



Lender Participation Agreement

Revised December 21, 2009

**Please complete and return to:
State Energy Office
Attn: Efficiency Kansas
1300 SW Arrowhead Road, Suite 100
Topeka, KS 66604**

785-271-3185

EFFICIENCY KANSAS LINKED DEPOSIT PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into between the Kansas State Treasurer (Treasurer) and the participating lending institution (Participant) for the purpose of providing state funds to facilitate low-interest loans to eligible borrowers for the Efficiency Kansas linked deposit program.

1. **ELIGIBLE PARTICIPANTS:** In order to participate in this Program, a bank must have its home office or a branch located within the State of Kansas as required by K.S.A. 75-4201(d). Institutions of the Farm Credit System organized under the *Federal Farm Credit Act of 1971* (12 U.S.C. 2001), Savings Banks, Savings and Loan Associations, and credit unions with offices located within the State of Kansas are also eligible.

2. **APPROVAL OF ELIGIBLE BORROWERS:** Participants shall be responsible for reviewing each borrower's application to determine the borrower's creditworthiness. If the Treasurer discovers at any time that a borrower or the terms of the loan offered by the Participant to the borrower do not meet the Program's criteria, the Treasurer may immediately withdraw any State deposits linked to that loan.

3. **KCC APPROVAL:** Before submitting an application to the Treasurer, participants shall submit each loan application to the Kansas Corporation Commission (KCC) for its certification that the borrower is eligible for the program. KCC shall also determine if funds are available for the program and award loan on a first-come first-served basis, based on the date and time loan requests are received by the KCC. KCC shall use a waiting list if funds are not available and process loans from the waiting list in the order they were received.

4. **INITIAL DEPOSIT AND DURATION:** Upon receipt of an approved loan request consisting of Kansas Corporation Commission's "Certification of Eligibility" and "Certification of Compliance by Lending Institution" from the Participant, the Treasurer shall place a deposit with the Participant from the Energy Efficiency Revolving Loan fund in the state treasury. The amount and duration of the linked deposit shall be no greater than the principal amount and duration of the Participant's loan to the eligible borrower; the duration shall not exceed fifteen (15) years. Participant may roll multiple loans to eligible borrowers into one Certification of Deposit (see item 5, below) to receive one linked deposit from the Treasurer. Participant shall account for each loan to each eligible borrower separately when they are rolled together.

5. **FUNDING:** Upon receipt of funds, Participant will provide a Certification of Deposit to the Treasurer as custodian for the Kansas Corporation Commission for the amount of funds approved for each borrower that will be held until the loan is paid in full, at which time it will be returned to Participant. (*See Attachment B for Wire Transfer Instructions form.*)

6. **INTEREST RATE:** The interest rate for each linked deposit shall be 0%; the loan rate to the borrower shall be a fixed interest rate of no more than 4%.

7. **REPAYMENT OF PRINCIPAL:** The Participant shall forward any payment of principal by an eligible borrower during the preceding calendar quarter to the Treasurer on the fifteenth day of January, April, July, October to reduce the outstanding principal of the Participant's linked deposit. These payments will also include the \$2.00 monthly administration fee collected on each loan. In the event of borrower delinquency, the Participant shall forward only those payments and fees received each quarter.

8. **ANNUAL BALANCE CONFIRMATION:** The Participant shall confirm each borrower's outstanding principal balance as of December 31, on the first banking day following January 1 of each year.

