value of the Loaned Securities.
- 4.6 Prior to the expiration of any letter of credit supporting Borrower's obligations hereunder, Borrower shall, no later than the Extension Deadline, (a) obtain an extension of the expiration of such letter of credit, (b) replace such letter of credit by providing Lender with a substitute letter of credit in an amount at least equal to the amount of the letter of credit for which it is substituted, or (c) transfer such other Collateral to Lender as may be acceptable to Lender.

5. Fees for Loan.

- 5.1 Unless otherwise agreed, (a) Borrower agrees to pay Lender a loan fee (a "Loan Fee"), computed daily on each Loan to the extent such Loan is secured by Collateral other than cash, based on the aggregate Market Value of the Loaned Securities on the day for which such Loan Fee is being computed, and (b) Lender agrees to pay Borrower a fee or rebate (a "Cash Collateral Fee") on Collateral consisting of cash, computed daily based on the amount of cash held by Lender as Collateral, in the case of each of the Loan Fee and the Cash Collateral Fee at such rates as Borrower and Lender may agree. Except as Borrower and Lender may otherwise agree (in the event that cash Collateral is transferred by clearing house funds or otherwise), Loan Fees shall accrue from and including the date on which the Loaned Securities are transferred to Borrower to, but excluding, the date on which such Loaned Securities are returned to Lender, and Cash Collateral Fees shall accrue from and including the date on which the cash Collateral is transferred to Lender to, but excluding, the date on which such cash Collateral is returned to Borrower.
- 5.2 Unless otherwise agreed, any Loan Fee or Cash Collateral Fee payable hereunder shall be payable:
- (a) in the case of any Loan of Securities other than Government Securities, upon the earlier of (i) the fifteenth day of the month following the calendar month in which such fee was incurred and (ii) the termination of all Loans hereunder (or, if a transfer of cash in accordance with Section 15 may not be effected on such fifteenth day or the day of such termination, as the case may be, the next day on which such a transfer may be effected); and
 - (b) in the case of any Loan of Government Securities, upon the termination of such Loan and at such other times, if any, as may be customary in accordance with market practice.

Notwithstanding the foregoing, all Loan Fees shall be payable by Borrower immediately in the event of a Default hereunder by Borrower and all Cash Collateral Fees shall be payable immediately by Lender in the event of a Default by Lender.

6. Termination of the Loan.

- 6.1 (a) Unless otherwise agreed, either party may terminate a Loan on a termination date established by notice given to the other party prior to the Close of Business on a Business Day. The termination date established by a termination notice shall be a date no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities (in the case of a notice given by Lender) or the non-cash Collateral securing the Loan (in the case of a notice given by Borrower) entered into at the time of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (i) in the case of Government Securities, the next Business Day following such notice and (ii) in the case of all other Securities, the third Business Day following such notice.
- (b) Notwithstanding paragraph (a) and unless otherwise agreed, Borrower may terminate a Loan on any Business Day by giving notice to Lender and transferring the Loaned Securities to Lender before the Cutoff Time on such Business Day if (i) the Collateral for such Loan consists of cash or Government Securities or (ii) Lender is not permitted, pursuant to Section 4.2, to Retransfer Collateral.
- 6.2 Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender; provided, however, that upon such transfer by Borrower, Lender shall transfer the Collateral (as adjusted pursuant to Section 9) to Borrower in accordance with Section 4.3.

7. Rights in Respect of Loaned Securities and Collateral.

- 7.1 Except as set forth in Sections 8.1 and 8.2 and as otherwise agreed by Borrower and Lender, until Loaned Securities are required to be redelivered to Lender upon termination of a Loan hereunder, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others. Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan.
- 7.2 Except as set forth in Sections 8.3 and 8.4 and as otherwise agreed by Borrower and Lender, if Lender may, pursuant to Section 4.2, Retransfer Collateral, Borrower hereby waives the right to vote, or to provide any consent or take any similar action with respect to, any such Collateral in the event that the record date or deadline for such vote, consent or other action falls during the term of a Loan and such Collateral is not required to be returned to Borrower pursuant to Section 4.5 or Section 9.

8. Distributions.

- 8.1 Lender shall be entitled to receive all Distributions made on or in respect of the Loaned Securities which are not otherwise received by Lender, to the full extent it would be so entitled if the Loaned Securities had not been lent to Borrower.

- 8.2 Any cash Distributions made on or in respect of the Loaned Securities, which Lender is entitled to receive pursuant to Section 8.1, shall be paid by the transfer of cash to Lender by Borrower, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Lender is not in Default at the time of such payment. Non-cash Distributions that Lender is entitled to receive pursuant to Section 8.1 shall be added to the Loaned Securities on the date of distribution and shall be considered such for all purposes, except that if the Loan has terminated, Borrower shall forthwith transfer the same to Lender.
- 8.3 Borrower shall be entitled to receive all Distributions made on or in respect of non-cash Collateral which are not otherwise received by Borrower, to the full extent it would be so entitled if the Collateral had not been transferred to Lender.
- 8.4 Any cash Distributions made on or in respect of such Collateral, which Borrower is entitled to receive pursuant to Section 8.3, shall be paid by the transfer of cash to Borrower by Lender, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Borrower is not in Default at the time of such payment. Non-cash Distributions that Borrower is entitled to receive pursuant to Section 8.3 shall be added to the Collateral on the date of distribution and shall be considered such for all purposes, except that if each Loan secured by such Collateral has terminated, Lender shall forthwith transfer the same to Borrower.
- 8.5 Unless otherwise agreed by the parties:
- (a) If (i) Borrower is required to make a payment (a "Borrower Payment") with respect to cash Distributions on Loaned Securities under Sections 8.1 and 8.2 ("Securities Distributions"), or (ii) Lender is required to make a payment (a "Lender Payment") with respect to cash Distributions on Collateral under Sections 8.3 and 8.4 ("Collateral Distributions"), and (iii) Borrower or Lender, as the case may be ("Payor"), shall be required by law to collect any withholding or other tax, duty, fee, levy or charge required to be deducted or withheld from such Borrower Payment or Lender Payment ("Tax"), then Payor shall (subject to subsections (b) and (c) below), pay such additional amounts as may be necessary in order that the net amount of the Borrower Payment or Lender Payment received by the Lender or Borrower, as the case may be ("Payee"), after payment of such Tax equals the net amount of the Securities Distribution or Collateral Distribution that would have been received if such Securities Distribution or Collateral Distribution had been paid directly to the Payee.
 - (b) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that Tax would have been imposed on a Securities Distribution or Collateral Distribution paid directly to the Payee.
 - (c) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that such Payee is entitled to an exemption from, or reduction in the rate of, Tax on a Borrower Payment or Lender Payment subject to the provision of a certificate or other documentation, but has failed timely to provide such certificate or other documentation.
 - (d) Each party hereto shall be deemed to represent that, as of the commencement of any Loan hereunder, no Tax would be imposed on any cash Distribution paid to it with respect to (i) Loaned Securities subject to a Loan in which it is acting as

Lender or (ii) Collateral for any Loan in which it is acting as Borrower, unless such party has given notice to the contrary to the other party hereto (which notice shall specify the rate at which such Tax would be imposed). Each party agrees to notify the other of any change that occurs during the term of a Loan in the rate of any Tax that would be imposed on any such cash Distributions payable to it.

