



**TENNESSEE HOUSING DEVELOPMENT AGENCY  
31620-00618**

**REQUEST FOR PROPOSALS  
For  
DOCUMENT CUSTODIAN SERVICES  
FEBRUARY 26, 2021**

---

**I. INTRODUCTION**

The Tennessee Housing Development Agency (“THDA”) is seeking proposals from firms interested in providing document custodian services for THDA’s Loan Program in connection with Ginnie Mae, Freddie Mac and Fannie Mae (collectively “Investors”). With this request (the "RFP") THDA asks that all interested parties submit their proposal for review and possible selection.

THDA will establish an evaluation committee to review and evaluate the proposals. Selection(s) will be made based on the recommendation by the committee. THDA intends to select one or more providers for document custodian on terms and conditions acceptable to THDA. In addition to the individual Investors’ custodian agreement, THDA will require a Tri-Party Agreement for document custodian services between THDA, its short term revolving loan facility provider (“RBC”) and the document custodian. A template of that agreement is attached hereto as Attachment B. If selected to move forward, the firm(s) understand that additional negotiations of an agreement may take place. THDA expects the effective date of the contract(s) to be on or around July 1, 2021.

**Freddie Mac Seller / Servicer Approval**

In March, 2018, the Board approved applications to both Fannie Mae and Freddie Mac for THDA to become an approved Seller/Servicer for Fannie Mae and for Freddie Mac. THDA received its Seller/Servicer approval from Freddie Mac on February 8, 2019. On May 21, 2019, THDA’s Board of Directors (Board) authorized THDA to begin the process to become a Ginnie Mae seller/servicer

**II. DESCRIPTION OF DOCUMENT CUSTODIAN SERVICES**

THDA is seeking a document custodian, which is approved as a document custodian for all Investors, willing to enter into document custodian services with THDA and Investors, and can provide the additional document custodian services required by the Tri-Party Agreement. The document custodian services will be available until all loans held meet release requirements.

### **III. SCHEDULE OF EVENTS**

<b>EVENT</b>	<b>TIME</b>	<b>DATE</b>
1. RFP Issued		February 26, 2021
2. Email Written “Questions & Comments” Deadline	2:00 p.m. CST	March 12, 2021
3. Response to Written “Questions & Comments”		March 17, 2021
4. Response Deadline	2:00 p.m. CST	March 31, 2021
5. Notice of Intent to Award Released		April 16, 2021
6. Contract Sent to Contractor for Signature		June 15, 2021
7. Contractor Signature Deadline	2:00 p.m. CST	June 30, 2021

### **IV. COMMUNICATION WITH THDA**

Interested parties and proposers must direct all communications regarding this RFP, including Questions and Comments, responses and cost proposals, to the following RFP Coordinator, who is THDA’s only official point of contact for this RFP:

Emily Kelley  
Tennessee Housing Development Agency  
Andrew Jackson Building  
502 Deaderick Street, Third Floor  
Nashville, TN 37243  
615-815-2063  
ekelley@thda.org

Questions or comments regarding this RFP may be directed to the RFP Coordinator via e-mail no later than the deadline specified in Section III.2. THDA will provide responses via e-mail as specified in Section III.3. All questions, comments, any modifications to this RFP, and THDA’s responses will be provided to all entities to whom this RFP was sent and may be posted on the THDA website: <http://thda.org/about-thda/public-notice-and-comment>

Each response to this RFP must consist of a Technical Proposal and a Cost Proposal. Each proposer must submit one (1) printed original and one (1) USB Flash Drive loaded with a copy of the Technical Proposal to THDA in a sealed package that is clearly marked:

**“Technical Proposal in Response to RFP 31620-00618 -- Do Not Open”**

Each proposer must submit one (1) printed original and one (1) USB Flash Drive loaded with a copy of the Cost Proposal to THDA in a separate, sealed package that is clearly marked:

**“Cost Proposal in Response to RFP- 31620-00618 -- Do Not Open”**

THDA must receive all Technical Proposals and Cost Proposals in response to this RFP, addressed to the RFP Coordinator at the above address, no later than 2:00 p.m., Central Daylight Time on March 31, 2021. Technical and Cost Proposals may be delivered to THDA via regular mail or overnight mail

and all must be addressed to the RFP Coordinator as specified above. Technical Proposals and/or Cost Proposals delivered after the specified time and date will not be considered by THDA.

## **V. FORMAT**

Technical Proposals are limited to ten (10) pages, excluding exhibits. Technical Proposals must be 1.5 spaced with one-inch margins and 12-point font size. A cover letter or executive summary must accompany each Technical Proposal and does not count against the page limit. Do not include ANY costs/fees with the Technical Response.

The Cost Proposal must be in the format of the Cost Proposal excel sheet and include separate fee schedules for Investors and Warehouse Line of Credit (Tri-Party Agreement) in excel, word or PDF documents.

## **VI. TECHNICAL PROPOSAL**

Responses must include, at a minimum, the following information:

### **1. Firm Overview and Experience**

- (a) Provide a brief description of your firm's history and organization, including ownership and capital structure.
- (b) Provide your organization's DUNS number and IRS employer identification number.
- (c) Provide a statement, signed by an authorized officer of your organization, that the information provided in response to this RFP is true and correct and that the person signing the statement has full authority to enter into a contract with THDA for the services set forth.

### **2. Technical Requirements**

Given the purpose of document custodian services and the information contained in Sections I and II, respond to the following:

- (a) Provide information on your services, any software utilized and the electronic communication required for the most efficient flow of documents and certification of loans.
- (b) Describe in detail your preferred process and timing of document delivery with customers.
- (c) Discuss and describe the standard time frames for certification and notices to a customer upon receipt of loan documents.
- (d) Discuss how your firm approaches the most efficient process for certifications when a third party warehouse lender desires certification in addition to the final certification for one of the agencies.
- (e) Describe your process in assigning account representatives or providing service to customers and the communication through the document delivery and certification processes.
- (f) Discuss your escalation process for problems with either specific loan files or the functionality provided through your electronic systems.
- (g) Describe the training available for your process, any software or electronic functionality used in the delivery and certification of loans.
- (h) Discuss how your process promotes compliance with Fannie Mae, Freddie Mac and Ginnie Mae requirements throughout the initial processes and through the close out of loan files.
- (i) Describe any differences in process on the Loan Servicing side of the business after loans are certified and in the course of regular loan release or transfer activity.
- (j) Discuss other advantages and efficiencies provided by the use of your services between the various stakeholders in a loan transaction.
- (k) Provide three or more client references and list the State Housing Finance Agencies that you currently provide service to or have an active contract for services.

- (l) Describe any additional services or features you provide that may add value beyond the responses to (a)-(k).

## **VII. COST PROPOSAL (to be submitted in separate sealed envelope)**

The Cost Proposal is one of the factors that will be considered in awarding this contract.

1. Complete the Cost Proposal in the form of the Cost Proposal excel sheet and include separate fee schedules for Investors and Warehouse Line of Credit (Tri-Party Agreement).
2. All Cost Proposals must remain firm for up to 60 days from the Response Deadline specified in Section III.4. Any Cost Proposal that does not offer to remain firm for the required time period may be considered non-responsive.

## **VIII. EVALUATION AND SELECTION**

THDA will establish an evaluation committee to select the proposer with the best combination of attributes based upon Firm Overview and Experience, Technical Requirements, and Cost.

The proposer with the apparent best-evaluated proposal must enter into an agreement with THDA no later than the Contract Signature Deadline date detailed in the RFP Section III, Schedule of Events. If the proposer fails to enter into an agreement with THDA by the deadline, THDA may determine that the proposer is non-responsive to the terms of this RFP and reject the proposal.

If THDA determines that the apparent best-evaluated proposal is non-responsive and rejects the proposal after opening Cost Proposals, the responsive cost proposals will be re-evaluated to determine the new, apparent best-evaluated proposal.