9. **DEFAULT BY BORROWER:** In the event of a default by an eligible borrower, the Participant shall remain responsible for payment of the outstanding principal on the linked deposit and will forward payment in full of outstanding principal to the Treasurer at the time of the next quarterly payment (see item 7, above).
10. **TERMINATION BY PARTICIPANT:** The Participant may terminate this Agreement at any time by returning the principal balance of the deposited funds to the Treasurer.
11. **REPORTING REQUIREMENTS:** The Participant shall provide quarterly reports to the State Energy Office, Kansas Corporation Commission, as required by the Department of Energy, detailing number of jobs created or retained at their lending institution, including any branches, as a result of their participation in the Efficiency Kansas loan program. The reports shall be due on or before the 5th of April, July, October, and January.
12. **SECURITIES PLEDGED AS COLLATERAL:** If the total State deposits with the Participant from this program exceed the maximum amount insured by the Federal Deposit Insurance Corporation (FDIC) or any other federal agency backed by the full faith and credit of the U.S. Treasury, the Participant shall pledge securities acceptable to the Treasurer as collateral for the amount of the linked deposits. Participant shall execute a Security Agreement with the KCC and a Custodial Agreement among Participant, KCC, and a custodial bank, which shall be executed by an authorized representative of each party and be retained in the records of Participant along with a corporate resolution authorizing the pledging of securities. *(A Corporate Resolution, Security Agreement, and Custodial Agreement are attached hereto as Attachments E, F, & G.)* Custodial bank shall issue a joint custody receipt to Participant and the Treasurer for each specific security held by it under the terms of the agreement. The agreement shall authorize transfer of the securities only on joint written authorization of the Treasurer and the Participant, except as provided below. If securities are pledged to the Federal Reserve Bank of Kansas City, Missouri, or to the Federal Home Loan Bank of Topeka, Kansas, a custodial agreement will not be executed, but the parties acknowledge and understand that all transfers of securities by the Federal Reserve Bank or the Federal Home Loan Bank are subject to the then applicable rules, procedures, and operating letters of such Federal Reserve Bank or such Federal Home Loan Bank
13. The Treasurer shall be entitled to withdraw any and all funds, without penalty from Participant, if the Participant fails to comply with the terms of either the Security Agreement or the Custodial Agreement.
14. This Linked Deposit Participation Agreement may not be assigned in whole or in part and is binding on the parties and their successors.
15. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected, and each provision of this contract shall be enforced to the fullest extent permitted by law.
16. **MODIFICATION:** This Agreement may only be modified by written agreement of the parties.
17. This Agreement shall be governed by the laws of the State of Kansas and incorporates by reference Kansas statutes and administrative regulations relevant to the subject matter of this Agreement and any amendments thereto are likewise incorporated herein without further action or acknowledgement by the parties.
18. Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by the Treasurer or the State of Kansas shall not constitute a waiver.

19. The rights and remedies of the Treasurer or the State of Kansas provided for in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year listed below.

Kansas State Treasurer

By: _____ Printed Name: _____ Date: _____
State Treasurer

Participant's Name: _____

Signature: _____ Title: _____

Printed Name: _____ Date: _____

Date: _____

CORRESPONDENT BANK INFORMATION
FOR FED WIRES

For future investment transactions with the Efficiency Kansas Program, we request that the following correspondent bank be utilized for transacting all Federal Reserve Wire Transfers.

CORRESPONDENT BANK: _____

ABA #: _____

ACCOUNT #: _____

By: _____
(Authorized Bank Officer)

LENDING BANK: _____

ADDRESS: _____

ABA #: _____ TELEPHONE #: _____

Lender completes and sends to State Treasurer with the executed Linked Deposit Participation Agreement

Date: _____

CORRESPONDENT BANK INFORMATION
FOR ACH (The Automated Clearing House)

For future investment transactions with the Efficiency Kansas Program, we request that the following correspondent bank be utilized for transacting all Automated Clearing House (ACH) debits and credits.

CORRESPONDENT BANK: _____

ABA #: _____

ACCOUNT #: _____

By: _____
(Authorized Bank Officer)

LENDING BANK: _____

ADDRESS: _____

ABA #: _____ TELEPHONE #: _____

Lender completes and sends to State Treasurer with the executed Linked Deposit Participation Agreement

Office of Kansas State Treasurer
Linked Deposit Programs
CONTACT INFORMATION

Please complete & return this form to:
Kansas State Treasurer
Attn: Linked Deposit Coordinator
900 SW Jackson, Ste 201
Topeka KS 66612

Bank Name: _____

Home Office Address: _____

Information Provided By: _____

Name

Title

CONTACT(S) FOR SEMI-ANNUAL INTEREST RATE CHANGES (CD's and LOANS)

Name: _____ Title: _____

Address: _____ City, State, Zip: _____

E-Mail Address: _____

Phone #: _____ Fax #: _____

Name: _____ Title: _____

Address: _____ City, State, Zip: _____

E-Mail Address: _____

Phone #: _____ Fax #: _____

CONTACT(S) FOR ACH INTEREST AND PRINCIPAL DEBITS

Name: _____ Title: _____

Address: _____ City, State, Zip: _____

E-Mail Address: _____

Phone #: _____ Fax #: _____

Name: _____ Title: _____

Address: _____ City, State, Zip: _____

E-Mail Address: _____

Phone #: _____ Fax #: _____

CONTACT(S) FOR GENERAL ACCOUNTING & BALANCE CONFIRMATIONS

Name: _____ Title: _____

Address: _____ City, State, Zip: _____

E-Mail Address: _____

Phone #: _____ Fax #: _____

Name: _____ Title: _____

Address: _____ City, State, Zip: _____

E-Mail Address: _____

Phone #: _____ Fax #: _____

NOTE: The officer requesting funds will remain the main contact for specific borrower information unless we are notified otherwise.

