

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village**  
**7/10/2018**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
Investment Agreements	Judy Buttny Finance Director

**SYNOPSIS**

Resolutions have been prepared to enter into agreements with PNC Bank and PFM Asset Management LLC to invest Village funds pursuant to the provisions of the Cash Management and Investment Policy.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2017-2019 include *Steward of Financial, Environmental and Neighborhood Sustainability*.

**FISCAL IMPACT**

By expanding the financial institutions with additional investment opportunities and also those that can bid on investments, the Village will be able to maximize its interest income. While yields are relatively modest today, there are still variations in secure approved financial instruments that are carried by various institutions. This may allow the Village to take advantage of those variations in yield in the future.

**RECOMMENDATION**

Approval on the July 10, 2018 consent agenda.

**BACKGROUND**

Per the Cash Management and Investment Policy the Village is to maintain a list of qualified and approved financial institutions authorized to provide investment services. All financial institutions and broker/dealers who desire to perform investment services for the Village must supply the Village with financial information and references.

PNC is a bank, and PFM offers a money market fund. Both have provided references and all have provided documentation that they will abide by our investment policies and provide appropriate collateralization. After these actions, there will be 12 certified institutions.

Current Members of the Village of Downers Grove Investment Group:

- PMA
- Illinois Funds
- Harris Bank
- Wintrust – Community Bank of Downers Grove
- US Bank
- Fifth Third Bank
- Associated Bank
- MB Financial Bank
- First Empire Securities

- Raymond James

New Members of the Village of Downers Grove Investment Group:

- PNC Bank
- PFM Asset Management LLC

### **ATTACHMENTS**

Resolutions

Contract Documents

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE AND PNC CAPITAL MARKETS, LLC**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That each of the officers and/or agents designated herein is authorized and empowered to open and maintain with or through PNC Capital Markets LLC ("PNC Capital Markets") one or more accounts on behalf of the Village for the purchase and sale (including/not including opening of margin accounts or making of short sales) of, and dealing and trading in, the following: any and all forms of securities and financial instruments including, without limitation, stocks, bonds, debentures, notes, scrip, rights, warrants, certificates of deposit and certificates of interest or indebtedness of any and every kind and nature whatsoever, contracts for the forward delivery of U.S. Government, federal agency and other securities, standby contracts in such securities, repurchase agreements and reverse repurchase (resale) agreements involving debt instruments, futures contracts and options on futures contracts, and options on any underlying security, group of securities or index of securities, whether debt or equity (hereafter collectively referred to as "Securities").

2. That each of the officers and/or agents designated herein is fully authorized on behalf and in the name of the Village: (a) to give and to receive from PNC Capital Markets oral or written instructions, confirmations, notices or demands by telephone, facsimile transmission, e-mail or any other mechanical or electronic means with respect to such accounts and at all times to have complete authority in every way to bind and obligate the Village for the carrying out of any contract, agreement or transaction entered into by any such officer and/or agent for and on behalf of the Village with or through PNC Capital Markets; (b) to pay in cash or by wire transfer, check or draft drawn upon the funds of the Village such sums as may be necessary in connection with any of said accounts; (c) to deliver Securities or other property to and deposit funds with or on the instructions of PNC Capital Markets in any account; (d) to order the transfer or delivery of Securities or other property to such officer or agent or any other person whatsoever, and/or to order the transfer of record of any Securities to any name selected by any of those officers or agents; (e) to affix the Village's seal to any documents or agreements; (f) to endorse any Securities in order to pass title thereto; (g) to direct the sale or exercise of any rights with respect to any Securities; (h) to sign for the Village all releases, assignments, powers of attorney and/or documents in connection with any such account, and to agree to any terms or conditions regarding any such account; (i) to direct PNC Capital Markets to surrender any Securities to the proper agent or party for the purpose of effecting any exchange or conversion, or for the purpose of deposit with any protective or similar

committee, or to accept delivery of any Securities; (j) to appoint any other person or persons to do any and all things which any of the said officers and/or agents is hereby empowered to do; and generally (k) to do and take all action necessary in connection with the accounts or considered desirable by such officer and/or agent with respect thereto.

3. That the opening and maintenance of one or more accounts by the Village with PNC Capital Markets prior to the effective date of these resolutions, and all purchases and sales of Securities and other actions taken in connection with such accounts are hereby ratified and confirmed in all respects.