THDA will score each proposal based upon the following criteria:

1. Efficiency and timeliness of services as described by your responses to Technical Requirements listed in Section VI. 2. (Score 40%)
2. Client On-Boarding & Training Process (Score 20%)
3. Cost (Score 10%)
4. Qualifications & Professional Experience (Score 10%)
5. Recommendation by References (Score 10%)
6. Value Added (Score 10%)

## **IX. CONDITIONS**

By submitting a Technical Proposal and a Cost Proposal, a proposer is deemed to accept all conditions of this RFP.

THDA reserves the right, in its sole discretion, to reject any and all Technical Proposals and Cost Proposals, and to enter into negotiations with one or more proposers. THDA reserves the right, in its sole discretion, to make those decisions after receipt of responses to this RFP. THDA's decision on these matters is final.

All Technical Proposals and Cost Proposals, upon submittal, become the property of THDA and will not be returned. Late submittals will not be reviewed or evaluated.

All Technical proposals, Cost Proposals and accompanying documentation or materials submitted in response to this RFP will be subject to the open records law of the State of Tennessee and will be available for public review in accordance with Tennessee Code Annotated Section 10-7-503.

THDA reserves the right, in its sole discretion, to amend, modify or withdraw this RFP at any time. Proposers are responsible for responding to the latest version of this RFP which can be found at <http://thda.org/about-thda/public-notice-and-comment> THDA, in its sole discretion, may reject any and all Technical Proposals and Cost Proposals on the basis of non-responsiveness or for failure to fully disclose requested information. THDA reserves the right, in its sole discretion, to contact any proposer to request additional or clarifying information and may negotiate the terms of the Technical Proposal or the Cost Proposal prior to commencement of services.

The expectations, plans and requests included in this RFP shall not be considered a commitment or contract binding on THDA.

THDA is not liable for any costs incurred by proposers including, without limitation, costs related to the preparation and delivery of the Technical Proposal and Cost Proposal or costs associated with providing additional information in response to THDA requests.

THDA reserves the right, in its sole discretion, to waive any irregularities in any Technical Proposal or Cost Proposal.

THDA reserves the discretion and right to add or eliminate a firm for any reason, including but not limited to, the following:

- Personnel Changes
- Mergers or acquisitions of firms
- Sanctions or limitation imposed or investigations or proceedings instituted by any regulator, Investors or government entity.
- Actual or apparent conflicts of interest

**ATTACHMENT A  
DOCUMENT CUSTODIAN RFP**

**Cost Proposal & Evaluation Guide**

---

**NOTICE:** THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

**COST PROPOSAL SCHEDULE—** The Cost Proposal shall indicate the proposed price for the delivery of specified goods for the entire scope of services including all services defined for a Document Custodian. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point. The services and costs shall be filled into the corresponding excel sheet and submitted along with this signed form.

**NOTICE:** Notwithstanding the line item of costs provided, the State is under no obligation to request work from the Vendor in any specific dollar amounts or to request any work at all from the Vendor during any period of the Vendor is

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the entity responding to the provisions of this RFQ and any contract awarded pursuant thereto. If said individual is not responding in an individual capacity or is the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the entity responding to this RFQ.

<b>RESPONDENT SIGNATURE:</b>	
<b>PRINTED NAME &amp; TITLE:</b>	
<b>DATE:</b>	

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

**ATTACHMENT B**  
**DOCUMENT CUSTODIAN RFP**

**TRI-PARTY CUSTODY AGREEMENT**

This TRI-PARTY CUSTODY AGREEMENT is made and entered into as of \_\_\_\_\_, 2021, by and among The Tennessee Housing Development Agency (“THDA”), **CUSTODIAN NAME** (the “Custodian”) and Royal Bank of Canada (the “Lender”).

WHEREAS, Lender and THDA have entered into a Credit and Security Agreement dated as of March 1, 2020 (as amended or otherwise modified from time to time, the “Credit Agreement”), pursuant to which Lender has agreed to make from time to time, one or more loans to THDA (each, an “Advance”) secured by certain Mortgage Loans as provided therein;

WHEREAS, THDA intends to deliver certain documents relating to such Mortgage Loans to the Custodian and the Custodian is willing to hold such documents in custody for the benefit of, and as bailee of and agent for, Lender and its successors and assigns; and

WHEREAS, the parties to this Agreement desire to set forth the terms and conditions under which the Custodian will hold such documents in custody.

NOW, THEREFORE, the parties to this Agreement hereby agree as follows:

**Section 1. Certain Definitions.** The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section or other subdivision; and section references refer to sections of this Agreement. For the purposes of this Agreement, the following terms shall have the indicated meanings unless the context or use indicates another or different meaning and intent, and the definitions of such terms are equally applicable to the singular and the plural forms of such terms.

“Advance Date” shall mean, with respect to any Mortgage Loan, the date of an advance of loan proceeds by Lender to THDA with respect to such Mortgage Loan.

“Agreement” shall mean this Tri-Party Custody Agreement and the schedules and exhibits hereto, as supplemented or amended from time to time.

“Applicable Agency” shall mean Fannie Mae, Freddie Mac, or Ginnie Mae, as applicable.

“Assignment of Mortgage” shall have the meaning set forth in Section 4 (C) hereof.

“Authorized Representative” shall have the meaning set forth in Section 20 hereof.

“Borrowing Base” shall have the meaning set forth in the Credit Agreement.

“Borrowing Base Mortgage Loan” means each Mortgage Loan that has been included in the calculation of the Borrowing Base by THDA and which has not been removed from the calculation of the Borrowing Base under the Credit Agreement (as mutually agreed upon by

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

Lender and THDA) and identified to Custodian and delivered pursuant to this Agreement.

“Business Day” shall mean any day other than (i) a Saturday or Sunday, (ii) any day that is a legal holiday under the laws of the State of \_\_\_\_\_ or any state in which the Custodian maintains a custodial facility, or (iii) any day on which the New York Stock Exchange, the Custodian’s offices, or banks or savings and loan institutions located in the State of \_\_\_\_\_ or any state in which the Custodian maintains a custodial facility or are closed or authorized or permitted to close.

“Conforming Loan” shall mean a Loan which meets all criteria of, and is eligible for sale to the Applicable Agencies.

“Credit Agreement” shall have the meaning set forth in the first WHEREAS clause above.

“Custodian Loan Transmission” shall mean, in the case of each Mortgage Loan held by the Custodian for the benefit of Lender, a computer-readable transmission containing the following information (and such other data as may be mutually agreed upon in writing by Lender, THDA and the Custodian), which shall be delivered by the Custodian pursuant to this Agreement: the Mortgage Loan Number, Mortgagor’s name, original principal amount, original Mortgage Note interest rate, Mortgagor’s address, and MERS Identification Number for each MERS Mortgage Loan. The Custodian shall incorporate all agreed upon data to the extent provided by THDA to the Custodian into the Custodian Loan Transmission. Each Custodian Loan Transmission made available shall cover all Mortgage Loans for which related Mortgage Files are being held by the Custodian hereunder on the date of such Custodian Loan Transmission.

"Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Custodian, or another method or system specified by the Custodian as available for use in connection with its services hereunder.

“Exception” shall mean, with respect to any Mortgage Loan, any variance from the requirements of Section 4 hereof with respect to the Mortgage Files.

“Exception Report” means a list or lists, as applicable, of Mortgage Loans held by the Custodian for the benefit of Lender, which list(s) shall be made available by the Custodian to Lender in an electronic format as provided in Section 5 hereof and which shall include codes indicating any Exceptions with respect to each Mortgage Loan listed thereon. Each Exception Report made available with a Custodian Loan Transmission shall set forth (a) the Mortgage Loans included in the Borrowing Base on any applicable Advance Date as well as the Mortgage Loans previously included in the Borrowing Base by Lender that continue to be included in the Borrowing Base and held by the Custodian hereunder and (b) all Exceptions with respect thereto, with any updates thereto from the time last made available.

