

## DEPOSIT AND PLEDGE AGREEMENT

**DEPOSIT AND PLEDGE AGREEMENT** dated \_\_\_\_\_, 20\_\_\_\_  
(the "Agreement") between \_\_\_\_\_  
(the "Corporation") and \_\_\_\_\_ (the  
"Depository").

The Corporation may from time to time deposit securities and funds (the "Deposited Assets") into an account established for such purpose by the Depository (the "Account"), as required by Section 202-b of the New York Banking Law, Part 322 of the Superintendent's Regulations and Part 51 of the General Regulations of the Superintendent ("Part 51"), all as amended from time to time. The Depository agrees to accept deposits of securities and funds from the Corporation to the Account, until the termination of this Agreement, in accordance with the requirements of Part 51.

In consideration of the grant to the Corporation by the Superintendent of Financial Services of the State of New York (the "Superintendent") of a license to open and maintain a branch or agency in New York, the Corporation hereby grants to the Superintendent a security interest in the Account and the Deposited Assets now or hereafter held therein or the proceeds thereof, as security for any obligations of the Corporation to the Superintendent and for the other purposes contemplated by the Banking Law or the regulations thereunder. To perfect such security interest, the Corporation, the Depository and the Superintendent have entered into a Control Agreement, a copy of which is attached hereto.

The rights of the Superintendent in and to the Deposited Assets, including rights under the security interest granted hereby, shall be in addition to, and not in limitation of, the rights of the Superintendent in and to such Deposited Assets arising under Part 51 and otherwise under the Banking Law and the regulations thereunder.

The parties agree that the location of the Account and all Deposited Assets in the Account is in the State of New York. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles. With respect to any suit, action or proceedings relating to this Agreement or the rights of the Corporation and the Superintendent to the Account and the Deposited Assets therein, each party irrevocably submits to the jurisdiction of the courts of the State of New York and waives any objection it may have at any time to the laying of venue in any such court, waives any claim that such court is an inconvenient forum and waives the right to object that such court does not have any jurisdiction over such party or the Account or the Deposited Assets.

The additional terms and conditions set forth on Annex 1 to this Agreement and required by Part 51 shall constitute a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to

be duly executed as of the date first above written.

*This Agreement is satisfactory in form to  
the Superintendent and the Depository  
is approved as the Depository  
thereunder.*

**SUPERINTENDENT OF FINANCIAL  
SERVICES OF  
THE STATE OF NEW YORK**

BY: \_\_\_\_\_

Name:

Deputy Superintendent

\_\_\_\_\_  
**CORPORATION**

By \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
**DEPOSITORY**

By \_\_\_\_\_

Name:

Title:

## Additional Terms Required by Part 51

- a. *Securities and funds to be held as special deposit.* Securities and funds deposited by the Corporation with the Depository shall be held by the Depository as a special deposit free of any lien, charge, right of set-off, credit or preference in connection with any claim of the Depository against the Corporation. The Depository shall not accept, as a deposit by the Corporation pursuant hereto any asset that is not accompanied by documentation necessary to facilitate transfer of title.
- b. *Depository to furnish receipt.* The depository shall furnish to the Corporation, upon the deposit of any securities or funds pursuant hereto a receipt or statement evidencing such deposit. Such receipt or statement shall identify the deposit as having been made by the Corporation pursuant to section 202-b(1) of the Banking Law and under this Agreement, and it shall provide the amount of the deposit and, with respect to deposits of securities, a description of each security so deposited.
- c. *Release of securities by Depository.* The Depository shall release deposited securities, in connection with their substitution or otherwise, or funds to the Corporation upon written request: (1) when accompanied by a certificate, as described in subdivision (e) below, signed by a duly authorized officer of the Corporation; or (2) upon receipt of a written order of the Superintendent, to release to the Corporation such part of the securities or funds on deposit under such conditions and terms as the order may specify.
- d. *Termination of right to substitute or withdraw securities or funds.* The right to substitute or withdraw securities or funds may be terminated or suspended by the Superintendent at any time.
- e. *Model certificate.* The following or similar certificate shall be executed by a duly authorized officer of the Corporation where withdrawals are made pursuant to paragraph (c)(1):

It is hereby certified that the aggregate of securities and/or funds remaining on deposit pursuant to the Deposit and Pledge Agreement after this withdrawal or substitution amounts to \$\_\_\_\_, valued at the lower of principal amount or market, and that such amount is at least equal to the amount required to be deposited pursuant to section 202-

b(1) of the Banking Law and Superintendent's Regulations, Part 322, section 322.1. The amount required to be maintained on deposit, as calculated pursuant to section 322.1 of the Superintendent's Regulations, is \$ \_\_\_\_\_ as of this date.

- f. *Depository to furnish monthly statement of all transactions.* The Depository shall furnish to the Corporation, at least once in each calendar month, a statement of all transactions in the Account since the closing date of the previous such statement. The statement shall include a listing of the securities on deposit and/or the amount of funds on deposit as of the closing date of the statement. A copy of such statement shall be simultaneously forwarded by the Depository to the Superintendent.
- g. *Depository may pay interest earned upon securities.* The Depository may pay to the Corporation interest earned on securities or funds deposited in accordance with such arrangements as may be made between the Depository and the Corporation. The Superintendent is authorized to issue an order revoking this provision.
- h. *Responsibility of Depository with respect to deposited securities.* Except as provided below, Depository shall hold the securities deposited by the Corporation hereunder separate and apart from all other securities and shall permit examination and comparison thereof by duly authorized representatives of the Corporation or of the Superintendent. Depository may utilize a central depository, clearing corporation or book entry system to hold securities deposited pursuant hereto, provided that the records of the central depository, clearing corporation or book entry system show that the securities are held for the Depository as principal or as agent or as custodian of its customers. The Depository shall maintain adequate records to demonstrate the disposition of such book entry deposits.
- i. *Depository shall safeguard securities.* The depository shall give to the safekeeping, handling and shipping of securities deposited with it by the Corporation the same degree of care given by the Depository to its own securities.
- j. *Superintendent shall not pay for services rendered.* The superintendent shall not be required to pay for any of the services rendered or any expenses incurred by the Depository or the Corporation under or in connection with Part 51 or the Deposit and Pledge Agreement.
- k. *Termination of Deposit and Pledge Agreement.* The Corporation or the Depository may terminate the Deposit and Pledge Agreement by giving the other party at least 60 days written notice of such termination, or such

shorter notice as the Superintendent may approve, provided that no termination by the Corporation or the Depository shall be effective until:

- (1) another depository has been designated by the Corporation;
- (2) such other depository has been approved by the Superintendent;
- (3) a deposit and pledge agreement has been executed in conformity with the provisions of Part 51; and
- (4) the Depository has released to the Corporation all the securities or funds on deposit in accordance with written instructions from the Corporation, approved by order of the Superintendent.

- I. *Termination of Deposit and Pledge Agreement by action of Superintendent.*  
If the conditions provided in paragraphs (k)(1)-(4) are not met within 60 days after notice of termination, or such shorter period as the Superintendent may by order approve, the Superintendent may order the Depository to release the securities and/or funds on such terms as may be specified in such order, and in such case the Superintendent shall furnish a copy of such order to the Corporation. The Depository shall in such case release the securities and funds upon the terms so specified, and the Deposit and Pledge Agreement shall terminate upon such release.