RESOLUTION

The State of Kansas, **Kansas Corporation Commission** has requested that a Security Agreement for Deposit be executed between the Kansas Corporation Commission and _____(bank, city). Said Security Agreement clarifies the secured position the State of Kansas holds in collateral pledged by this bank to secure deposits of the state agency, in excess of the insured limits of the Federal Deposit Insurance Corporation or the National Credit Union Administration (NCUA). Said Security Agreement has been written by legal counsel of the State of Kansas and is being requested from all depositories holding State of Kansas deposits.

"THEREFORE, BE IT RESOLVED, that an officer of _____ is hereby authorized to execute said Security Agreement, and other documents required by the State of Kansas or the Kansas Corporation Commission; that this Agreement has been approved and is authorized by the board of directors of this bank; and that this Agreement is reflected in the minutes of said board of directors and in the records of this bank and shall remain continuously throughout its term an official record of this bank."

(Date)

The foregoing is a true and correct copy of a resolution adopted at a regular scheduled meeting of the Board of Directors of _____.

Secretary of the Board

(Corporate seal)

**SECURITY AGREEMENT FOR DEMAND DEPOSIT
FEE AGENCY ACCOUNTS**

This Security Agreement is made and entered into this __ day of _____, 2____, by and between the Kansas Corporation Commission hereinafter called “state agency, and _____, hereinafter called “depository bank,” for the purpose of establishing a security interest in collateral pledged by depository bank or its agent, trustee, wholly-owned subsidiary, or affiliate bank having identical ownership, hereinafter called “affiliate”, against funds deposited by the state agency,.”

WHEREAS, state agency acknowledges and depository bank understands that the State of Kansas has deposited, and will in the future deposit, public funds in depository bank in amounts exceeding the amounts insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA); and

WHEREAS, K.S.A 75-4221 requires that the amounts of the state agency’s deposits in excess of the amounts insured by the FDIC or NCUA be secured by pledge of collateral as required by K.S.A. 75-4218; and

WHEREAS, depository bank or its affiliate desires to pledge collateral securities and undivided fractional interests therein (securities) to secure each and every deposit of public funds by the state agency in depository bank; and

WHEREAS, the parties desire to reduce their security agreement to writing.

NOW, THEREFORE, state agency and depository bank agree as follows:

1. The depository bank or its affiliate shall pledge securities permitted by the Pooled Money Investment Board’s (hereinafter called PMIB) Investment Policy to secure deposits made by the state agency. As of the execution of this security agreement, permitted securities include:

a. direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations, letters of credit and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds. (This includes only those mortgage-backed securities (MBS’s) for which the issuing government agency has guaranteed the payment of principal and interest.);

b. Kansas municipal bonds that are general obligations of the municipality issuing the same;

c. revenue bonds of any agency or arm of the State of Kansas;

d. revenue bonds of any municipality within the State of Kansas except the following:

(1) bonds issued under the provisions of K.S.A. 12-1740 *et seq.*, and amendments thereto, unless such bonds are rated at least MIG-1 or Aa by Moody's Investors Service or AA by Standard & Poor's Corp., and

(2) bonds secured by revenues of a utility that has been in operation for less than three years;

e. temporary notes of any municipal corporation or quasi-municipal corporation within the State of Kansas that are general obligations of such corporation issuing the same;

f. warrants of any municipal corporation or quasi-municipal corporation within the State of Kansas, the issuance of which is authorized by the State Board of Tax Appeals and that are payable from the proceeds of a mandatory tax levy;

g. bonds of any municipal or quasi-municipal corporation of the State of Kansas that have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, or direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America. A copy of the escrow agreement shall be furnished to the State Treasurer;

h. A letter of credit issued by a United States sponsored enterprise that under federal law may be accepted as security for public funds.

(1) The letter of credit (LOC) must be in the format acceptable to the Office of the State Treasurer.

(2) The Kansas State Treasurer must be designated as the irrevocable and unconditional beneficiary of the letter of credit.