“Indemnitee” shall have the meaning set forth in Section 19 hereof

“MERS” shall mean the Mortgage Electronic Registration System, Inc., a corporation organized and existing under the laws of the State of Delaware.



**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

“MERS Mortgage Loan” shall mean any Mortgage Loan as to which the related Mortgage has been recorded in the name of MERS, as agent for the holder from time to time of the Mortgage Note, and which is identified as a MERS Mortgage Loan on the related Mortgage Loan Schedule.

“Mortgage” shall mean a mortgage, deed of trust or other instrument securing a Mortgage Note, which creates a first or second priority lien on the Mortgaged Property described therein.

“Mortgage Backed Security” shall have the meaning set forth in the Credit Agreement.

“Mortgage File” shall mean, as to each Mortgage Loan subject to this Agreement, the Required Documents, including without limitation Trailing Documents delivered by THDA to the Custodian in respect of a Mortgage Loan in accordance with Section 3 below.

“Mortgage Loan” shall mean a mortgage loan that is secured by a first priority lien (as reflected on the Mortgage Loan Schedule) encumbering an owner-occupied single family or two- to four-family residential housing structure or condominium and appurtenant facilities which the Custodian has been instructed to hold for Lender pursuant to this Agreement.

“Mortgage Loan Documents” shall mean, with respect to a Mortgage Loan, the documents comprising the Mortgage File for such Mortgage Loan.

“Mortgage Loan Number” shall mean the number assigned to a Mortgage Loan to facilitate identification for administrative purposes.

“Mortgage Loan Schedule” shall mean a listing of Mortgage Loans in written and computer readable standardized text formats, delivered or caused to be delivered by THDA to Lender and the Custodian, incorporating the fields listed on Schedule II hereto and such other information and fields as may be mutually agreed upon by Lender, THDA and the Custodian and in a form satisfactory to Lender and the Custodian. The Mortgage Loan Schedule shall separately identify all MERS Mortgage Loans and include the MERS Identification Number for each MERS Mortgage Loan and shall separately identify all Mortgage Loans for each owner-occupied single family or two- to four-family residential housing structures or condominiums and appurtenant facilities.

“Mortgage Note” shall mean a promissory note, together with any rider, addendum or amendment thereto, evidencing a Mortgage Loan.

“Mortgaged Premises” shall mean the real property, including all buildings, structures, improvements or fixtures thereon and all appurtenances, water rights, privileges and benefits appertaining thereto, that is conveyed, pledged or mortgaged, or in which a security interest is granted under a mortgage or deed of trust to secure the payment and performance of a Mortgage Loan.

“Mortgagor” shall mean any obligor under a Mortgage Note, including any Person that has acquired Mortgaged Premises and assumed the obligations of the original maker under the Mortgage Note and Mortgage, or a Person that has acquired title to any Mortgaged Premises subject to the lien of the Mortgage.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

“Officer’s Certificate” shall mean a certificate signed by (i) an officer (authorized to sign an Officer’s Certificate) of THDA or other Person submitting a Mortgage File to Custodian or (ii) an officer from the appropriate records depository for the jurisdiction where the respective Mortgaged Premises are located. The text of any particular Officer’s Certificate may be printed or stamped upon or attached to a document constituting a portion of a Mortgage File and the signature of an officer authorized to sign an Officer’s Certificate may be either a facsimile or other reproduction thereof.

“Paperless Release Request” shall mean a request for release of any Mortgage Loan Document(s), submitted via Custodian’s secure web site (**NAME OF SITE**).

“Permissible Delivery Event”: Any of the following: (i) the occurrence of a Security Issuance Failure of the related Mortgage-Backed Security, written notice of which shall have been received by the Custodian from the Applicable Agency, (ii) a delivery of such Mortgage File is not otherwise prohibited by Applicable Agency guidelines or (iii) the Applicable Agency has given specific consent for such delivery.

“Person” shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof.

“Post-Certification Period” In connection with the certification of Borrowing Base Mortgage Loans by Custodian to the Applicable Agency, the period (x) commencing on the date that Custodian provides the Applicable Agency with the related certification in connection with the sale or securitization of such Borrowing Base Mortgage Loans and (y) ending on the date that Custodian shall have received written notice from Lender, which may be via electronic mail (which written notice may be relied upon by Custodian without further inquiry and without liability of any kind to any other Person) or notice from the Applicable Agency to the effect that either (i) the Applicable Agency has remitted, or Lender has received, the purchase price in respect of the related Borrowing Base Mortgage Loans or (ii) the Applicable Agency has issued the related Mortgage-Backed Security to Lender, as applicable.

“Responsible Officer” shall mean, with respect to the Custodian, any officer, including any managing director, vice president, assistant vice president, trust officer or any other officer of Custodian customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Agreement, and, with respect to a particular matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Request for Release of Documents” shall mean a written request for release of any Mortgage Loan Document(s) containing loan number, borrower’s name, address, reason for the release and shipping instruction, or substantially in the form of Exhibit B hereto, or a Paperless Release Request.

“Required Documents” shall refer to the documents listed in Section 4 hereof.

“Review Procedures” shall have the meaning set forth in Section 5 hereof.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

“Trailing Document” shall mean any additional original document acquired by THDA in respect of a Mortgage Loan (including original documents evidencing an assumption, modification, consolidation or extension of a Mortgage Loan) that is delivered or caused to be delivered by THDA to the Custodian after initial Mortgage File setup on the Custodian’s automated data system, to the extent delivery of such documents is required by the Credit Agreement.

“Trailing Document Schedule” shall mean a list (in written form and in computer readable form compatible with Custodian’s data systems) identifying the Trailing Documents delivered or caused to be delivered by THDA to Custodian and the Mortgage Files to which they pertain, such Trailing Document Schedule to be delivered prior to or in concurrence with the delivery of any Trailing Documents.

“Transaction” shall have the meaning assigned thereto in the Credit Agreement.

“Transmittal Letter” shall refer to a letter substantially in the form of Exhibit A hereto.

**Section 2. Appointment of the Custodian.** Lender hereby appoints the Custodian, and the Custodian hereby accepts its appointment, to act as the agent and custodian for and bailee of Lender, and its successors and assigns as provided herein, for the purpose of taking custody of the Mortgage Files on the terms and conditions set forth herein. With respect to each individual Mortgage Loan, the Custodian’s appointment as Lender’s bailee, custodian and agent shall terminate upon the earlier of (a) the release by Lender of its security interest in such Mortgage Loan and written notice to the Custodian of such release, (b) the delivery by Custodian of the related Mortgage File to a successor custodian approved by Lender or to Lender in accordance with Section 11 hereof, and (c) the receipt by Custodian of a termination notice pursuant to Section 24 hereof.

**Section 3. Delivery of Mortgage Files.** THDA shall from time to time deliver or cause to be delivered Mortgage Files to the Custodian to be held hereunder, which shall be reviewed by the Custodian as provided in Section 5. With respect to each Transaction, (i) THDA shall provide written notice, in the form of a Mortgage Loan Schedule (in a form acceptable to Lender and the Custodian), to Lender and the Custodian with respect to such Mortgage Loans which are to be included in the calculation of the Borrowing Base, no later than \_\_\_\_\_ (Eastern time) at least \_\_\_\_\_ Business Days prior to the requested Advance Date, and (ii) subject to the following paragraph, THDA shall deliver to the Custodian the Mortgage Files (none of which shall contain an Exception) with respect to such Mortgage Loans not later than \_\_\_\_\_ (Eastern time) at least \_\_\_\_\_ Business Days preceding such Advance Date.