- 8.6 To the extent that, under the provisions of Sections 8.1 through 8.5, (a) a transfer of cash or other property by Borrower would give rise to a Margin Excess or (b) a transfer of cash or other property by Lender would give rise to a Margin Deficit, Borrower or Lender (as the case may be) shall not be obligated to make such transfer of cash or other property in accordance with such Sections, but shall in lieu of such transfer immediately credit the amounts that would have been transferable under such Sections to the account of Lender or Borrower (as the case may be).

9. Mark to Market.

- 9.1 If Lender is a Customer, Borrower shall daily mark to market any Loan hereunder and in the event that at the Close of Trading on any Business Day the Market Value of the Collateral for any Loan to Borrower shall be less than 100% of the Market Value of all the outstanding Loaned Securities subject to such Loan, Borrower shall transfer additional Collateral no later than the Close of Business on the next Business Day so that the Market Value of such additional Collateral, when added to the Market Value of the other Collateral for such Loan, shall equal 100% of the Market Value of the Loaned Securities.
- 9.2 In addition to any rights of Lender under Section 9.1, if at any time the aggregate Market Value of all Collateral for Loans by Lender shall be less than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Deficit"), Lender may, by notice to Borrower, demand that Borrower transfer to Lender additional Collateral so that the Market Value of such additional Collateral, when added to the Market Value of all other Collateral for such Loans, shall equal or exceed the Margin Percentage of the Market Value of the Loaned Securities.
- 9.3 Subject to Borrower's obligations under Section 9.1, if at any time the Market Value of all Collateral for Loans to Borrower shall be greater than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Excess"), Borrower may, by notice to Lender, demand that Lender transfer to Borrower such amount of the Collateral selected by Borrower so that the Market Value of the Collateral for such Loans, after deduction of such amounts, shall thereupon not exceed the Margin Percentage of the Market Value of the Loaned Securities.
- 9.4 Borrower and Lender may agree, with respect to one or more Loans hereunder, to mark the values to market pursuant to Sections 9.2 and 9.3 by separately valuing the Loaned Securities lent and the Collateral given in respect thereof on a Loan-by-Loan basis.
- 9.5 Borrower and Lender may agree, with respect to any or all Loans hereunder, that the respective rights of Lender and Borrower under Sections 9.2 and 9.3 may be exercised only where a Margin Excess or Margin Deficit exceeds a specified dollar amount or a specified percentage of the Market Value of the Loaned Securities under such Loans (which amount or percentage shall be agreed to by Borrower and Lender prior to entering into any such Loans).

9.6 If any notice is given by Borrower or Lender under Sections 9.2 or 9.3 at or before the Margin Notice Deadline on any day on which a transfer of Collateral may be effected in accordance with Section 15, the party receiving such notice shall transfer Collateral as provided in such Section no later than the Close of Business on such day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such Collateral no later than the Close of Business on the next Business Day following the day of such notice.

10. Representations.

The parties to this Agreement hereby make the following representations and warranties, which shall continue during the term of any Loan hereunder:

- 10.1 Each party hereto represents and warrants that (a) it has the power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder, (b) it has taken all necessary action to authorize such execution, delivery and performance, and (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.
- 10.2 Each party hereto represents and warrants that it has not relied on the other for any tax or accounting advice concerning this Agreement and that it has made its own determination as to the tax and accounting treatment of any Loan and any dividends, remuneration or other funds received hereunder.
- 10.3 Each party hereto represents and warrants that it is acting for its own account unless it expressly specifies otherwise in writing and complies with Section 11.1(b).
- 10.4 Borrower represents and warrants that it has, or will have at the time of transfer of any Collateral, the right to grant a first priority security interest therein subject to the terms and conditions hereof.
- 10.5
 - (a) Borrower represents and warrants that it (or the person to whom it relends the Loaned Securities) is borrowing or will borrow Loaned Securities that are Equity Securities for the purpose of making delivery of such Loaned Securities in the case of short sales, failure to receive securities required to be delivered, or as otherwise permitted pursuant to Regulation T as in effect from time to time.
 - (b) Borrower and Lender may agree, as provided in Section 24.2, that Borrower shall not be deemed to have made the representation or warranty in subsection (a) with respect to any Loan. By entering into any such agreement, Lender shall be deemed to have represented and warranted to Borrower (which representation and warranty shall be deemed to be repeated on each day during the term of the Loan) that Lender is either (i) an "exempted borrower" within the meaning of Regulation T or (ii) a member of a national securities exchange or a broker or dealer registered with the U.S. Securities and Exchange Commission that is entering into such Loan to finance its activities as a market maker or an underwriter.
- 10.6 Lender represents and warrants that it has, or will have at the time of transfer of any Loaned Securities, the right to transfer the Loaned Securities subject to the terms and conditions hereof.

11. Covenants.

- 11.1 Each party agrees either (a) to be liable as principal with respect to its obligations hereunder or (b) to execute and comply fully with the provisions of Annex I (the terms and conditions of which Annex are incorporated herein and made a part hereof).
- 11.2 Promptly upon (and in any event within seven (7) Business Days after) demand by Lender, Borrower shall furnish Lender with Borrower's most recent publicly-available financial statements and any other financial statements mutually agreed upon by Borrower and Lender. Unless otherwise agreed, if Borrower is subject to the requirements of Rule 17a-5(c) under the Exchange Act, it may satisfy the requirements of this Section by furnishing Lender with its most recent statement required to be furnished to customers pursuant to such Rule.

12. Events of Default.

All Loans hereunder may, at the option of the non-defaulting party (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), be terminated immediately upon the occurrence of any one or more of the following events (individually, a "Default"):

- 12.1 if any Loaned Securities shall not be transferred to Lender upon termination of the Loan as required by Section 6;
- 12.2 if any Collateral shall not be transferred to Borrower upon termination of the Loan as required by Sections 4.3 and 6;
- 12.3 if either party shall fail to transfer Collateral as required by Section 9;
- 12.4 if either party (a) shall fail to transfer to the other party amounts in respect of Distributions required to be transferred by Section 8, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15;
- 12.5 if an Act of Insolvency occurs with respect to either party;
- 12.6 if any representation made by either party in respect of this Agreement or any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder;
- 12.7 if either party notifies the other of its inability to or its intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or
- 12.8 if either party (a) shall fail to perform any material obligation under this Agreement not specifically set forth in clauses 12.1 through 12.7, above, including but not limited to the payment of fees as required by Section 5, and the payment of transfer taxes as required by Section 14, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15.

The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice as promptly as practicable to the defaulting party of the exercise of its option to terminate all Loans hereunder pursuant to this Section 12.