(3) The issuer and the depository bank must notify the Office of the State Treasurer by certified or registered mail at least 45 days prior to cancellation or the non-renewal of a letter of credit.

(4) The issuer may not provide letters of credit for any one-depository bank in an amount, which exceeds ten percent of the issuer's capital and surplus.

PMIB reserves the right to revise the list of permitted securities at any time.

2. All of the above listed securities shall be current as to interest according to the terms thereof.

3. Whenever a bond is authorized to be pledged as a security under paragraph 1, above, such bond shall be accepted as a security if:

a. in the case of a certificated bond, it is assigned, delivered or pledged to the holder of the deposit for security;

b. in the case of an uncertificated bond, registration of a pledge of the bond is authorized by the system and the pledge of the bond is authorized by the system and the pledge of the uncertificated bond is registered; or

c. in a form approved by the Attorney General, which assures the availability of the bond proceeds pledged as a security for public deposits.

4. If the PMIB removes a security that has been pledged by the depository or its affiliate from the list of permitted securities in its Investment Policy, the depository bank shall have 30 days after receiving notice from the PMIB to provide permitted securities or to refund the full amount of the deposit.

5. Depository bank hereby grants to the State of Kansas a security interest in securities pledged to secure payment of deposits made by the state agency in depository bank. Depository bank shall obtain and provide to the state agency a written agreement from its affiliate that the affiliate grants a security interest to the State of Kansas in securities owned by the affiliate which are pledged on behalf of the depository bank to secure payment of deposits made with the depository bank. Such agreement shall be in a form approved by the PMIB. Such agreement shall be approved by the board of directors of the affiliate and reflected in its minutes. A copy of such minutes and a signed resolution (Attachment E) acknowledging this approval shall be provided to the state agency. From the time of execution of such agreement, the agreement shall remain continuously an official record of the affiliate. Any such deposit of securities, except with the State Treasurer, shall have a joint custody receipt which shall constitute a perfected security interest taken therefore with one copy going to the state agency and one copy going to such affiliate.

6. Depository bank shall take such action as is necessary to perfect the security interest herein granted. Depository bank shall furnish satisfactory proof thereof to the State Treasurer.

7. Depository bank shall pledge collateral on a market value basis. The collateral requirement is defined as the total deposits of public funds in depository bank, including accrued interest, less the amounts of such deposits which are insured by the FDIC or NCUA. The aggregate market value of collateral must be no less than:

- a. 100% of the collateral requirement for the following security types having final maturities of five years or less: U.S. Treasury or government agencies securities, excluding Collateralized Mortgage Obligations (CMO's) and mortgaged-backed securities (MBS's).
- b. 105% of pledge requirement for all other acceptable collateral.

The parties acknowledge that demand deposit balances may fluctuate from time to time and that the state agency shall not withdraw funds if the depository bank has shown a reasonable attempt, based on historical balances, to adequately secure the current balances.

8. Depository bank shall transfer or deposit the pledged securities to or with the State Treasurer, the Federal Reserve Bank of Kansas City, Missouri, the Federal Home Loan Bank of Topeka, Kansas, or a custodial bank having adequate modern facilities for the safekeeping of securities which shall have received the prior approval of the PMIB. Any such custodial bank receiving securities for safekeeping shall be liable to the State of Kansas for any loss suffered by the State of Kansas in the event such custodial bank relinquishes the custody of any such securities contrary to the provisions of the State Moneys Law (K.S.A. 75-4201 *et seq.*) or any rules and regulations adopted by the State Treasurer or the PMIB. Please indicate where pledged securities will be transferred by circling one of the entities listed below:

_____ The State Treasurer

_____ The Federal Reserve Bank of Kansas City

_____ The Federal Home Loan Bank of Topeka

_____ Custodial Bank _____

9. A "custodial agreement" (Attachment G) among depository bank, state agency and a custodial bank shall be executed by an authorized representative of each party and be retained in the records of depository bank. Custodial bank shall issue a joint custody receipt to depository bank and the State Treasurer for each

specific security held by it under the terms of the agreement. The agreement shall authorize transfer of the securities only on joint written authorization of the State Treasurer and the depository bank, except as provided below.

If securities are pledged to the State Treasurer, Federal Reserve Bank of Kansas City, Missouri, or to the Federal Home Loan Bank of Topeka, Kansas, a custodial agreement will not be executed but the parties acknowledge and understand that all transfers of securities by the Federal Reserve Bank or the Federal Home Loan Bank are subject to the then applicable rules, procedures and operating letters of such Federal Reserve Bank or such Federal Home Loan Bank.