Notwithstanding anything herein to the contrary, (i) if Mortgage Files are delivered to the Custodian after \_\_\_\_\_ Eastern time on a Business Day, then the Custodian will have \_\_\_\_\_ to complete such review, and (ii) if \_\_\_ or more Mortgage Files are delivered to the Custodian by \_\_\_\_\_ Eastern time on a Business Day, then the Custodian will have \_\_\_\_\_ to complete such review for each increment of up to \_\_\_\_\_ additional files (e.g., the Custodian would have \_\_\_\_\_). In such event, THDA must deliver the Mortgage Files to the Custodian sufficiently in advance so that the Custodian shall have the time required to complete its review and make available the required Custodian Loan Transmission and related

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

Exception Report on the Advance Date.

From time to time, THDA may forward or cause to be forwarded to the Custodian a Trailing Document. Any Trailing Document that is so forwarded to the Custodian shall be accompanied by a Trailing Document Schedule including a transmittal with instructions on filing, the identity of the Mortgage Loans to which such Trailing Documents relate and any other information reasonably requested by the Custodian. Subject to the inclusion of such documents within a Trailing Document Schedule transmitted to the Custodian, the Custodian shall hold such additional documents as part of the related Mortgage File. With respect to such Trailing Documents that are being delivered, if up to \_\_\_\_\_ Trailing Documents are delivered prior to \_\_\_\_\_ (Eastern time), the Custodian shall complete its review within \_\_\_\_ Business Days.

From time to time, THDA may request that Custodian certify a Borrowing Base Mortgage Loan or a pool of Borrowing Base Mortgage Loans to the Applicable Agency in connection with a sale or a securitization of such Borrowing Base Mortgage Loans, as applicable. With respect to each such Borrowing Base Mortgage Loan, THDA shall deliver to Custodian the related Applicable Agency documents listed on Exhibit D-1, D-2 or D-3; as applicable. Prior to Custodian certifying Borrowing Base Mortgage Loans to Fannie Mae, Custodian shall be in receipt of Fannie Mae Form 2004A executed by Lender containing loan list, contract number and Fannie Mae payee code by 12:00 PM (EST) on the day prior to settlement (if a copy is received by such time, an original shall be delivered on the next Business Day via overnight mail). The parties hereto acknowledge that a delay in the delivery of the form may cause a delay in certifying Borrowing Base Mortgage Loans. THDA shall provide to Lender and Custodian the Fannie Mae purchase advice notice by 10:00AM (EST) on the Settlement Date for reconciliation by Custodian. Custodian will notify THDA and Lender of any discrepancies for resolution prior to 12:00PM (EST) on the Settlement Date provided the Fannie Mae purchase advice notice is received by 10:00AM (EST). Lender shall provide written notice to Custodian indicating receipt of payment from or on behalf of THDA within 60 minutes of receipt of such payment. Custodian shall not be obligated to certify Borrowing Base Mortgage Loans to Freddie Mac unless a Freddie Mac Agreement has been executed. Promptly upon Custodian certifying a Borrowing Base Mortgage Loan to an Agency, Custodian shall (A) designate such Borrowing Base Mortgage Loan as a Certified Mortgage Loan in its electronic records, (B) delete such Borrowing Base Mortgage Loan from the Custodial Loan Transmission and include such Borrowing Base Mortgage Loan on a Custodial Loan Transmission. After certification of a Borrowing Base Mortgage Loan to an Agency, except as otherwise provided in the Applicable Agency Agreement, as applicable, Custodian shall continue to hold such Borrowing Base Mortgage Loan as the custodian and bailee for hire for the exclusive benefit of Lender, but subject to the control of Fannie Mae if such Borrowing Base Mortgage Loan has been certified to Fannie Mae (until the occurrence of any of the events specified in Section 2) and shall not act upon instructions of any THDA or any Approved Investor to deliver such Borrowing Base Mortgage Loan other than as expressly provided in this Agreement and subject to the Applicable Agency guidelines; provided that, if the Custodian receives written notice (which may be via electronic transmission) from any Agency indicating that such Agency has rejected, or failed to purchase, any Borrowing Base Mortgage Loans so certified to such Agency or to the extent a Permissible Delivery Event has occurred, (A) such Borrowing Base Mortgage Loans shall no longer be subject to such Agency's guidelines and (B) Custodian shall promptly designate such Borrowing Base Mortgage Loans as Borrowing Base Mortgage Loans in its electronic records and shall give prompt written notice of such designation

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

to Lender and THDA within one (1) Business Day by deleting such Borrowing Base Mortgage Loans from the Custodial Loan Transmission.

In addition, with respect to any Borrowing Base Mortgage Loans that have been certified to Fannie Mae, Custodian hereby acknowledges and agrees that, during the Post-Certification Period, the ownership interest, security interest or any other interest, as the case may be, of Lender with respect to such Borrowing Base Mortgage Loans, subject to Fannie Mae's control, are unaffected by Custodian's certification of such Borrowing Base Mortgage Loans to Fannie Mae. Lender acknowledges that during the Post-Certification Period, Lender shall only have the right to direct Custodian with respect to the disposition of such Borrowing Base Mortgage Loan after (x) Custodian's receipt of written notice (which may be via electronic transmission) from either Fannie Mae or Lender indicating that Fannie Mae has rejected, or failed to purchase, any such Borrowing Base Mortgage Loan so certified to Fannie Mae or (y) the occurrence of a Permissible Delivery Event. Upon the expiration of the Post-Certification Period, Custodian shall, in respect of the remaining Borrowing Base Mortgage Loans which have not been so purchased, hold such Borrowing Base Mortgage Loans for the exclusive benefit of Lender.

**Section 4. Required Documents for all Mortgage Loans.** THDA shall deliver or cause to be delivered to the Custodian the following Required Documents to the Custodian with respect to each Mortgage Loan listed on each Mortgage Loan Schedule delivered to the Custodian pursuant to Section 3 above:

- A. the original Mortgage Note together with all intervening endorsements evidencing a complete chain of endorsements from the originator of the Mortgage Loan to THDA, endorsed in blank by the holder/payee thereof without recourse;
- B. a copy of the unrecorded Mortgage; and
- C. a copy of the title commitment received by THDA insuring the lien position of the related Mortgage Loan previously deemed acceptable in writing by THDA or its servicer (on behalf of THDA).

With respect to any Mortgage Loan, if the Custodian has identified such Mortgage Loan as having an Exception or if THDA has knowledge of an Exception, THDA shall promptly and diligently attempt to cure such Exception.

**Section 5. The Custodian's Examination and Certification of Mortgage Files.** For Mortgage Files delivered to the Custodian by \_\_\_\_\_ Eastern time on a Business Day, then the Custodian shall complete its review of such Mortgage Files and make available the required Custodian Loan Transmission, and any Exception Report (if applicable), no later than \_\_\_\_\_ Eastern time on the \_\_\_\_\_ Business Day immediately following the Business Day on which the Mortgage Files were delivered. The Custodian shall examine the documents received by the Custodian pursuant to Section 3 hereunder; provided, however, that the Custodian shall have no obligation to determine that any of such documents delivered to it hereunder actually have been recorded (or recorded in the appropriate jurisdiction) or that they are other than what they purport to be on their face. THDA shall be responsible for causing the delivery to the Custodian of each Required Document for each Mortgage File and for completing or correcting any missing,

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

incomplete or inconsistent documents. The Custodian shall not be responsible or liable for taking any such action, causing THDA or any other Person to do so or notifying Lender that any such action has or has not been taken. With respect to each Mortgage Loan listed on a given Mortgage Loan Schedule, the Custodian shall conduct the following review (the "Review Procedures") and shall confirm that:

- A. the Mortgage Note and Mortgage each appear to bear an original signature or signatures (or copied signatures, in the case of the Mortgage) purporting to be the signature or signatures of the Person or Persons named as the maker and Mortgagor or grantor or, in the case of copies of the Mortgage permitted hereunder, that such copies bear a reproduction of such signature or signatures;
- B. the original Mortgage Note, the copy of the Mortgage, if any, delivered pursuant to this Agreement, appear on their face to be regular and to relate to such Mortgage Loan; and
- C. the Mortgage Note has an original principal amount set forth therein greater than or equal to the current principal amount of the indebtedness secured by the related Mortgage as reported to the Custodian by THDA on the related Mortgage Loan Schedule.