13. Remedies.

- 13.1 Upon the occurrence of a Default under Section 12 entitling Lender to terminate all Loans hereunder, Lender shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Loaned Securities ("Replacement Securities") in the principal market for such Loaned Securities in a commercially reasonable manner, (b) to sell any Collateral in the principal market for such Collateral in a commercially reasonable manner and (c) to apply and set off the Collateral and any proceeds thereof (including any amounts drawn under a letter of credit supporting any Loan) against the payment of the purchase price for such Replacement Securities and any amounts due to Lender under Sections 5, 8, 14 and 16. In the event that Lender shall exercise such rights, Borrower's obligation to return a like amount of the Loaned Securities shall terminate. Lender may similarly apply the Collateral and any proceeds thereof to any other obligation of Borrower under this Agreement, including Borrower's obligations with respect to Distributions paid to Borrower (and not forwarded to Lender) in respect of Loaned Securities. In the event that (i) the purchase price of Replacement Securities (plus all other amounts, if any, due to Lender hereunder) exceeds (ii) the amount of the Collateral, Borrower shall be liable to Lender for the amount of such excess together with interest thereon at a rate equal to (A) in the case of purchases of Foreign Securities, LIBOR, (B) in the case of purchases of any other Securities (or other amounts, if any, due to Lender hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such purchase until the date of payment of such excess. As security for Borrower's obligation to pay such excess, Lender shall have, and Borrower hereby grants, a security interest in any property of Borrower then held by or for Lender and a right of setoff with respect to such property and any other amount payable by Lender to Borrower. The purchase price of Replacement Securities purchased under this Section 13.1 shall include, and the proceeds of any sale of Collateral shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Lender exercises its rights under this Section 13.1, Lender may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Securities or selling all or a portion of the Collateral, to be deemed to have made, respectively, such purchase of Replacement Securities or sale of Collateral for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 18, upon the satisfaction of all obligations hereunder, any remaining Collateral shall be returned to Borrower.
- 13.2 Upon the occurrence of a Default under Section 12 entitling Borrower to terminate all Loans hereunder, Borrower shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Collateral ("Replacement Collateral") in the principal market for such Collateral in a commercially reasonable manner, (b) to sell a like amount of the Loaned Securities in the principal market for such Loaned Securities in a commercially reasonable manner and (c) to apply and set off the Loaned Securities and any proceeds thereof against (i) the payment of the purchase price for such Replacement Collateral, (ii) Lender's obligation to return any cash or other Collateral, and (iii) any amounts due to Borrower under Sections 5, 8 and 16. In such event, Borrower may treat the Loaned Securities as its own and Lender's obligation to return a

like amount of the Collateral shall terminate; provided, however, that Lender shall immediately return any letters of credit supporting any Loan upon the exercise or deemed exercise by Borrower of its termination rights under Section 12. Borrower may similarly apply the Loaned Securities and any proceeds thereof to any other obligation of Lender under this Agreement, including Lender's obligations with respect to Distributions paid to Lender (and not forwarded to Borrower) in respect of Collateral. In the event that (i) the sales price received from such Loaned Securities is less than (ii) the purchase price of Replacement Collateral (plus the amount of any cash or other Collateral not replaced by Borrower and all other amounts, if any, due to Borrower hereunder), Lender shall be liable to Borrower for the amount of any such deficiency, together with interest on such amounts at a rate equal to (A) in the case of Collateral consisting of Foreign Securities, LIBOR, (B) in the case of Collateral consisting of any other Securities (or other amounts due, if any, to Borrower hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such sale until the date of payment of such deficiency. As security for Lender's obligation to pay such deficiency, Borrower shall have, and Lender hereby grants, a security interest in any property of Lender then held by or for Borrower and a right of setoff with respect to such property and any other amount payable by Borrower to Lender. The purchase price of any Replacement Collateral purchased under this Section 13.2 shall include, and the proceeds of any sale of Loaned Securities shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Borrower exercises its rights under this Section 13.2, Borrower may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Collateral or selling all or a portion of the Loaned Securities, to be deemed to have made, respectively, such purchase of Replacement Collateral or sale of Loaned Securities for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 18, upon the satisfaction of all Lender's obligations hereunder, any remaining Loaned Securities (or remaining cash proceeds thereof) shall be returned to Lender.

13.3 Unless otherwise agreed, the parties acknowledge and agree that (a) the Loaned Securities and any Collateral consisting of Securities are of a type traded in a recognized market, (b) in the absence of a generally recognized source for prices or bid or offer quotations for any security, the non-defaulting party may establish the source therefor in its sole discretion, and (c) all prices and bid and offer quotations shall be increased to include accrued interest to the extent not already included therein (except to the extent contrary to market practice with respect to the relevant Securities).

13.4 In addition to its rights hereunder, the non-defaulting party shall have any rights otherwise available to it under any other agreement or applicable law.

14. Transfer Taxes.

All transfer taxes with respect to the transfer of the Loaned Securities by Lender to Borrower and by Borrower to Lender upon termination of the Loan and with respect to the transfer of Collateral by Borrower to Lender and by Lender to Borrower upon termination of the Loan or pursuant to Section 4.5 or Section 9 shall be paid by Borrower.

15. Transfers.

- 15.1 All transfers by either Borrower or Lender of Loaned Securities or Collateral consisting of "financial assets" (within the meaning of the UCC) hereunder shall be by (a) in the case of certificated securities, physical delivery of certificates representing such securities together with duly executed stock and bond transfer powers, as the case may be, with signatures guaranteed by a bank or a member firm of the New York Stock Exchange, Inc., (b) registration of an uncertificated security in the transferee's name by the issuer of such uncertificated security, (c) the crediting by a Clearing Organization of such financial assets to the transferee's "securities account" (within the meaning of the UCC) maintained with such Clearing Organization, or (d) such other means as Borrower and Lender may agree.
- 15.2 All transfers of cash hereunder shall be by (a) wire transfer in immediately available, freely transferable funds or (b) such other means as Borrower and Lender may agree.
- 15.3 All transfers of letters of credit from Borrower to Lender shall be made by physical delivery to Lender of an irrevocable letter of credit issued by a "bank" as defined in Section 3(a)(6)(A)-(C) of the Exchange Act. Transfers of letters of credit from Lender to Borrower shall be made by causing such letters of credit to be returned or by causing the amount of such letters of credit to be reduced to the amount required after such transfer.
- 15.4 A transfer of Securities, cash or letters of credit may be effected under this Section 15 on any day except (a) a day on which the transferee is closed for business at its address set forth in Schedule A hereto or (b) a day on which a Clearing Organization or wire transfer system is closed, if the facilities of such Clearing Organization or wire transfer system are required to effect such transfer.
- 15.5 For the avoidance of doubt, the parties agree and acknowledge that the term "securities," as used herein (except in this Section 15), shall include any "security entitlements" with respect to such securities (within the meaning of the UCC). In every transfer of "financial assets" (within the meaning of the UCC) hereunder, the transferor shall take all steps necessary (a) to effect a delivery to the transferee under Section 8-301 of the UCC, or to cause the creation of a security entitlement in favor of the transferee under Section 8-501 of the UCC, (b) to enable the transferee to obtain "control" (within the meaning of Section 8-106 of the UCC), and (c) to provide the transferee with comparable rights under any applicable foreign law or regulation.