10. Depository bank represents and warrants to the State of Kansas that:

a. it or its affiliate is the sole legal and equitable owner of the securities transferred to secure the deposits made by the state agency in depository bank;

b. no security interest in the securities pledged has been or will be granted by it or its affiliate other than that granted herein to secure deposits made by the state agency with depository bank or which has been or may be granted in an undivided fractional interest in securities not pledged to State Treasurer;

c. deposits made by the State of Kansas in depository bank are insured by the FDIC or NCUA in the amount of the deposit or deposits up to the maximum deposit insurance amount for one depositor at one financial institution as determined by the FDIC or NCUA;

d. it and its affiliate have received value by virtue of the operation of this agreement and the agreement of the parties for the state agency's banking services; and

e. depository bank is duly authorized to execute this agreement; that this agreement has been approved and authorized by the board of directors of depository bank; and that this agreement will be reflected in the minutes of said board and in the records of depository bank within 90 days after its execution and shall remain continuously throughout its term an official record of such bank; and depository bank shall furnish certified copies of such minutes to the state agency upon adoption.

11. Substitution of Pledged Securities:

a. If the State Treasurer serves as the custodian for the state agency, depository bank shall be permitted to release or substitute securities pledged hereunder at any time pursuant to prior written authorization by the State Treasurer. On substitution of securities, written notice stating the CUSIP and pool number, if applicable, par value, interest rate, maturity date and market value of the withdrawn securities and of the substituted securities will be sent to the State Treasurer by depository bank within three days of any substitution. Depository bank, at least monthly, and at any time on demand by the State Treasurer or the PMIB, shall furnish to the State Treasurer or the PMIB a statement describing by CUSIP and pool number, par value, interest rate, maturity date and current market value of the securities pledged by depository bank.

b. If the depository bank uses a custodial bank, the Federal Reserve Bank of Kansas City or The Federal Home Loan Bank of Topeka as the custodian for its pledged securities, the custodian must establish procedures to ensure that the depository bank can only substitute pledged securities with the prior approval of the State Treasurer.

12. Depository bank or its affiliate pledging securities for depository bank shall be in default and the State of Kansas shall be entitled to foreclose on the security interest in securities pledged pursuant to this agreement by depository bank or its affiliate bank on the occurrence of any of the following:

a. Depository bank fails to pay any check, draft or warrant lawfully drawn by the State Treasurer and Director of Accounts and Reports which is properly payable and there are sufficient funds on deposit for its payment; or

b. depository bank fails to account for any check, draft, warrant, order or certificate of deposit or any money entrusted to such bank by the state agency;

c. a conservator or receiver is appointed for depository bank; or

d. depository bank fails pay the borrows' payment of principal to the State Treasurer each quarter as required by the Participation Agreement.

The State of Kansas shall give written notice of default under this section, and the depository bank shall have ten (10) days to cure any such default before foreclosure proceedings may be initiated.

13. In the event of a default, securities pledged by depository bank or its affiliate and held by the State Treasurer, the Federal Reserve Bank of Kansas City, Missouri, Federal Home Loan Bank of Topeka, Kansas, or a custodial bank shall be subject to sale pursuant to the laws of the State of Kansas to satisfy the obligations of depository bank to the state agency, and the State of Kansas.

14. In all cases wherein it appears to the State Treasurer that the securities pledged by depository bank have become inadequate, it shall be the duty of the State Treasurer to immediately notify depository bank and demand that additional security be pledged to make good such inadequacy. In default of such additional security being promptly furnished, the PMIB shall instruct the state agency to close the account.

15. In all cases where depository bank fails to meet the requirements established in this agreement or by the State Treasurer or the PMIB through rule and regulation, or in statute, the PMIB shall instruct the state agency to advise depository bank it must close the account for the full ledger balance amount. In addition, the PMIB shall instruct the state agency to advise depository bank that it must close the account for the full ledger balance amount if any one or more of the following events occur:

a. capital, surplus and undivided profits as shown on the balance sheet portion of the quarterly call report fall below the minimum regulatory guidelines;

b. tier I and tier II risk based capital as shown on the risk based capital schedule of the quarterly call report shall fall below the minimum regulatory guidelines;

c. the capital accounts of the depository bank deteriorate to levels indicated in a or b, above, for any reason between quarterly call reports; or

d. a conservator or receiver is appointed for depository bank or its affiliate banks.