For Mortgage Files received by the Custodian by \_\_\_\_\_ Eastern, upon completion of such review, the Custodian shall determine if the documents included in the Mortgage File delivered in connection with any particular Mortgage Loan Schedule satisfy the requirements enumerated in this Section. If upon examination of the Required Documents relating to any Mortgage File, the Custodian determines that such documents do not satisfy the above requirements or is unable to confirm that such documents satisfy such requirements, the Custodian shall identify such Mortgage Loan as having an Exception on the Exception Report attached to the applicable Custodian Loan Transmission. Not later than the end of each Business Day during the term of this Agreement, the Custodian shall make available to THDA and the Lender, via the Custodian's secured website, a Custodian Loan Transmission and an Exception Report. Each Custodian Loan Transmission and Exception Report made available to THDA and the Lender by Custodian shall supersede, cancel and replace every previous Custodian Loan Transmission and Exception Report made available, and shall, in each case, control and be binding upon the parties hereto. Upon the termination of the Custodian's obligations under this Agreement, every Custodian Loan Transmission and Exception Report made available by the Custodian under this Agreement automatically shall be null and void.

**Section 6. Further Obligations of the Custodian.**

A. The Custodian shall have responsibility only for Mortgage Files and their contents that have been actually delivered to it and that have not been released in accordance with this Agreement. The Custodian shall segregate and identify the Mortgage Files by pool on its automated data system and maintain custody of all Mortgage Loan Documents received by it in secure and fire rated facilities, all in accordance with customary standards for such custody. The Custodian shall implement and maintain administrative and operating procedures pursuant to which it shall keep and maintain all records and information necessary to permit the regular identification of all Required Documents held or released by it hereunder.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

B. Upon (x) either (i) the payment in full to Lender of the Repurchase Price (as defined in the Credit Agreement) related to any Mortgage Loan or (ii) conversion of any Mortgage Loan to a Mortgage-Backed Security and (y) upon receipt by Custodian of a Request for Release executed by THDA and Lender certifying that either (i) such payment in full has been received by Lender or (ii) such Mortgage Loan(s) has been converted to a Mortgage-Backed Security (provided that THDA shall deliver a copy of such Request for Release to Lender and Lender shall indicate its consent to such Request for Release by signing such Request for Release prior to the delivery of such Request for Release to Custodian), Custodian shall promptly release the related Mortgage File to THDA or, in the event of a Mortgage Loan having been converted to Mortgage-Backed Security, release the related Mortgage File to the Applicable Agency pursuant to the terms of the applicable custodial agreement. After such release, the Custodian shall update its records to reflect the release of the applicable Mortgage Loans and such Mortgage Loans shall be deleted from the Custodian Loan Transmission and Exception Report delivered no later than the following Business Day.

**Section 7. Release of Mortgage Loan Documents.** In the event that any specific Mortgage Loan Document is needed by THDA for the purpose of correction of errors therein or for one of the other purposes set forth in a Request for Release of Documents, THDA shall send to the Custodian a completed Request for Release of Documents. Unless Lender (i) has directed the Custodian in writing not to release Mortgage Loan Documents to THDA or (ii) notified the Custodian in writing that an Event of Default under the Credit Agreement has occurred, the Custodian shall release such document(s) as follows:

Number of Mortgage Files Requested	Release Turnaround Time

In the case of documents released pursuant to this Section 7, THDA shall return to the Custodian the Required Documents, or such other documents that have been released to THDA, when THDA's need therefor no longer exists. Any request for release by THDA shall be in the form of the Request for Release of Documents.

In the event Lender advises the Custodian, or THDA advises the Custodian on behalf of itself or the Lender, in each case in writing, that Lender or THDA, as applicable, desires to sell Mortgage Loans, the Custodian shall forward the related Mortgage Files (at THDA's expense as provided in Section 18) in accordance with the instructions of Lender or THDA, as the case may be, along with a fully completed Transmittal Letter in substantially in the form of Exhibit A, identifying such Mortgage Loans as subject to the interest of Lender to the purchaser of the Mortgage Loans; provided, however, that any Mortgage Files that are unacceptable to the purchaser of the Mortgage Loans be returned directly to the Custodian and held by the Custodian

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

for Lender in accordance with this Agreement upon receipt of such Mortgage Files. The Custodian shall promptly provide Lender or THDA with a copy of each Transmittal Letter upon such party's request. Promptly upon receipt by Lender of the amount of the proceeds of such sale equal to that portion of the Borrowing Base allocable to such Mortgage Loans or otherwise upon Lender's receipt of the funds from the sale of such Mortgage Loans in the amount set forth in such Transmittal Letter into the account set forth in such Transmittal Letter, the Lender shall notify the Custodian thereof in writing. After the Custodian receives such written notice from Lender that it has received payment, the Custodian shall update its records to reflect the release of the applicable purchased Mortgage Loans and such Mortgage Loans shall be deleted from the Custodian Loan Transmission and Exception Report made available no later than the following Business Day.

In addition, THDA may provide a transmission for release of documents, via Electronic Means, in a form agreed to in advance of initial transmission by Lender, THDA and the Custodian containing information readable without intervention by the Custodian's data processing operations computer hardware and software staff, and arranged in a record layout to be specified by the Custodian (a "Paperless Release Request"). THDA agrees to maintain and control access to electronic signature information and assumes liability for any unauthorized use thereof. THDA also agrees to maintain accurate records of electronic transactions related to the Mortgage Files. THDA hereby authorizes the Custodian to automatically append the electronic signature of an Authorized Representative to the applicable request for release of documents and agrees and acknowledges that by appending such Authorized Representative's electronic signature, the Custodian shall be entitled to rely thereon. For purposes of this Agreement the term "electronic signature" is defined as an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

THDA agrees in advance to comply with all Custodian data encryption, security and record layout standards in connection with any Paperless Release Request as may be amended from time to time upon notice from the Custodian to THDA. The Custodian reserves the right to restrict or suspend THDA's access to the Custodian's computer systems for maintenance or repairs or for any other reason in Custodian's sole discretion, provided however that Custodian shall promptly provide THDA notice of such restriction or suspension.

Notwithstanding the foregoing, THDA is authorized to transmit and Custodian is authorized to accept signed Requests for Release of Documents sent via Electronic Means.

**Section 8. Right to Inspect.** The Custodian shall upon not less than \_\_\_\_ (X) Business Days prior written notice, subject to availability, permit (a) inspection during regular business hours by Lender (or by its auditors or agents when requested by Lender) of the Mortgage Loan Documents, at such place or places where the related Mortgage Files are deposited, and (b) Lender (or its auditors or agents when requested by Lender) to make copies of the Mortgage Loan Documents. THDA shall be responsible for any expenses in connection with such inspection and copying. Any such inspection and copying shall be subject to the procedures of Custodian. In addition, and not in limitation of the foregoing, to the extent permissible by applicable law, THDA shall indemnify and hold Custodian harmless from all claims, costs, expenses, losses and damages incurred by Custodian as a result of the loss or misplacement of any Mortgage Files or documents or papers contained in the Mortgage Files while in the possession of the Lender (or its auditors or agents when requested by Lender).



