

CUSTODIAL AGREEMENT

This Custodial Agreement (the "Agreement") dated as of _____, among _____ Bank (the "Depository"), _____ (the "Qualified Trustee"), and Nebraska Bankers Insurance and Services Company (the "Administrator").

1. Definitions. Unless otherwise provided in this Agreement, the following terms shall have the following respective meanings for purposes of this Agreement:

- a. **Administrator** means the Nebraska Bankers Insurance and Services Company (NBISCO) and its officers, directors, employees, agents, successors, and assigns.
- b. **Aggregate Deposits** means the amount of aggregate deposits of Public Funds of Governmental Units that are collateralized by a depository through the pooling method as specified in *Neb.Rev.Stat. § 77-2398*.
- c. **Approved Securities** means those securities identified in *Neb.Rev.Stat. § 77-2387(14)*.
- d. **Custodial Official** means an officer or an employee of the state of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the Public Funds Deposit Security Act (the "Act") or the security for the deposit of public money or public funds subject to the Act.
- e. **Department** means the Nebraska Department of Banking and Finance.
- f. **Depository** means the bank, capital stock financial institution, or qualifying mutual financial institution named in the introductory paragraph of this Agreement.
- g. **Event of Default** means any of the following events or conditions:
 - (1) The Depository fails to make any return or repayment of Public Funds to an agency of the state of Nebraska or any political subdivision from accounts held by the Depository as and when due or wrongfully dishonors any draft presented upon such accounts;
 - (2) The Depository breaches any covenant made in this Agreement;
 - (3) Any bankruptcy case, assignment for the benefit of creditors, receivership, or other state, federal, or foreign insolvency proceeding is commenced by or against the Depository or any of its respective properties;
 - (4) The Depository becomes insolvent or is generally not paying its debts as they become due;
 - (5) The issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities; or
 - (6) The Depository discontinues its usual business, commences to dissolve, wind-up, or liquidate itself.

- h. **Fair Market Value** means the value of the Pledged Securities as determined by any independent service that regularly furnishes such information to financial institutions in the United States as of the applicable date of transaction or report.
 - i. **FDIC** means the Federal Deposit Insurance Corporation, a federally chartered public corporation of the United States of America.
 - j. **Governing Authority** means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the Act.
 - k. **Governmental Unit** means the state of Nebraska or any political subdivision thereof.
 - l. **Nebraska UCC** means the Uniform Commercial Code as enacted in the state of Nebraska, *Neb.Rev.Stat. UCC* § 1-101, et seq., as now or hereafter amended.
 - m. **Pledge Amount** means the difference between the amount of aggregate deposits of public funds placed with the Depository and any FDIC insurance applicable to such funds, multiplied by 102% (by illustration: Pledge Amount = Aggregate Deposits – applicable FDIC insurance x102%).
 - n. **Pledged Securities** means those Approved Securities as to which the Depository has granted a security interest to the Administrator and which have been credited to the Securities Account held with the Qualified Trustee.
 - o. **Political Subdivision** means any county, city, village, township, district, authority, or other political corporation or entity, whether organized and existing under the directions of the Constitution of Nebraska or laws of the state of Nebraska or by virtue of a charter, corporate articles, or other legal instruments executed under authority of the constitution or laws, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.
 - p. **Public Funds** means monies of a Governmental Unit deposited in the Depository.
 - q. **Qualified Trustee** means a Federal Reserve Bank or a branch of a Federal Reserve Bank, a Federal Home Loan Bank, or another responsible bank, capital stock financial institution, qualifying mutual financial institution or trust company, other than the depository granting the security interest, as designated by the Depository.
 - r. **Securities Account** means the account established with and held by the Qualified Trustee for the benefit of the Department containing Pledged Securities, and any successor account thereto.
2. Establishment of Securities Account. The Qualified Trustee hereby confirms that:
- a. The Qualified Trustee has established an account number in the name of the Department or the Administrator, (such account and any successor account the "Securities Account"),
 - b. The Qualified Trustee, shall, subject to the terms of this Agreement, treat the Department or the Administrator as entitled to exercise the rights that comprise any securities entitlement credited to the Securities Account,

- c. All property delivered to the Qualified Trustee pursuant to the Security Agreement will be promptly credited to the Securities Account, and
- d. All securities or other property underlying any financial assets credited to the Securities Account shall be registered in the name of the Qualified Trustee, endorsed to the Qualified Trustee or in blank or credited to another securities account maintained in the name of the Qualified Trustee and in no case will any financial asset credited to the Securities Account be registered in the name of the Depository, payable to the order of the Depository, or specially endorsed to the Depository except to the extent the foregoing have been specially endorsed to the Qualified Trustee or in blank.