16. Contractual Currency.

- 16.1 Borrower and Lender agree that (a) any payment in respect of a Distribution under Section 8 shall be made in the currency in which the underlying Distribution of cash was made, (b) any return of cash shall be made in the currency in which the underlying transfer of cash was made, and (c) any other payment of cash in connection with a Loan under this Agreement shall be in the currency agreed upon by Borrower and Lender in connection with such Loan (the currency established under clause (a), (b) or (c) hereinafter referred to as the "Contractual Currency"). Notwithstanding the foregoing, the payee of any such payment may, at its option, accept tender thereof in any other currency; provided, however, that, to the extent permitted by applicable law, the obligation of the payor to make such payment will be discharged only to the extent of the amount of Contractual Currency that such payee may, consistent with normal banking

procedures, purchase with such other currency (after deduction of any premium and costs of exchange) on the banking day next succeeding its receipt of such currency.

- 16.2 If for any reason the amount in the Contractual Currency received under Section 16.1, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due in respect of this Agreement, the party required to make the payment will (unless a Default has occurred and such party is the non-defaulting party) as a separate and independent obligation and to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.
- 16.3 If for any reason the amount in the Contractual Currency received under Section 16.1 exceeds the amount in the Contractual Currency due in respect of this Agreement, then the party receiving the payment will (unless a Default has occurred and such party is the non-defaulting party) refund promptly the amount of such excess.

17. ERISA.

Lender shall, if any of the Securities transferred to the Borrower hereunder for any Loan have been or shall be obtained, directly or indirectly, from or using the assets of any Plan, so notify Borrower in writing upon the execution of this Agreement or upon initiation of such Loan under Section 2.1. If Lender so notifies Borrower, then Borrower and Lender shall conduct the Loan in accordance with the terms and conditions of Department of Labor Prohibited Transaction Exemption 81-6 (46 Fed. Reg. 7527, Jan. 23, 1981; as amended, 52 Fed. Reg. 18754, May 19, 1987), or any successor thereto (unless Borrower and Lender have agreed prior to entering into a Loan that such Loan will be conducted in reliance on another exemption, or without relying on any exemption, from the prohibited transaction provisions of Section 406 of the Employee Retirement Income Security Act of 1974, as amended, and Section 4975 of the Internal Revenue Code of 1986, as amended). Without limiting the foregoing and notwithstanding any other provision of this Agreement, if the Loan will be conducted in accordance with Prohibited Transaction Exemption 81-6, then:

- 17.1 Borrower represents and warrants to Lender that it is either (a) a bank subject to federal or state supervision, (b) a broker-dealer registered under the Exchange Act or (c) exempt from registration under Section 15(a)(1) of the Exchange Act as a dealer in Government Securities.
- 17.2 Borrower represents and warrants that, during the term of any Loan hereunder, neither Borrower nor any affiliate of Borrower has any discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or renders investment advice (within the meaning of 29 C.F.R. Section 2510.3-21(c)) with respect to the assets of the Plan involved in the Loan. Lender agrees that, prior to or at the commencement of any Loan hereunder, it will communicate to Borrower information regarding the Plan sufficient to identify to Borrower any person or persons that have discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or that render investment advice (as defined in the preceding sentence) with respect to the assets of the Plan involved in the Loan. In the event Lender fails to communicate and keep current during the term of any Loan such information, Lender rather than Borrower shall be deemed to have made the representation and warranty in the first sentence of this Section 17.2.

- 17.3 Borrower shall mark to market daily each Loan hereunder pursuant to Section 9.1 as is required if Lender is a Customer.
- 17.4 Borrower and Lender agree that:
- (a) the term "Collateral" shall mean cash, securities issued or guaranteed by the United States government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than Borrower or an affiliate thereof;
 - (b) prior to the making of any Loans hereunder, Borrower shall provide Lender with (i) the most recent available audited statement of Borrower's financial condition and (ii) the most recent available unaudited statement of Borrower's financial condition (if more recent than the most recent audited statement), and each Loan made hereunder shall be deemed a representation by Borrower that there has been no material adverse change in Borrower's financial condition subsequent to the date of the latest financial statements or information furnished in accordance herewith;
 - (c) the Loan may be terminated by Lender at any time, whereupon Borrower shall deliver the Loaned Securities to Lender within the lesser of (i) the customary delivery period for such Loaned Securities, (ii) five Business Days, and (iii) the time negotiated for such delivery between Borrower and Lender; provided, however, that Borrower and Lender may agree to a longer period only if permitted by Prohibited Transaction Exemption 81-6; and
 - (d) the Collateral transferred shall be security only for obligations of Borrower to the Plan with respect to Loans, and shall not be security for any obligation of Borrower to any agent or affiliate of the Plan.

18. Single Agreement.

Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder constitute a single business and contractual relationship and have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted. In addition, Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that (a) each shall perform all of its obligations in respect of each Loan hereunder, and that a default in the performance of any such obligation by Borrower or by Lender (the "Defaulting Party") in any Loan hereunder shall constitute a default by the Defaulting Party under all such Loans hereunder, and (b) the non-defaulting party shall be entitled to set off claims and apply property held by it in respect of any Loan hereunder against obligations owing to it in respect of any other Loan with the Defaulting Party.

19. APPLICABLE LAW.

THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

20. Waiver.

The failure of a party to this Agreement to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. All waivers in respect of a Default must be in writing.

21. Survival of Remedies.

All remedies hereunder and all obligations with respect to any Loan shall survive the termination of the relevant Loan, return of Loaned Securities or Collateral and termination of this Agreement.

22. Notices and Other Communications.

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise to the individuals and at the facsimile numbers and addresses specified with respect to it in Schedule A hereto, or sent to such party at any other place specified in a notice of change of number or address hereafter received by the other party. Any notice, statement, demand or other communication hereunder will be deemed effective on the day and at the time on which it is received or, if not received, on the day and at the time on which its delivery was in good faith attempted; provided, however, that any notice by a party to the other party by telephone shall be deemed effective only if (a) such notice is followed by written confirmation thereof and (b) at least one of the other means of providing notice that are specifically listed above has previously been attempted in good faith by the notifying party.

23. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

23.1 EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY SUCH COURT, SOLELY FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS HEREUNDER OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY LOAN HEREUNDER AND (B) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE.

23.2 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. Miscellaneous.

24.1 Except as otherwise agreed by the parties, this Agreement supersedes any other agreement between the parties hereto concerning loans of Securities between Borrower and Lender. This Agreement shall not be assigned by either party without the prior written consent of the other party and any attempted assignment without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon

and shall inure to the benefit of Borrower and Lender and their respective heirs, representatives, successors and assigns. This Agreement may be terminated by either party upon notice to the other, subject only to fulfillment of any obligations then outstanding. This Agreement shall not be modified, except by an instrument in writing signed by the party against whom enforcement is sought. The parties hereto acknowledge and agree that, in connection with this Agreement and each Loan hereunder, time is of the essence. Each provision and agreement herein shall be treated as separate and independent from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

- 24.2 Any agreement between Borrower and Lender pursuant to Section 10.5(b) or Section 25.37 shall be made (a) in writing, (b) orally, if confirmed promptly in writing or through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing.