**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

**Section 9. Delivery of Required Documents to Lender.** In the event that any specific Mortgage Loan Document is needed by the Lender, the Lender shall send to the Custodian a completed Request for Release of Documents. The Custodian shall release such document(s) as follows:

Number of Mortgage Files Requested	Release Turnaround Time

Without limiting the generality of the provisions of Section 18 below, it is expressly agreed that in no event shall the Custodian have any liability for any losses or damages to any Person, including without limitation, the Lender, arising out of actions of the Custodian consistent with the instructions of Lender. In the event the Custodian does not receive such written instructions, the Custodian shall be authorized to utilize a nationally recognized courier service.

**Section 10. Fees of the Custodian.** It is understood that Custodian will charge such fees for its services under this Agreement as are set forth in a separate agreement between the Custodian and THDA, the payment of which, together with the Custodian's reasonable expenses (including, but not limited to, reasonable attorneys' fees and expenses) in connection herewith, shall be solely the obligation of THDA. The obligations of THDA under this Section 10 and such separate agreement shall survive the termination of this Agreement and the resignation or removal of the Custodian.

**Section 11. Termination by Custodian or THDA.** The Custodian may terminate its obligations under this Agreement upon at least thirty (30) days' prior written notice to THDA and the Lender. In the event of such termination, (i) THDA shall appoint, by written instrument, a successor custodian, subject to the written approval of Lender, and (ii) the Custodian, promptly upon payment of its fees and expenses, shall transfer to the successor custodian, as directed, all Mortgage Files being held by the Custodian under this Agreement. The Custodian's sole responsibility after termination of its obligations as aforesaid shall be to safely maintain all of the Mortgage Files and to deliver the same to a successor custodian; provided, that if a successor Custodian has not accepted custodial responsibilities within the period set forth in the first sentence of this Section 11, the Custodian may, at the expense of THDA, petition any court of competent jurisdiction to name a successor custodian or may deliver the Mortgage Files to Lender. Custodian shall not be responsible for the fees and expenses of any successor custodian. Upon delivery of the Mortgage Files to any successor custodian or to the Lender as provided in this paragraph, all duties and obligations of the Custodian shall cease and terminate. The payment of all costs and expenses relating to the transfer of the Mortgage Files upon termination shall be the sole responsibility of THDA.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

THDA may (and shall, upon the written request of the Lender) at any time and without cause remove and discharge the Custodian from the performance of its duties under this Agreement upon at least sixty (60) days' written notice from THDA to the Custodian, with a copy to the Lender. Such removal shall take effect upon (i) the appointment of a successor custodian by THDA, and (ii) delivery of all the Mortgage Files to the successor custodian, which delivery shall be subject to, and shall be made promptly after, payment of the Custodian's unpaid fees and expenses. The payment of such successor custodian's fees and expenses and all costs and expenses in connection with such transfer shall be the sole responsibility of THDA. If a successor custodian is not appointed by THDA within the aforementioned sixty (60) days, the Custodian may, at the expense of THDA, petition any court of competent jurisdiction to name a successor custodian or may deliver the Mortgage Files to Lender. Upon delivery of the Mortgage Files to any successor custodian or to the Lender as provided in this paragraph, all duties and obligations of the Custodian shall cease and terminate.

**Section 12. Representations by THDA and Lender.** THDA hereby represents and warrants to, and covenants with, the Lender and the Custodian that any Mortgage Loan described herein shall constitute a Mortgage Loan within the meaning of the Credit Agreement, and all provisions of the Credit Agreement (including the provisions of the Credit Agreement granting a security interest in the Mortgage Loans to the Lender), and all representations and warranties contained in such documents, are applicable to such Mortgage Loans. Each of the Lender and THDA hereby represents and warrants to each other and to the Custodian that this Agreement has been duly executed and delivered by such party and constitutes a valid, legal and binding obligation of such party, enforceable against such party in accordance with its terms, except (i) as the enforcement thereof may be limited by applicable debtor relief laws and (ii) that certain equitable remedies may not be available regardless of whether enforcement is sought in equity or at law.

**Section 13. Custody of Mortgage Files.** The Custodian shall segregate on its automated data system and maintain possession and custody of the Mortgage Files for the benefit of the Lender and as bailee of and agent and custodian for Lender for all purposes until otherwise notified by the Lender in writing pursuant to the terms hereof. The Custodian shall also make appropriate notations in the Custodian's books and records reflecting that the Required Documents are owned by the Lender unless otherwise notified by the Lender in writing pursuant to the terms hereof. In the event that Custodian fails to produce a Mortgage Note that was in its possession pursuant to this Agreement within \_\_\_\_ (X) Business Days after required or requested by THDA or the Lender (a "Custodial Delivery Failure"), and provided that (i) such Mortgage Note is not outstanding pursuant to the terms of this Agreement; and (ii) such Mortgage Note was held by the Custodian on behalf of Lender, as evidenced by a Custodian Loan Transmission and an Exception Report which did not list such document as an Exception, then Custodian shall with respect to any missing Mortgage Note, promptly deliver to the Lender or THDA upon request, a lost note affidavit in the form of Exhibit C hereto ("Lost Note Affidavit"). In the event that such original Mortgage Note is subsequently found and delivered to the Lender, the Lender shall return the Lost Note Affidavit to the Custodian.

**Section 14. Insurance.** The Custodian shall, at its own expense, maintain at all times during the existence of this Agreement and keep in full force and effect insurance in amounts, with standard coverage and subject to deductibles, all as customary for insurance typically maintained by banks that act as custodian.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

**Section 15. Notices.** Except as otherwise expressly provided herein, all communications hereunder shall be in writing and shall be mailed, delivered or sent via Electronic Means, if to THDA, Lender or the Custodian at its address as indicated on Schedule I or at such other address as shall be designated by such party in a written notice to the other parties. All such notices and communications shall be effective when received by the party to which such notice is to be given, except that any notice, demand or request (except pursuant to Section 3) received by the Custodian after \_\_\_\_\_ (Eastern time) shall be deemed to have been received on the next succeeding Business Day.

**Section 16. Representations by the Custodian.** By execution of this Agreement, the Custodian, in its capacity as Custodian, represents and warrants that it does not currently hold, and during the existence of this Agreement shall not hold, any adverse interest, by way of security or otherwise, in any Mortgage Loan, and hereby waives and releases any such interest that it may have in any Mortgage Loan as of the date hereof. Notwithstanding any other provisions of this Agreement and without limiting the generality of the foregoing, the Custodian, in its capacity as Custodian, shall not at any time exercise or seek to enforce any claim, right or remedy, including any statutory or common law rights of set-off, if any, that the Custodian may otherwise have against all or any part of a Mortgage File, Mortgage Loan or proceeds of either. The Custodian further represents and warrants that this Agreement has been duly executed and delivered by the Custodian and constitutes a valid, legal and binding obligation of the Custodian, enforceable against the Custodian in accordance with its terms, except (i) as the enforcement thereof may be limited by applicable debtor relief laws and (ii) that certain equitable remedies may not be available regardless of whether enforcement is sought in equity or at law.