3. Entitlement Holder. The Department or Administrator shall be the entitlement holder as defined in UCC § 8-102(a)(7).

4. "Securities Entitlement" Election. The Qualified Trustee hereby agrees that each item of property, whether investment property, financial asset, security, instrument, or cash, credited to the Securities Account shall be treated as a Securities Entitlement with respect to the Securities Account as defined in UCC § 8-102(a)(17).

5. Entitlement Orders. If at any time the Qualified Trustee shall receive an Entitlement Order as defined in UCC § 8-102(a)(8) issued by the Department or by the Administrator and relating to the Securities Account, the Qualified Trustee shall comply with such Entitlement Order without further consent by the Depository or any other person.

6. Subordination of Lien: Waiver of Set-Off. In the event that the Qualified Trustee has or subsequently obtains by agreement, operation of law, or otherwise a security interest in the Securities Account or any security entitlement credited thereto, the Qualified Trustee hereby agrees to immediately notify the Department of such secondary security interest and further agrees that such security interest shall be subordinated to the Department. The securities entitlements and other items held in the Securities Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Department.

7. Conflict with other Agreements. There are no other agreements entered into between the Qualified Trustee and the Depository with respect to the Securities Account, other than the safekeeping or custodial agreement pursuant to which the account was opened. In the event of any conflict between this Agreement, or any portion thereof, and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail.

8. Notice of Adverse Claims. Except for the claims and interest of the Department or the Administrator and of the Depository in the Securities Account, the Qualified Trustee does not know of any claim to, or interest in, the Securities Account or in any "financial asset," as defined in UCC § 8-102(a)(1), credited thereto.

If any person asserts any lien, encumbrance, or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution, or similar process) against the Securities Account or in any financial asset carried therein, the Qualified Trustee shall promptly notify the Administrator and Depository thereof.

9. Maintenance of Securities Account. In addition to, and not in lieu of, the obligation of the Qualified Trustee to honor Entitlement Orders as agreed in Section 5 hereof, the Qualified Trustee agrees to maintain the Securities Account as follows:

- a. Custody of Pledged Securities and Reports. The Qualified Trustee shall maintain custody of the Pledged Securities and (1) send written safekeeping receipts or electronic advices and (2) reports or statements, each required by, and in a form approved by, the Department or the Administrator of all pledged securities as of the end of each calendar month, sent on a monthly basis to the Administrator and the Depository within ten (10) business days after the end of each month.
- b. Authorization for Release of Pledged Securities. The Qualified Trustee shall require written authorization from the Administrator before effecting release of any of the Pledged Securities to the Depository. The Qualified Trustee will not pay the Depository any principal funds as a result of a maturity or redemption without (1) the receipt of written authorization by the Administrator, and (2) adequate collateral replacement of Approved Securities to ensure the Fair Market Value of the Securities Account exceeds the Pledge Amount, if needed. In no case shall the Fair Market Value of the Securities Account be less than the Pledge amount after the withdrawal.
- c. Statements and Confirmations. The Qualified Trustee will promptly send copies of all statements, confirmations, and other correspondence concerning the Securities Account and/or any financial assets credited thereto simultaneously to the Depository and the Administrator.
- d. Substitution of Pledged Securities. In the event of a maturity or redemption, the Qualified Trustee shall require the substitution of an appropriate amount of Approved Securities to satisfy the Pledge Amount.
- e. Duty to Resolve Discrepancies. It is the duty of the Qualified Trustee to work with the Administrator to resolve any and all differences or discrepancies between their respective records and reports of inventory of Pledged Securities. The Administrator shall immediately report its inability or failure to reach such resolution to the Department.
- f. Interest payments. The Depository may collect and receive all interest payments on the Pledged Securities under certain circumstances, as more fully set forth in this Agreement.

10. Representations, Warranties, and Covenants of the Qualified Trustee. The Qualified Trustee hereby makes the following representations, warranties, and covenants:

- a. The Qualified Trustee is a federal reserve bank or a bank, federal home loan bank, capital stock financial institution, qualifying mutual financial institution, or trust company that:

1. Is organized and existing under the laws of the state of Nebraska, any other state, or the United States
 2. Has executed all forms required for a Qualified Trustee under *Neb.Rev.Stat. § 77-2386 et. seq.*;
 3. Hereby agrees to be subject to the jurisdiction of the courts of the state of Nebraska or of courts of the United States that are located within the state of Nebraska for the purpose of any litigation arising out of *Neb.Rev.Stat. § 77-2386 et. seq.*; and
 4. Is authorized to act as a Qualified Trustee under *Neb.Rev.Stat. § 77-2386 et. seq.*
- b. The Securities Account shall be maintained in the manner set forth herein until termination of this Agreement. The Qualified Trustee shall not change the name or account number of the Securities Account without the prior written consent of the Department or the Administrator.
- c. No financial asset is or will be registered in the name of the Depository, payable to its order, or specially endorsed to it, except to the extent such financial asset has been endorsed to the Qualified Trustee or in blank.
- d. This Custodial Agreement is a valid and legally binding obligation of the Qualified Trustee.
- e. The Qualified Trustee has not entered into and until the termination of this Agreement shall not enter into any agreement with any other person relating to any property of the Securities Account and/or any securities entitlements credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in UCC § 8-102(a)(8) of such person. The Qualified Trustee has not entered into any other agreement with the Depository or Department purporting to limit or condition the obligation of the Qualified Trustee to comply with entitlement orders as set forth in Section 5 hereof.