Depository bank shall notify the PMIB (Director of Investments, Pooled Money Investment Board, 900 SW Jackson, Suite 209, Topeka, KS 66612) and the State Treasurer (900 SW Jackson, Suite 201, Topeka, KS 66612) and the state agency in writing within 48 hours when any of the above mentioned events of default occur.

16. In the event of insolvency or dissolution of depository bank, as a result of any cause, the State Treasurer shall be entitled to file a claim for the full amount of such account and the State Treasurer, custodial bank, Federal Reserve or Federal Home Loan Bank shall retain or collect dividends or interest on securities pledged by depository bank or its affiliate until the amount of the dividends and interest added to the amount realized from sale of any securities so pledged to the State of Kansas equals the amount of the account.

17. The State Treasurer shall be responsible to depository bank for the safe return of any securities deposited with the State Treasurer pursuant to this agreement.

18. The state agency shall be entitled to withdraw any and all funds, including accrued interest, from depository bank, if:

a. Depository bank fails to pledge securities in accordance with paragraphs 8 and 12 above; or

b. depository bank fails to abide by paragraph 11 and its subparts above.

19. This security agreement may not be assigned in whole or in part and is binding on the parties, their successor and assigns.

20. If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected, and each provision of this contract shall be enforced to the fullest extent permitted by law.

21. Depository bank and state agency agree and understand that the State Treasurer is a third party beneficiary to this agreement.

22. This agreement may be modified by written agreement of the parties and with notice of such modification to the State Treasurer.

23. This agreement shall be governed by the laws of the State of Kansas including K.S.A. 75-4201 *et seq.*, and incorporates by reference Kansas statutes and administrative regulations relevant to the subject matter of this agreement, and any amendments thereto, are likewise incorporated herein without further action or acknowledgment by the parties. PMIB shall give the depository bank 30 days advance notice of any changes in any administrative regulations relevant to this contract and the depository bank may terminate this agreement by closing the account with 30 days advance notice to the state agency if it chooses to not comply with the regulations.

24. Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by the state agency, State Treasurer, PMIB or the State of Kansas shall not constitute a waiver.

25. The rights and remedies of the State Treasurer, the PMIB or the State of Kansas provided for in this agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

Participating Bank

Bank: _____

Address: _____

Address: _____

Printed Name: _____ Title: _____

Signature: _____ Date: _____

State Agency

State Agency: _____

Printed Name: _____ Title: _____

Signature: _____ Date: _____

CUSTODIAL AGREEMENT

This Custodial Agreement dated _____, 20____, is made and entered into by and among the Kansas Corporation Commission of the State of Kansas (State Agency); _____ (depository bank) and _____ (custodian).

State agency and depository bank have requested that custodian undertake certain custodial functions in connection with certain securities pledged by depository bank to secure deposits from State Agency. Accordingly, custodian, State Agency, and depository bank agree as follows:

1. Maintenance of Account. Custodian will maintain a securities custody account (Account) in the name of depository bank to hold securities of depository bank, including securities designated from time to time by depository bank pursuant to the procedures provided for herein as being subject to a lien in favor of State Agency and from time to time deposited with or collected by custodian. From time to time hereafter, depository bank will send a written, facsimile, telephone or other communication (in form satisfactory to custodian) to custodian designating and identifying one or more securities then held by custodian in the Account, as being subject to a pledge and lien granted by depository bank to State Agency. Upon receipt of such communication and the securities described therein, custodian will (i) issue and deliver to each of State Agency and depository bank an identical joint safekeeping/custody receipt (JCR) identifying the securities and reflecting State Agency's status as a pledgee, and (ii) mark its books and records to reflect that state agency is a lienholder. For purposes of this Agreement, the securities listed on all such JCR's are referred to herein as the "Pledged Securities." All Pledged Securities shall be held by custodian subject to the terms of this Agreement, and depository bank confirms and warrants that all such Pledged Securities are and will be subject to a lien in favor of State Agency and that custodian may deal with State Agency as a "secured party" under the Kansas Uniform Commercial Code.