**Section 17. Concerning the Custodian.** No representations, warranties, covenants (other than those expressly made by the Custodian in this Agreement) or obligations of the Custodian shall be implied with respect to this Agreement or the Custodian's services hereunder. Without limiting the generality of the foregoing, the Custodian:

A. shall have no duties or obligations other than those specifically set forth herein or as may subsequently be agreed in writing by the parties hereto and shall use reasonable care in the performance of its duties hereunder and shall act in good faith and in accordance with the reasonable commercial standards of the mortgage banking business for document custodians;

B. makes no representations as to and shall not be responsible for or required to verify (A) the validity, legality, enforceability, due authorization, effectiveness, recordability, insurability, sufficiency, value, form, substance, or genuineness of any of the documents contained in any Mortgage File or (B) the collectability, ownership, insurability, validity, transferability, insurability, value, effectiveness, perfection, priority or suitability of any Mortgage Loan;

C. shall not be obligated to take any legal action hereunder that might in its judgment involve any expense or liability unless it has been furnished with indemnity satisfactory to it;

D. may conclusively rely on and shall be fully protected in acting in good faith upon any certificate, instrument, opinion, notice, instructions, letter, telegram or other document or communication, or any security, delivered to it and in good faith believed by it to be genuine and to have been signed by the proper party or parties;

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

E. may rely on and shall be protected in acting in good faith upon the written instructions of THDA or Lender, as applicable, and such employees and representatives of THDA or Lender as THDA or Lender may hereinafter designate in writing;

F. may consult with counsel satisfactory to it (including counsel for Lender) and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered, or omitted by it hereunder in good faith and in furtherance of its duties hereunder, in accordance with the advice or opinion of such counsel;

G. shall not be liable for any error of judgment, or for any act done or step taken or omitted by it, in good faith, or for any mistake of fact or law, or for anything that it may do or refrain from doing in connection therewith, except in the case of gross negligence, lack of good faith or willful misconduct of the Custodian in its performance of this Agreement; and

H. may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

In no event shall any party hereto be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that each party shall use reasonable efforts which are consistent with accepted practices in the applicable industry to resume performance as soon as practicable under the circumstances.

Any Person into which the Custodian may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Custodian shall be a party, or any Person to which all or substantially all of the corporate trust business of the Custodian may be sold or otherwise transferred, shall without the execution or filing of any paper or further act on the part of any parties hereto become the successor Custodian hereunder, without the prior written consent of THDA and Lender.

In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering ("Applicable Banking Law"), the Custodian is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Custodian. Accordingly, each of Lender and THDA agrees to provide to the Custodian upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Custodian to comply with Applicable Banking Law.

In the event that the Custodian is directed to deliver Mortgage Files or other loan documents to any Person in accordance with the terms of this Agreement, the party requiring such delivery shall be responsible for compliance with all applicable laws and regulations regarding customer information or personally identifiable information of a Mortgagor included in any such Mortgage Files or other loan documents.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

In no event shall the Custodian or its directors, affiliates, officers, agents and employees be held liable for any lost profits or exemplary, punitive, special, indirect or consequential damages of any kind resulting from any action taken or omitted to be taken by it or them hereunder or in connection herewith even if advised of the possibility of such damages.

Any other provision of this Agreement to the contrary notwithstanding, the Custodian shall have no notice of and shall not be bound by any of the terms and conditions of any other document or agreement executed or delivered in connection with, or intended to control any part of, the transactions anticipated by or referred to in this Agreement (including, but not limited to, the Credit Agreement) unless the Custodian is a signatory party to that document or agreement.

The Custodian shall have no liability to any third party in the event that (a) a Custodian Loan Transmission and Exception Report is not the most recent Custodian Loan Transmission and Exception Report made available, (b) a Custodian Loan Transmission and Exception Report has been, or in the future will be, superseded, cancelled or replaced by any Custodian Loan Transmission and Exception Report subsequently made available by Custodian to the Lender, or (c) any of the Mortgage Files with respect to the Mortgage Loans set forth on any Custodian Loan Transmission have been released from Custodian's possession as provided in this Agreement.

The Custodian shall not be responsible for the preparation or filing of any reports or returns relating to federal, state or local income taxes with respect to this Agreement, other than in respect of the Custodian's compensation or for reimbursement of expenses; shall be under no obligation to verify the authenticity of any signature on any of the documents received or examined by it in connection with this Agreement or the authority or capacity of any person to execute or issue such document, except as provided in Section 20 of this Agreement with respect to Authorized Representatives; shall have no duty to ascertain whether or not any cash amount or payment has been received by THDA, Lender or any third person and shall not be required to perform any cash movement functions in relation to this Agreement; and shall not be required to value or produce a report detailing the value of the Mortgage Loans or Mortgage Files.

The Custodian shall be under no responsibility or duty with respect to the disposition of any Required Documents while such Required Documents are not in its possession. In the event that any provision of this Agreement implies or requires that action or forbearance be taken by a party, but is silent as to which party has the duty to act or refrain from acting, the parties agree that the Custodian shall not be the party required to take the action or refrain from acting. If the Custodian shall request instructions from the Lender with respect to any act, action or failure to act in connection with this Agreement, the Custodian shall be entitled to refrain from taking such action and continue to refrain from acting unless and until the Custodian shall have received written instructions from the Lender without incurring any liability therefor to the Lender, THDA or any other Person. If the Custodian shall at any time receive conflicting instructions from the Lender and THDA with respect to the Mortgage Files and the conflict between such instructions cannot be resolved by reference to the terms of this Agreement, the Custodian shall be entitled to rely on the instructions of the Lender. No provision of this Agreement shall require the Custodian to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties under this Agreement if it shall have grounds for believing that repayment of such funds or adequate indemnity is not reasonably assured to it.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

If Custodian receives Written Instructions that appear on their face to have been transmitted by an Authorized Representative via Electronic Means, Lender and THDA understand and agree that Custodian cannot determine the identity of the actual sender of such Written Instructions and that Custodian shall conclusively presume that such Written Instructions have been sent by an Authorized Representative. Lender and THDA shall be responsible for ensuring that only Authorized Representatives transmit such Written Instructions to Custodian and that all Authorized Representative treat applicable user and authorization codes, passwords and/or authentication keys with extreme care. The Custodian shall have the right to accept and act upon instructions, ("Instructions") given pursuant to this Agreement and delivered using Electronic Means; provided, however, that the Lender and THDA shall provide to the Custodian a Schedule I listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which Schedule I shall be amended by the Lender and THDA whenever a person is to be added or deleted from the listing. If the Lender and THDA elect to give the Custodian Instructions using Electronic Means and the Custodian in its discretion elects to act upon such Instructions, the Custodian's understanding of such Instructions shall be deemed controlling. The Lender and THDA understand and agree that the Custodian cannot determine the identity of the actual sender of such Instructions and that the Custodian shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the Schedule I provided to the Custodian have been sent by such Authorized Officer. The Lender and THDA shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Custodian and that the Lender and THDA and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Lender and THDA. The Custodian shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian's reliance upon and compliance with such Instructions, notwithstanding that such directions may conflict or be inconsistent with a subsequent Written Instruction. The Lender and THDA agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Custodian, including without limitation the risk of the Custodian acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Custodian and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Lender and THDA; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Custodian immediately upon learning of any compromise or unauthorized use of the security procedures.

The provisions of this Section 17 shall survive any termination of this Agreement and the termination, resignation or removal of the Custodian.

**Section 18. Transmission of Mortgage Files.** Prior to any shipment of any Mortgage Files, or other loan documents hereunder to THDA or any Person pursuant to the request of THDA hereunder, THDA shall deliver to the Custodian written instructions as to the method of shipment and shipper(s) the Custodian is to utilize in connection with the transmission of Mortgage Files or other loan documents in the performance of the Custodian's duties hereunder. THDA shall arrange for the provision of such services at its sole cost and expense and will maintain such insurance against loss or damage to Mortgage Files or other loan documents as THDA deems appropriate.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

Without limiting the generality of the provisions of Section 17 above, it is expressly agreed that in no event shall the Custodian have any liability for any losses or damages to any Person, including without limitation, THDA, arising out of actions of the Custodian consistent with the instructions of THDA. In the event the Custodian does not receive such written instructions, the Custodian shall be authorized to utilize a nationally recognized courier service.

**Section 19. Indemnification.** To the extent permitted by law, THDA agrees to indemnify and hold harmless Custodian and its respective directors, officers, employees, agents, designees, successors and assigns (each, an “Indemnitee”) from and against any and all liabilities, obligations, damages, penalties, claims, actions, judgments, suits, disbursements, losses, costs and expenses of any kind or nature, including reasonable fees and expenses of counsel, court costs and costs of appeal (“Losses”) arising from or connected with Custodian’s execution and performance of this Agreement or its participation in any transactions contemplated hereby, including but not limited to the claims of any third parties against Custodian, except to the extent such loss, liability or expense results from the gross negligence, lack of good faith or willful misconduct on the part of Custodian. The foregoing indemnifications shall survive the termination of this Agreement and the resignation or removal of Custodian hereunder.