11. Successors. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives.

12. Notices. Any notice, request, or other communication required to be given under this Agreement shall be in writing and deemed to have been properly given when delivered by electronic means in person, or four days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Depository:

Name: _____
Attn: _____
Address: _____
Email: _____

Administrator:

Nebraska Bankers Insurance and Service Co.
Attention: Misty Stoner
PO Box 80008
Lincoln, NE 68501
nepooledcollateral@nebankers.org

Qualified Trustee:

Name: _____
Attn: _____
Address: _____
Email: _____

Any party may change its address for notice in the manner set forth above.

13. Termination of Obligations. The rights and powers granted herein to the Department have been granted in order to perfect the security interest in the Securities Account and are powers coupled with an interest and will neither be affected by the bankruptcy of the Depository nor by the lapse of time. The obligations of the Qualified Trustee hereunder shall continue in effect until the security interest of the Department in the Securities Account has been terminated pursuant to the terms of the Security Agreement and the Department has notified the Qualified Trustee of such termination in writing.

14. Nebraska and Federal Law to Govern: Choice of Forum. This Agreement shall be deemed to have been made in the state of Nebraska and shall be construed, and the rights and liabilities of the parties determined, in accordance with the laws of the state of Nebraska. With respect to regulatory matters, all transactions under this Agreement shall be subject to all applicable laws and rules and regulations of all federal, state, and self-regulatory agencies, including but not limited to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the United States Treasury, and the Nebraska Department of Banking and Finance. Any action brought to assert any right or remedy pertaining to this Agreement shall be brought exclusively in the District Court of Lancaster County, Nebraska.

15. Conduct of the Parties. Conduct of the parties shall not in any matter constitute a waiver of any right, duty, or obligation imposed by this Agreement upon any party hereto.

16. Time of the Essence. Time is of the essence of this Agreement.

17. Headings. The headings of the sections and subsections hereof are for descriptive purposes only and do not modify or qualify any of the rights or obligations set forth in this Agreement.

18. Limitation on Assignment. The Administrator shall not assign this Agreement or any right or obligation hereunder without the prior written approval of the Department. Further, the Administrator shall not subcontract or substitute performance under this Agreement without the prior written permission of the Department.

19. Independent Parties. The parties to this Agreement are independent, and nothing herein shall be construed to make either party an agent, employee, partner, or joint venture of the other.

20. Construction. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties hereto that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

21. Severability. Notwithstanding any provisions hereof, if any provision herein is or should become inconsistent with any present or future law, rule, or regulation of any sovereign government or regulatory body having jurisdiction over the subject matter of this Agreement, such provision shall be deemed to be rescinded or modified in accordance with any such law, rule, or regulation; in all other respects, this Agreement shall continue to remain in full force and effect.

22. Amendment. Except as otherwise provided herein, this Agreement may be modified only by the prior written agreement of the parties. This Agreement represents the entire agreement and understanding among the Depository, Qualified Trustee, and Administrator concerning the subject matter hereof and shall supersede any previous agreement among the Depository, Qualified Trustee, and Administrator.

23. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original of equal dignity with the others and which is deemed one and the same instrument as the others.

24. Hold Harmless. Solely as between the Qualified Trustee and the Depository, the Depository hereby agrees to indemnify, defend and hold the Qualified Trustee, its affiliates and each of their officers, directors, employees, agents and representatives harmless from and against any suit, judgment, claim, asserted claim, demand, loss, liability, expense or interest, (including legal fees and expenses), ("Losses and Expenses") arising out of or in connection with this Agreement, excluding, however, those Losses and Expenses which are finally determined by a court of competent jurisdiction to have resulted directly from the Qualified Trustee's gross negligence or willful misconduct in the performance of its obligations as described by this Agreement. This indemnification shall survive resignation of the Qualified Trustee or termination of this Agreement.

25. Termination. This agreement may be terminated by the Depository or the Qualified Trustee with 30 days' written notice to the other parties.

IN WITNESS WHEREOF, the Depository, Qualified Trustee, and Administrator have caused this Agreement to be executed as of the date first written above.

DEPOSITORY

By: _____
Printed Name: _____
Title: _____

QUALIFIED TRUSTEE

By: _____
Printed Name: _____
Title: _____

ADMINISTRATOR

By: _____
Printed Name: Misty Stoner
Title: NBISCO Financial Program Administrator