2. Income. Until custodian has been notified in writing by State Agency or the State Treasurer of Kansas that a default has occurred under any security agreement between State Agency and depository bank, custodian is authorized to deliver or pay over all principal payments, interest and other income received by custodian on the Pledged Securities to depository bank, or to deposit same in any account maintained by the depository bank (including, without limitation, the Account) and permit depository bank to withdraw or transfer same; provided, however, that if custodian receives a principal payment on a pledged security that constitutes the full repayment of the then-outstanding principal balance of such Pledged Security, custodian shall hold such principal payment in a cash collateral account maintained by the custodian in the name of depository bank as if, and to the same effect that it was included within the Pledged Securities. After receiving notification from State Agency or the State Treasurer of Kansas of an event of default under any security agreement between State Agency and depository bank, custodian shall hold all principal payments, interest and other income received by it with respect to the Pledged Securities, in a cash account maintained by custodian in the name of depository bank, and all such sums shall be held as if, and to the same effect that, it was included within the Pledged Securities.

3. Custodian's Obligation to Hold Securities. Custodian shall hold the Pledged Securities, including any pledged Securities that constitute additions or substitutions that were designated by depository bank under the procedures provided for herein in order to satisfy any security agreement between depository bank and State Agency, and shall not sell, transfer, assign, pledge (except as otherwise agreed to by State

Agency and depository bank or as provide for herein), or otherwise utilize such Pledged Securities or any cash that is to be held as Pledged Securities pursuant to the provision in Section 2 above. Custodian shall have no duty or obligation to examine or determine if the Pledged Securities, including any Pledged Securities offered by depository bank as additions or substitutions, are permitted collateral under the applicable laws and regulations in effect from time to time, or if the value of any Pledged Securities is sufficient under such applicable laws or regulations.

4. Care of Property; Reliance on Instructions.

a. Custodian shall exercise the same care with respect to the Pledged Securities as custodian exercises with respect to custodian's own property. Custodian assumes responsibility only for loss to any Pledged Securities occasioned by the negligence of, or conversion, misappropriation or theft by custodian's agents and/or employees, and then only to the extent of the market value on the date of the discovery of the loss. Custodian, at its option, may insure itself against loss from any cause but shall be under no obligation to obtain insurance directly for the benefit of either State Agency or depository bank.

b. Custodian, at any time, without any resulting liability to it, may act in reliance on any instructions custodian believes to be genuine, including instructions by a signed writing (via telecopy or otherwise), by electronic communication or by telephone. Custodian may rely upon any instruction that is in writing if it purports to be signed by a representative of State Agency whose name has been furnished to custodian as being a designated individual authorized to give such instructions to custodian on behalf of State Agency (Authorized Representative) or if it purports to be signed by a representative of the depository bank (as applicable), without any duty to investigate or confirm the actual authority of such named representative. Custodian is expressly authorized to rely upon any facsimile copy of any written document (including any JCR) as if, and to the same effect that, an original executed copy thereof had been received by it from the party purporting to have executed it.

c. All credits, debits or transfers shall be deemed to have been completed at such time as recorded on custodian's books.

d. Custodian undertakes to perform only the duties expressly set forth in this agreement, and assumes no responsibility other than for the safekeeping and disposition of the Pledged Securities as provided for herein.

e. Transfer of securities to custodian may be accomplished by crediting the account of custodian with the Federal Reserve Bank of Kansas City, Missouri, or by delivery of physical certificates to custodian in negotiable form. State Agency and depository bank agree that custodian's use of the Federal Reserve and other third-party custodians, depositories, financial intermediaries and agents in connection with the Pledged Securities and transactions contemplated under this agreement is authorized and shall comply fully with all terms and conditions of this agreement regarding custodian's transfer and custody of the securities. State Agency and depository bank acknowledge and understand that all transfers of securities by the Federal Reserve are subject to the Federal Reserve's then applicable rules and procedures and operating letters.

5. Release of Securities. Depository bank shall transfer or deposit Pledged Securities to custodian which shall act as a financial intermediary. No Pledged Security shall be released or substituted without the written instruction of an Authorized Representative and an instruction (written, facsimile, telephone, electronic or otherwise) of a representative of depository bank, **except:**

a. on written notice of default sent by an Authorized Representative to custodian, custodian is authorized to release, deliver or transfer the Pledged Securities to the State Treasurer of Kansas without further authorization or consent of depository bank and without return or execution of JCR (describing the Pledged Security) that was issued to depository bank;

b. custodian shall thereupon provide written notice to depository bank of delivery or transfer to the state treasurer of the Pledged Securities; and

c. custodian shall therefore be discharged of all further responsibility with respect to the Pledged Securities.