In the event that THDA is not permitted by law to indemnify an Indemnitee for Losses pursuant to this Section 19, if an Indemnitee incurs Losses or is made a party to litigation pertaining to this Agreement, Custodian shall be compensated reasonably by THDA for its extraordinary services in connection therewith and reimbursed for any and all Losses occasioned thereby (except Losses resulting from the gross negligence, lack of good faith or willful misconduct on the part of Custodian) if THDA is notified in writing prior to the performance of those services or the incurring of those expenses.

**Section 20. Authorizations.** Any of the persons whose signatures and titles appear on Schedule I (an “Authorized Representative”) are authorized, acting singly, to act for THDA, Lender or the Custodian, as the case may be, under this Agreement. The specimen signature for each such Authorized Representative of THDA, the Custodian and Lender initially authorized hereunder is set forth on Schedule I. From time to time, THDA, the Custodian and Lender may, by delivering to the others a revised schedule, change the information previously given, but each of the parties hereto shall be entitled to rely conclusively on the then current schedule until receipt of a superseding schedule. The Custodian may rely, and shall be protected in acting or refraining to act, upon any written instruction, notice, order, request, direction, certificate, opinion or other instrument or document believed by the Custodian to be genuine and to have been signed or presented by an Authorized Representative in the case of THDA and Lender and by the proper party or parties, in all other cases.

**Section 21. Entire Agreement; Amendments.** This Agreement, together with the exhibits, schedules and other writings referred to herein or delivered pursuant hereto, constitutes the entire agreement and understanding of the parties with respect to the matters and transactions contemplated by this Agreement and supersedes any prior agreement and understandings with respect to those matters and transactions. The provisions of this Agreement set forth the exclusive duties of the Custodian and no implied duties shall be read into this Agreement against the Custodian. No amendment or waiver of any provision of this Agreement and no consent to any departure herefrom shall in any event be effective unless the same shall be in writing and signed

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

by all the parties hereto and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. The Custodian shall not be required to execute any amendment that adversely affects its rights, duties, indemnities or immunities hereunder.

**Section 22. Severability.** If any one or more of the provisions contained in this Agreement should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

**Section 23. Binding Effect; Governing Law.** This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be construed in accordance with, and governed by, the law of the State of \_\_\_\_\_, without giving effect to the conflict of law principles thereof; provided, however, that the obligations of THDA shall be construed in accordance with, and governed by, the law of the State of Tennessee.

**Section 24. Termination by Lender.** This Agreement shall terminate on the date when Lender notifies the Custodian in writing that the Credit Agreement is terminated. Within three (3) Business Days of the Custodian's receipt of both such written termination and the payment of the Custodian's fees and expenses, the Custodian shall deliver any remaining Mortgage Files to Lender or any Person directed by Lender.

**Section 25. Actions Necessary to Preserve Rights under Mortgage Loan Documents.** Notwithstanding the delivery of possession of the Mortgage Notes and other Mortgage Loan Documents to Custodian, each of Lender and THDA acknowledges that Custodian shall have no obligation to (i) collect or enforce any Mortgage Note or other Mortgage Loan Document, (ii) take action to preserve or maintain the obligations of any party obligated under any Mortgage Note or other Mortgage Loan Documents, (iii) take action to protect, preserve or safeguard the rights of Lender or THDA against any Person under the Mortgage Loan Documents, or (iv) take action to obtain, preserve, safeguard, continue, perpetuate or enforce rights against any collateral which may secure repayment of any Mortgage Note. Each of Lender and THDA hereby expressly releases Custodian from the obligation to take any such action.

**Section 26. Execution in Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement (and by facsimile or pdf transmission, which facsimile or pdf transmission signatures shall be considered original executed counterparts).

**Section 27. Confidentiality.** The parties hereto agree that they and their advisors, including legal counsel, shall not disclose to any other Person and shall keep confidential the terms and conditions of this Custodial Agreement (including fee arrangements) and any amendment, supplement or Exhibit hereto ("Confidential Information"). In the event that any party hereto or its advisors breaches any provision of this section, then, in addition to any other rights and remedies available to the non-breaching party, a non-breaching party shall be entitled to temporary and permanent injunctive relief against the breaching party without the necessity of proving actual



**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

damages. Notwithstanding the foregoing, Confidential Information may be disclosed by a party to the extent that (i) such party reasonably deems necessary to do so in working with taxing authorities or other governmental agencies or regulatory bodies or in order to comply with any applicable laws, (ii) any portion of the Confidential Information is required by law or requested by judicial or regulatory or supervisory process to be disclosed, or (iii) such disclosure is necessary to establish, make effective or enforce Lender's or THDA's rights in Mortgage Loans held by Custodian pursuant to this Agreement.

**Section 28. SUBMISSION TO JURISDICTION; WAIVERS.** EACH OF THE LENDER, THDA AND THE CUSTODIAN HEREBY IRREVOCABLY AND UNCONDITIONALLY:

A. AGREES THAT TENNESSEE CLAIMS COMMISSION OR STATE OR FEDERAL COURTS IN TENNESSEE SHALL BE THE VENUE FOR ALL CLAIMS, DISPUTES, OR DISAGREEMENTS ASSERTED AGAINST THDA ARISING UNDER THIS AGREEMENT. THE LENDER, THE CUSTODIAN AND THDA EACH ACKNOWLEDGE AND AGREE THAT ANY RIGHTS, CLAIMS, OR REMEDIES AGAINST THDA OR ITS EMPLOYEES ARISING UNDER THIS AGREEMENT SHALL BE SUBJECT TO AND LIMITED TO THOSE RIGHTS AND REMEDIES AVAILABLE UNDER TENN. CODE ANN. §§ 9-8-101 -408. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATED DOCUMENTS, THE ADVANCES OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF, OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY HERETO OR ANY RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE..

B. OTHER THAN CLAIMS AGAINST THDA,

1. SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF \_\_\_\_\_ SITTING IN THE \_\_\_\_\_, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE \_\_\_\_\_, AND APPELLATE COURTS FROM ANY THEREOF;

2. CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

3. AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT FILL IN TRI-PARTY AGREEMENT AT THIS TIME**

OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO ITS ADDRESS SET FORTH ON SCHEDULE I HERETO OR AT SUCH OTHER ADDRESS OF WHICH EACH OTHER PARTY HERETO SHALL HAVE BEEN NOTIFIED IN WRITING; AND

4. AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION;

C. WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THAT ANY SUCH CLAIM OR CAUSE OF ACTION, ACTION, PROCEEDING OR OTHER LITIGATION SHALL BE TRIED BY A COURT TRIAL WITHOUT JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY ARE WAIVED BY OPERATION OF THIS SECTION 28 AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY OTHER DOCUMENT DELIVERED IN CONNECTION HERewith OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER RELATED DOCUMENT AND ANY OTHER DOCUMENT DELIVERED IN CONNECTION THEREWITH.

**\*\*FOR REFERENCE ONLY\*\***  
**DO NOT SIGN THIS TRI-PARTY AGREEMENT AT THIS TIME**

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first above written.

THE TENNESSEE HOUSING DEVELOPMENT  
AGENCY, as THDA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ROYAL BANK OF CANADA, as Lender

By: \_\_\_\_\_  
Name: Bradley E. Siembieda  
Title: Director

**CUSTODIAN NAME**, as Custodian

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT C  
ATTESTATION  
DOCUMENT CUSTODIAN RFP**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

---

**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

---

**PRINTED NAME AND TITLE OF SIGNATORY**

---

**DATE OF ATTESTATION**