25. Definitions.

For the purposes hereof:

- 25.1 "Act of Insolvency" shall mean, with respect to any party, (a) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party's seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (b) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (i) is consented to or not timely contested by such party, (ii) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (iii) is not dismissed within 15 days, (c) the making by such party of a general assignment for the benefit of creditors, or (d) the admission in writing by such party of such party's inability to pay such party's debts as they become due.
- 25.2 "Bankruptcy Code" shall have the meaning assigned in Section 26.1
- 25.3 "Borrower" shall have the meaning assigned in Section 1.
- 25.4 "Borrower Payment" shall have the meaning assigned in Section 8.5(a).
- 25.5 "Broker-Dealer" shall mean any person that is a broker (including a municipal securities broker), dealer, municipal securities dealer, government securities broker or government securities dealer as defined in the Exchange Act, regardless of whether the activities of such person are conducted in the United States or otherwise require such person to register with the U.S. Securities and Exchange Commission or other regulatory body.
- 25.6 "Business Day" shall mean, with respect to any Loan hereunder, a day on which regular trading occurs in the principal market for the Loaned Securities subject to such Loan, provided, however, that for purposes of determining the Market Value of any Securities hereunder, such term shall mean a day on which regular trading occurs in the principal market for the Securities whose value is being determined. Notwithstanding the

foregoing, (a) for purposes of Section 9, "Business Day" shall mean any day on which regular trading occurs in the principal market for any Loaned Securities or for any Collateral consisting of Securities under any outstanding Loan hereunder and "next Business Day" shall mean the next day on which a transfer of Collateral may be effected in accordance with Section 15, and (b) in no event shall a Saturday or Sunday be considered a Business Day.

- 25.7 "Cash Collateral Fee" shall have the meaning assigned in Section 5.1.
- 25.8 "Clearing Organization" shall mean (a) The Depository Trust Company, or, if agreed to by Borrower and Lender, such other "securities intermediary" (within the meaning of the UCC) at which Borrower (or Borrower's agent) and Lender (or Lender's agent) maintain accounts, or (b) a Federal Reserve Bank, to the extent that it maintains a book-entry system.
- 25.9 "Close of Business" shall mean the time established by the parties in Schedule B or otherwise orally or in writing or, in the absence of any such agreement, as shall be determined in accordance with market practice.
- 25.10 "Close of Trading" shall mean, with respect to any Security, the end of the primary trading session established by the principal market for such Security on a Business Day, unless otherwise agreed by the parties.
- 25.11 "Collateral" shall mean, whether now owned or hereafter acquired and to the extent permitted by applicable law, (a) any property which Borrower and Lender agree prior to the Loan shall be acceptable collateral and which is transferred to Lender pursuant to Sections 4 or 9 (including as collateral, for definitional purposes, any letters of credit mutually acceptable to Lender and Borrower), (b) any property substituted therefor pursuant to Section 4.5, (c) all accounts in which such property is deposited and all securities and the like in which any cash collateral is invested or reinvested, and (d) any proceeds of any of the foregoing; *provided, however*, that if Lender is a Customer, "Collateral" shall (subject to Section 17.4(a), if applicable) be limited to cash, U.S. Treasury bills and notes, an irrevocable letter of credit issued by a "bank" (as defined in Section 3(a)(6)(A)-(C) of the Exchange Act), and any other property permitted to serve as collateral securing a loan of securities under Rule 15c3-3 under the Exchange Act or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation) pursuant to exemptive, interpretive or no-action relief or otherwise. If any new or different Security shall be exchanged for any Collateral by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become Collateral in substitution for the former Collateral for which such exchange is made. For purposes of return of Collateral by Lender or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Collateral initially transferred by Borrower to Lender, as adjusted pursuant to the preceding sentence.
- 25.12 "Collateral Distributions" shall have the meaning assigned in Section 8.5(a).
- 25.13 "Confirmation" shall have the meaning assigned in Section 2.1.
- 25.14 "Contractual Currency" shall have the meaning assigned in Section 16.1.

- 25.15 "Customer" shall mean any person that is a customer of Borrower under Rule 15c3-3 under the Exchange Act or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation).
- 25.16 "Cutoff Time" shall mean a time on a Business Day by which a transfer of cash, securities or other property must be made by Borrower or Lender to the other, as shall be agreed by Borrower and Lender in Schedule B or otherwise orally or in writing or, in the absence of any such agreement, as shall be determined in accordance with market practice.
- 25.17 "Default" shall have the meaning assigned in Section 12.
- 25.18 "Defaulting Party" shall have the meaning assigned in Section 18.
- 25.19 "Distribution" shall mean, with respect to any Security at any time, any distribution made on or in respect of such Security, including, but not limited to: (a) cash and all other property, (b) stock dividends, (c) Securities received as a result of split ups of such Security and distributions in respect thereof, (d) interest payments, (e) all rights to purchase additional Securities, and (f) any cash or other consideration paid or provided by the issuer of such Security in exchange for any vote, consent or the taking of any similar action in respect of such Security (regardless of whether the record date for such vote, consent or other action falls during the term of the Loan). In the event that the holder of a Security is entitled to elect the type of distribution to be received from two or more alternatives, such election shall be made by Lender, in the case of a Distribution in respect of the Loaned Securities, and by Borrower, in the case of a Distribution in respect of Collateral.
- 25.20 "Equity Security" shall mean any security (as defined in the Exchange Act) other than a "nonequity security," as defined in Regulation T.
- 25.21 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.
- 25.22 "Extension Deadline" shall mean, with respect to a letter of credit, the Cutoff Time on the Business Day preceding the day on which the letter of credit expires.
- 25.23 "FDIA" shall have the meaning assigned in Section 26.4.
- 25.24 "FDICIA" shall have the meaning assigned in Section 26.5.
- 25.25 "Federal Funds Rate" shall mean the rate of interest (expressed as an annual rate), as published in Federal Reserve Statistical Release H.15(519) or any publication substituted therefor, charged for federal funds (dollars in immediately available funds borrowed by banks on an overnight unsecured basis) on that day or, if that day is not a banking day in New York City, on the next preceding banking day.
- 25.26 "Foreign Securities" shall mean, unless otherwise agreed, Securities that are principally cleared and settled outside the United States.
- 25.27 "Government Securities" shall mean government securities as defined in Section 3(a)(42)(A)-(C) of the Exchange Act.
- 25.28 "Lender" shall have the meaning assigned in Section 1.