Delivery to custodian of (i) a writing executed by an Authorized Representative releasing State Agency's lien on a Pledged Security, or (ii) the JCR describing the Pledged Security, if executed by an Authorized Representative, shall constitute a release and discharge by State Agency of any lien in and to such Pledged Security, and custodian is thereupon authorized to deliver or transfer such Pledged Security to depository bank or to any account or entity designated by depository bank. If custodian is required to transfer, deliver or sell any Pledged Securities pursuant to provisions of any statute or regulation applicable to securities pledged for state deposits, custodian is hereby expressly authorized to effect such transfer, delivery or sale pursuant to such statute or regulation, and upon doing so shall be released and discharged from any further duty or liability hereunder or otherwise with respect to such Pledged Securities.

6. Reporting. On a monthly basis, or as requested, custodian shall provide to the State Treasurer of Kansas written notice stating the CUSIP and pool number, par value, interest rate and maturity date of all Pledged Securities. This notice shall be accepted by the State Treasurer of Kansas as sufficient evidence of the depositing of Pledged Securities with custodian by depository bank.

7. Compensation. Depository bank agrees to pay custodian compensation for the services to be rendered under this Agreement based on rates which shall be determined by custodian from time to time.

8. Indemnification. State Agency subject to the Kansas Tort Claims Act, and depository bank agree, jointly and severally, to indemnify custodian from and hold it harmless against any liability in connection to, arising out of or in any way related to the transactions contemplated and relationship established by this agreement, **except** that State Agency and depository bank shall not be liable for any liability that is determined to be the direct result of acts or omissions on the part of custodian constituting negligence or willful misconduct **nor** shall State Agency be liable for any costs, attorneys fees or other expense in the defense of any claim by custodian.

9. Entire Agreement, Modification or Amendment. This agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior oral or written agreements. No modification of or amendment to this agreement shall be binding unless in writing and executed by the parties.

10. Termination. This agreement shall terminate upon ten-business days' written notice of termination, signed by State Agency and depository bank. It is further provided that custodian may terminate this agreement upon ten (10) days' written notice to all other parties hereto. Upon any termination of this Agreement, custodian is authorized to transfer or deliver the Pledged Securities to any person, entity or account specified in any written instructions signed by State Agency and custodian, and if no such written instructions are received, then the Pledged Securities may be transferred or delivered to State Agency or any

entity or account designated by State Agency , or, at custodian's sole discretion, may continue to be held by custodian until custodian receives written instructions signed by both State agency and depository bank. Upon any termination, custodian may defer any transfer or delivery of the Pledged Securities until it has first received all JCR's issued by custodian with respect to the Pledged Securities, duly executed by State Agency and depository bank as applicable.

11. Severability. If any provision of this agreement is held to be unenforceable by a court of competent jurisdiction, the other terms and provisions shall not be affected and shall remain if full force and effect.

12. Rights and Remedies. The rights and remedies conferred on the parties shall be cumulative and the exercise or waiver of any right or remedy shall not preclude or inhibit the exercise of any additional rights and remedies.

13. Headings. Headings are for reference purposes only and shall not be construed as part of this agreement.

14. Notices. All notices shall be given to the party entitled to receive notices at the following addresses and telephone numbers:

a. Unless and until State Agency shall give written notice to depository bank and custodian to the contrary, the following person shall be authorized to act on behalf of State Agency and to give and receive all notices and otherwise act under this agreement:

Kansas State Treasurer's Office
Attn. Tracy Barngrover
Landon State Office Building
900 S.W. Jackson, Ste. 209
Topeka, Kansas 66612-1220
Telephone (785) 296-3701

b. Unless and until **depository bank** shall give written notice to State Agency and custodian to the contrary, the following person shall be authorized to act on behalf of depository bank and to give and receive all notices and otherwise act under this agreement:

Name: _____

Title: _____

Bank: _____

Address: _____

Address: _____

Telephone: _____

c. Unless and until **custodian** shall give written notice to State Agency and depository bank to the contrary, the following person shall be authorized to act on behalf of custodian and to give and receive all notices and otherwise act under this agreement:

Name: _____

Title: _____

Bank: _____

Address: _____

Address: _____

Telephone: _____

15. This agreement shall be governed by the laws of the State of Kansas.

Custodian:

By: _____

Title: _____

Date: _____

Depository Bank:

By: _____

Title: _____

Date: _____

State Agency :

By: _____

Title: _____

Date: _____