- 25.29 "Lender Payment" shall have the meaning assigned in Section 8.5(a).
- 25.30 "LIBOR" shall mean for any date, the offered rate for deposits in U.S. dollars for a period of three months which appears on the Reuters Screen LIBO page as of 11:00 a.m., London time, on such date (or, if at least two such rates appear, the arithmetic mean of such rates).
- 25.31 "Loan" shall have the meaning assigned in Section 1.
- 25.32 "Loan Fee" shall have the meaning assigned in Section 5.1.
- 25.33 "Loaned Security" shall mean any Security transferred in a Loan hereunder until such Security (or an identical Security) is transferred back to Lender hereunder, except that, if any new or different Security shall be exchanged for any Loaned Security by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become a Loaned Security in substitution for the former Loaned Security for which such exchange is made. For purposes of return of Loaned Securities by Borrower or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Loaned Securities, as adjusted pursuant to the preceding sentence.
- 25.34 "Margin Deficit" shall have the meaning assigned in Section 9.2.
- 25.35 "Margin Excess" shall have the meaning assigned in Section 9.3.
- 25.36 "Margin Notice Deadline" shall mean the time agreed to by the parties in the relevant Confirmation, Schedule B hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of mark-to-market obligations as provided in Section 9 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice).
- 25.37 "Margin Percentage" shall mean, with respect to any Loan as of any date, a percentage agreed by Borrower and Lender, which shall be not less than 100%, unless (a) Borrower and Lender agree otherwise, as provided in Section 24.2, and (b) Lender is not a Customer. Notwithstanding the previous sentence, in the event that the writing or other confirmation evidencing the agreement described in clause (a) does not set out such percentage with respect to any such Loan, the Margin Percentage shall not be a percentage less than the percentage obtained by dividing (i) the Market Value of the Collateral required to be transferred by Borrower to Lender with respect to such Loan at the commencement of the Loan by (ii) the Market Value of the Loaned Securities required to be transferred by Lender to Borrower at the commencement of the Loan.
- 25.38 "Market Value" shall have the meaning set forth in Annex II or otherwise agreed to by Borrower and Lender in writing. Notwithstanding the previous sentence, in the event that the meaning of Market Value has not been set forth in Annex II or in any other writing, as described in the previous sentence, Market Value shall be determined in accordance with market practice for the Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such source, plus accrued interest to the extent not included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8, unless market practice with respect to the valuation of such Securities in

connection with securities loans is to the contrary). If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation. The determinations of Market Value provided for in Annex II or in any other writing described in the first sentences of this Section 25.38 or, if applicable, in the preceding sentence shall apply for all purposes under this Agreement, except for purposes of Section 13.

- 25.39 "Payee" shall have the meaning assigned in Section 8.5(a).
- 25.40 "Payor" shall have the meaning assigned in Section 8.5(a).
- 25.41 "Plan" shall mean: (a) any "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 which is subject to Part 4 of Subtitle B of Title I of such Act; (b) any "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986; or (c) any entity the assets of which are deemed to be assets of any such "employee benefit plan" or "plan" by reason of the Department of Labor's plan asset regulation, 29 C.F.R. Section 2510.3-101.
- 25.42 "Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as in effect from time to time.
- 25.43 "Retransfer" shall mean, with respect to any Collateral, to pledge, repledge, hypothecate, rehypothecate, lend, relend, sell or otherwise transfer such Collateral, or to re-register any such Collateral evidenced by physical certificates in any name other than Borrower's.
- 25.44 "Securities" shall mean securities or, if agreed by the parties in writing, other assets.
- 25.45 "Securities Distributions" shall have the meaning assigned in Section 8.5(a).
- 25.46 "Tax" shall have the meaning assigned in Section 8.5(a).
- 25.47 "UCC" shall mean the New York Uniform Commercial Code.

26. Intent.

- 26.1 The parties recognize that each Loan hereunder is a "securities contract," as such term is defined in Section 741 of Title 11 of the United States Code (the "Bankruptcy Code"), as amended (except insofar as the type of assets subject to the Loan would render such definition inapplicable).
- 26.2 It is understood that each and every transfer of funds, securities and other property under this Agreement and each Loan hereunder is a "settlement payment" or a "margin payment," as such terms are used in Sections 362(b)(6) and 546(e) of the Bankruptcy Code.
- 26.3 It is understood that the rights given to Borrower and Lender hereunder upon a Default by the other constitute the right to cause the liquidation of a securities contract and the right to set off mutual debts and claims in connection with a securities contract, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code.
- 26.4 The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Loan hereunder is a "securities contract" and "qualified financial

contract," as such terms are defined in the FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to the Loan would render such definitions inapplicable).

26.5 It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment obligation under any Loan hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation," respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

26.6 Except to the extent required by applicable law or regulation or as otherwise agreed, Borrower and Lender agree that Loans hereunder shall in no event be "exchange contracts" for purposes of the rules of any securities exchange and that Loans hereunder shall not be governed by the buy-in or similar rules of any such exchange, registered national securities association or other self-regulatory organization.

27. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS.

27.1 WITHOUT WAIVING ANY RIGHTS GIVEN TO LENDER HEREUNDER, IT IS UNDERSTOOD AND AGREED THAT THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT LENDER WITH RESPECT TO LOANED SECURITIES HEREUNDER AND THAT, THEREFORE, THE COLLATERAL DELIVERED TO LENDER MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF BORROWER'S OBLIGATIONS IN THE EVENT BORROWER FAILS TO RETURN THE LOANED SECURITIES.

27.2 LENDER ACKNOWLEDGES THAT, IN CONNECTION WITH LOANS OF GOVERNMENT SECURITIES AND AS OTHERWISE PERMITTED BY APPLICABLE LAW, SOME SECURITIES PROVIDED BY BORROWER AS COLLATERAL UNDER THIS AGREEMENT MAY NOT BE GUARANTEED BY THE UNITED STATES.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex I

Party Acting as Agent

This Annex sets forth the terms and conditions governing all transactions in which a party lending or borrowing Securities, as the case may be ("Agent"), in a Loan is acting as agent for one or more third parties (each, a "Principal"). Unless otherwise defined, capitalized terms used but not defined in this Annex shall have the meanings assigned in the Securities Loan Agreement of which it forms a part (such agreement, together with this Annex and any other annexes, schedules or exhibits, referred to as the "Agreement") and, unless otherwise specified, all section references herein are intended to refer to sections of such Securities Loan Agreement.

1. **Additional Representations and Warranties.** In addition to the representations and warranties set forth in the Agreement, Agent hereby makes the following representations and warranties, which shall continue during the term of any Loan: Principal has duly authorized Agent to execute and deliver the Agreement on its behalf, has the power to so authorize Agent and to enter into the Loans contemplated by the Agreement and to perform the obligations of Lender or Borrower, as the case may be, under such Loans, and has taken all necessary action to authorize such execution and delivery by Agent and such performance by it.
2. **Identification of Principals.** Agent agrees (a) to provide the other party, prior to any Loan under the Agreement, with a written list of Principals for which it intends to act as Agent (which list may be amended in writing from time to time with the consent of the other party), and (b) to provide the other party, before the Close of Business on the next Business Day after agreeing to enter into a Loan, with notice of the specific Principal or Principals for whom it is acting in connection with such Loan. If (i) Agent fails to identify such Principal or Principals prior to the Close of Business on such next Business Day or (ii) the other party shall determine in its sole discretion that any Principal or Principals identified by Agent are not acceptable to it, the other party may reject and rescind any Loan with such Principal or Principals, return to Agent any Collateral or Loaned Securities, as the case may be, previously transferred to the other party and refuse any further performance under such Loan, and Agent shall immediately return to the other party any portion of the Loaned Securities or Collateral, as the case may be, previously transferred to Agent in connection with such Loan; *provided, however*, that (A) the other party shall promptly (and in any event within one Business Day of notice of the specific Principal or Principals) notify Agent of its determination to reject and rescind such Loan and (B) to the extent that any performance was rendered by any party under any Loan rejected by the other party, such party shall remain entitled to any fees or other amounts that would have been payable to it with respect to such performance if such Loan had not been rejected. The other party acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist the other party in obtaining from Agent's Principals such information regarding the financial status of such Principals as the other party may reasonably request.
3. **Limitation of Agent's Liability.** The parties expressly acknowledge that if the representations and warranties of Agent under the Agreement, including this Annex, are true and correct in all material respects during the term of any Loan and Agent otherwise complies with the provisions of this Annex, then (a) Agent's obligations under the Agreement shall not include a guarantee of performance by its Principal or Principals and (b) the other party's remedies shall not include a right of setoff against obligations, if any, of Agent arising in other transactions in which Agent is acting as principal.

4. Multiple Principals.

- (a) In the event that Agent proposes to act for more than one Principal hereunder, Agent and the other party shall elect whether (i) to treat Loans under the Agreement as transactions entered into on behalf of separate Principals or (ii) to aggregate such Loans as if they were transactions by a single Principal. Failure to make such an election in writing shall be deemed an election to treat Loans under the Agreement as transactions on behalf of separate Principals.
- (b) In the event that Agent and the other party elect (or are deemed to elect) to treat Loans under the Agreement as transactions on behalf of separate Principals, the parties agree that (i) Agent will provide the other party, together with the notice described in Section 2(b) of this Annex, notice specifying the portion of each Loan allocable to the account of each of the Principals for which it is acting (to the extent that any such Loan is allocable to the account of more than one Principal), (ii) the portion of any individual Loan allocable to each Principal shall be deemed a separate Loan under the Agreement, (iii) the mark to market obligations of Borrower and Lender under the Agreement shall be determined on a Loan-by-Loan basis (unless the parties agree to determine such obligations on a Principal-by-Principal basis), and (iv) Borrower's and Lender's remedies under the Agreement upon the occurrence of a Default shall be determined as if Agent had entered into a separate Agreement with the other party on behalf of each of its Principals.
- (c) In the event that Agent and the other party elect to treat Loans under the Agreement as if they were transactions by a single Principal, the parties agree that (i) Agent's notice under Section 2(b) of this Annex need only identify the names of its Principals but not the portion of each Loan allocable to each Principal's account, (ii) the mark to market obligations of Borrower and Lender under the Agreement shall, subject to any greater requirement imposed by applicable law, be determined on an aggregate basis for all Loans entered into by Agent on behalf of any Principal, and (iii) Borrower's and Lender's remedies upon the occurrence of a Default shall be determined as if all Principals were a single Lender or Borrower, as the case may be.
- (d) Notwithstanding any other provision of the Agreement (including, without limitation, this Annex), the parties agree that any transactions by Agent on behalf of a Plan shall be treated as transactions on behalf of separate Principals in accordance with Section 4(b) of this Annex (and all mark to market obligations of the parties shall be determined on a Loan-by-Loan basis).

5. **Interpretation of Terms.** All references to "Lender" or "Borrower," as the case may be, in the Agreement shall, subject to the provisions of this Annex (including, among other provisions, the limitations on Agent's liability in Section 3 of this Annex), be construed to reflect that (i) each Principal shall have, in connection with any Loan or Loans entered into by Agent on its behalf, the rights, responsibilities, privileges and obligations of a "Lender" or "Borrower," as the case may be, directly entering into such Loan or Loans with the other party under the Agreement, and (ii) Agent's Principal or Principals have designated Agent as their sole agent for performance of Lender's obligations to Borrower or Borrower's obligations to Lender, as the case may be, and for receipt of performance by Borrower of its obligations to Lender or Lender of its obligations to Borrower, as the case may be, in connection with any Loan or Loans under the Agreement (including, among other things, as Agent for each Principal in connection with transfers of securities, cash or other property and as agent for giving and receiving all notices under the Agreement). Both Agent and its Principal or Principals shall be deemed "parties" to the Agreement and all references to a "party" or "either party" in the Agreement shall be deemed revised accordingly (and any

Default by Agent under the Agreement shall be deemed a Default by Lender or Borrower, as the case may be).

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex II

Market Value

Unless otherwise agreed by Borrower and Lender:

1. If the principal market for the Securities to be valued is a national securities exchange in the United States, their Market Value shall be determined by their last sale price on such exchange at the most recent Close of Trading or, if there was no sale on the Business Day of the most recent Close of Trading, by the last sale price at the Close of Trading on the next preceding Business Day on which there was a sale on such exchange, all as quoted on the Consolidated Tape or, if not quoted on the Consolidated Tape, then as quoted by such exchange.
2. If the principal market for the Securities to be valued is the over-the-counter market, and the Securities are quoted on The Nasdaq Stock Market ("Nasdaq"), their Market Value shall be the last sale price on Nasdaq at the most recent Close of Trading or, if the Securities are issues for which last sale prices are not quoted on Nasdaq, the last bid price at such Close of Trading. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.
3. Except as provided in Section 4 of this Annex, if the principal market for the Securities to be valued is the over-the-counter market, and the Securities are not quoted on Nasdaq, their Market Value shall be determined in accordance with market practice for such Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such a source. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.
4. If the Securities to be valued are Foreign Securities, their Market Value shall be determined as of the most recent Close of Trading in accordance with market practice in the principal market for such Securities.
5. The Market Value of a letter of credit shall be the undrawn amount thereof.
6. All determinations of Market Value under Sections 1 through 4 of this Annex shall include, where applicable, accrued interest to the extent not already included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8 of the Agreement), unless market practice with respect to the valuation of such Securities in connection with securities loans is to the contrary.
7. The determinations of Market Value provided for in this Annex shall apply for all purposes under the Agreement, except for purposes of Section 13 of the Agreement.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex III

Term Loans

This Annex sets forth additional terms and conditions governing Loans designated as "Term Loans" in which Lender lends to Borrower a specific amount of Loaned Securities ("Term Loan Amount") against a pledge of cash Collateral by Borrower for an agreed upon Cash Collateral Fee until a scheduled termination date ("Termination Date"). Unless otherwise defined, capitalized terms used but not defined in this Annex shall have the meanings assigned in the Securities Loan Agreement of which it forms a part (such agreement, together with this Annex and any other annexes, schedules or exhibits, referred to as the "Agreement").

1. The terms of this Annex shall apply to Loans of Equity Securities only if they are designated as Term Loans in a Confirmation therefor provided pursuant to the Agreement and executed by each party, in a schedule to the Agreement or in this Annex. All Loans of Securities other than Equity Securities shall be "Term Loans" subject to this Annex, unless otherwise agreed in a Confirmation or other writing.
2. The Confirmation for a Term Loan shall set forth, in addition to any terms required to be set forth therein under the Agreement, the Term Loan Amount, the Cash Collateral Fee and the Termination Date. Lender and Borrower agree that, except as specifically provided in this Annex, each Term Loan shall be subject to all terms and conditions of the Agreement, including, without limitation, any provisions regarding the parties' respective rights to terminate a Loan.
3. In the event that either party exercises its right under the Agreement to terminate a Term Loan on a date (the "Early Termination Date") prior to the Termination Date, Lender and Borrower shall, unless otherwise agreed, use their best efforts to negotiate in good faith a new Term Loan (the "Replacement Loan") of comparable or other Securities, which shall be mutually agreed upon by the parties, with a Market Value equal to the Market Value of the Term Loan Amount under the terminated Term Loan (the "Terminated Loan") as of the Early Termination Date. Such agreement shall, in accordance with Section 2 of this Annex, be confirmed in a new Confirmation at the commencement of the Replacement Loan and be executed by each party. Each Replacement Loan shall be subject to the same terms as the corresponding Terminated Loan, other than with respect to the commencement date and the identity of the Loaned Securities. The Replacement Loan shall commence on the date on which the parties agree which Securities shall be the subject of the Replacement Loan and shall be scheduled to terminate on the scheduled Termination Date of the Terminated Loan.
4. Borrower and Lender agree that, except as provided in Section 5 of this Annex, if the parties enter into a Replacement Loan, the Collateral for the related Terminated Loan need not be returned to Borrower and shall instead serve as Collateral for such Replacement Loan.
5. If the parties are unable to negotiate and enter into a Replacement Loan for some or all of the Term Loan Amount on or before the Early Termination Date, (a) the party requesting termination of the Terminated Loan shall pay to the other party a Breakage Fee computed in accordance with Section 6 of this Annex with respect to that portion of the Term Loan Amount for which a Replacement Loan is not entered into and (b) upon the transfer by Borrower to Lender of the Loaned Securities subject to the Terminated Loan, Lender shall transfer to Borrower Collateral for the Terminated Loan in accordance with and to the extent required under the Agreement, provided that no Default has occurred with respect to Borrower.

6. For purposes of this Annex, the term "Breakage Fee" shall mean a fee agreed by Borrower and Lender in the Confirmation or otherwise orally or in writing. In the absence of any such agreement, the term "Breakage Fee" shall mean, with respect to Loans of Government Securities, a fee equal to the sum of (a) the cost to the non-terminating party (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of the termination of the Terminated Loan, and (b) any other loss, damage, cost or expense directly arising or resulting from the termination of the Terminated Loan that is incurred by the non-terminating party (other than consequential losses or costs for lost profits or lost opportunities), as determined by the non-terminating party in a commercially reasonable manner, and (c) any other amounts due and payable by the terminating party to the non-terminating party under the Agreement on the Early Termination Date.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Schedule A

Names and Addresses for Communications

Schedule B

Defined Terms and Supplemental Provisions

ANNEX C

AUTHORIZED INVESTMENTS FOR CASH COLLATERAL

Lender's Agent acknowledges that it has been instructed by Lender to and shall make investments of Cash Collateral only if the investments are expressly permitted by the PFIA for collateral under a securities lending agreement.

If Lender's Agent, in error, invests Lender's funds in instruments not expressly authorized by the PFIA for Cash Collateral under a securities lending agreement, Lender's Agent assumes all liability for making such investments and indemnifies Lender from liability with respect to such transactions.

Lender's Agent does not assume liability, nor offer any indemnifications, for any investments that are authorized by the PFIA for Collateral under a securities lending agreement, as reflected in ANNEX E, including the following to the extent authorized by the PFIA for such purpose:

- A. Direct obligations of the United States or obligations which require timely repayment of principal and interest, and are fully guaranteed by the United States;
- B. Obligations issued or guaranteed by any agency, department or instrumentality of the United States if such obligations conform to Frost Bank's Securities Lending Executive Committee's then current guidelines;
- C. SEC Rule 2a-7 regulated money market mutual funds which are approved by Frost Bank's Securities Lending Executive Committee;
- D. Commercial paper issued by corporations, whether organized and operating within the United States or outside the United States, having a rating category of "First Tier Security" as defined under SEC Rule 2a-7, that conforms to Frost Bank's Securities Lending Executive Committee's then current guidelines; and
- E. Other investments which Frost Bank's Securities Lending Executive Committee may from time to time add to their guidelines as permitted investments.

ANNEX D

COMPENSATION OF LENDER'S AGENT

Split of Revenues

All Revenues (as defined below) in connection with securities lending activities shall be split between Lender and Lender's Agent, as follows:

<u>Lender</u>	<u>Lender's share of Revenue</u>	<u>Lender's Agent's share of Revenue</u>
Travis County	60 %	40 %

"Revenues" shall mean:

- (i) net monthly income (i.e., the gross income earned by the investment of Cash Collateral for Lender's Loans, less the amount paid to Borrowers as the Cash Collateral Fee as well as related expenses in respect thereof), excluding money market sweep income retained by Lender's Agent in accordance with Section 3(b) of this Agreement; and
- (ii) loan fees actually paid by Borrowers in respect of Lender's Loans.

Other Retention by Lender's Agent

As provided in Section 3(b), Lender's Agent shall be entitled to retain 100% of the income generated by the use of a money market sweep for Revenue in accordance with such Section.

ANNEX E

TEXAS PUBLIC FUNDS INVESTMENT ACT, SECTION 2256.0115

Sec. 2256.0115. AUTHORIZED INVESTMENTS: SECURITIES LENDING PROGRAM.

(a) A securities lending program is an authorized investment under this subchapter if it meets the conditions provided by this section.

(b) To qualify as an authorized investment under this subchapter:

(1) the value of securities loaned under the program must be not less than 100 percent collateralized, including accrued income;

(2) a loan made under the program must allow for termination at any time;

(3) a loan made under the program must be secured by:

(A) pledged securities described by Section 2256.009;

(B) pledged irrevocable letters of credit issued by a bank that is:

(i) organized and existing under the laws of the United States or any other state; and

(ii) continuously rated by at least one nationally recognized investment rating firm at not less than A or its equivalent; or

(C) cash invested in accordance with Section:

(i) 2256.009;

(ii) 2256.013;

(iii) 2256.014; or

(iv) 2256.016;

(4) the terms of a loan made under the program must require that the securities being held as collateral be:

(A) pledged to the investing entity;

(B) held in the investing entity's name; and

(C) deposited at the time the investment is made with the entity or with a third party selected by or approved by the investing entity;

(5) a loan made under the program must be placed through:

(A) a primary government securities dealer, as defined by 5 C.F.R. Section 6801.102(f), as that regulation existed on September 1, 2003; or

(B) a financial institution doing business in this state; and

(6) an agreement to lend securities that is executed under this section must have a term of one year or less.