4. That the Village Council of the Village of Downers Grove has determined that it would be convenient to and in the best interests of the Village to elect to have deposits and withdrawals made to and from the Village's account or accounts at any bank or other affiliate of PNC Capital Markets in connection with transactions in the Village's account or accounts with PNC Capital Markets; and, accordingly, (a) each such affiliate is hereby requested, authorized and directed (i) to honor all orders transmitted to such affiliate by PNC Capital Markets orally, in writing, or by any other mechanical or electronic means, for the payment of money and the delivery of Securities and other property to PNC Capital Markets for the account of the Village, and (ii) to place to the credit of the Village all money, drafts, checks, credits, Securities and other property delivered by PNC Capital Markets to such affiliate for the account of the Village; and (b) PNC Capital Markets is hereby requested, authorized and directed to transmit such orders and to make such deliveries. As used herein, the term "affiliate" means any direct or indirect wholly owned subsidiary of PNC Capital Markets' parent, The PNC Financial Services Group, Inc.

5. That the Village Manager and Village Clerk are fully authorized on behalf and in the name of the Village to take all such further action and to execute and deliver all such further instruments and documents and to incur and pay all such fees, expenses and taxes as in their judgment shall be necessary, proper or advisable in order to carry out fully the intent and accomplish the purposes of the foregoing resolutions.

6. That the Village shall certify to PNC Capital Markets promptly, when and as made, any change in the officers and/or agents designated herein and such modification when received by you shall be adequate both to terminate the powers of the persons theretofore authorized and to empower the persons thereby substituted; and that pursuant to the aforesaid, the powers and authority granted hereunder shall continue to be fully effective until receipt by you of written notice of change or rescission thereof.

7. That these resolutions shall remain in full force and effect until written notification of their revocation shall be received by PNC Capital Markets.

The authorized officers or agents referred to above are as follows:

Judy Buttny, Finance Director	Carol Hogan, Assistant Finance Director
David Fieldman, Village Manager	Robin Lahey, Finance Manager

8. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

9. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

## CUSTOMER AGREEMENT

In consideration of PNC Capital Markets LLC ("PNCCM," "we," "us," and "our") opening one or more accounts on your behalf, you represent, warrant, and agree to, the terms set forth below. Throughout this agreement, "you" and "yours" refer to each applicant who signs this agreement.

1. You represent and warrant that (a) you have the requisite power and are duly authorized to execute and deliver this agreement, to enter into the transactions contemplated hereby and to perform your obligations hereunder, (b) you have taken all necessary action to authorize such execution, delivery and performance, (c) you will enter into such transactions as principal (or, if agreed in writing in advance of the execution of any transactions on your behalf by us, as agent for a disclosed principal), (d) the person signing this agreement on your behalf is duly authorized to do so on your behalf (and on behalf of any such disclosed principal), (e) you have obtained all authorizations of any governmental body required in connection with this agreement and any transactions contemplated hereby and such authorizations are in full force and effect, (f) the execution, delivery and performance of this agreement and the transactions contemplated hereby will not violate any law, ordinance, charter, by-law or rule applicable to you or any agreement by which you are bound or to which any of your assets are subject, (g) at all times during the existence of your account(s), the account(s) shall not contain assets that are either (i) plan assets subject to the provisions of Title I, Subtitle B, Part 4 of the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the "Code") or (ii) assets of a governmental plan or other plan subject to restrictions similar or analogous to those contained in the foregoing provisions of ERISA or the Code, and (h) except as otherwise disclosed to PNCCM, you are not an employee of or otherwise affiliated with any exchange, a member firm of any exchange, the Financial Industry Regulatory Authority ("FINRA"), a member firm thereof, a municipal securities dealer, a bank, a trust company, or an insurance company and no one except you has an interest in the account(s) subject to this agreement. You shall provide 45 days prior written notice to PNCCM if any of the representations and warranties contained in Section 1(g) will become incorrect or if you are going to become so employed or affiliated. Upon the execution of any transaction by PNCCM on your behalf, you shall be deemed to repeat all the foregoing representations and warranties made by you.
2. To the extent applicable, this agreement and all transactions executed hereunder will be subject to the constitution, by-laws, rules, regulations, interpretations and customs, as appropriate, of the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, FINRA, the Municipal Securities Rulemaking Board and the exchange (and its clearinghouse, if any) where executed and all other applicable federal and state laws and regulations.
3. You hereby irrevocably constitute and appoint PNCCM as your true and lawful agent and attorney-in-fact, with full power to act in your name and on your behalf, (a) for the purpose of carrying out your directions in accordance with the terms and conditions of this agreement with us for your account and risk with respect to the purchase or sale of securities and (b) with respect to the execution of all instruments and the taking of all action necessary or desirable to effectuate the rights and remedies provided hereunder and by applicable law to PNCCM.
4. You understand that PNCCM will execute and clear all transactions under this agreement. You understand that PNC Bank, National Association or agents thereof may hold securities in safekeeping for your account.
5. You understand and acknowledge that we do not give investment, legal or tax advice, and, further, understand that each of your transactions with us will be done solely on your order or the order of your authorized delegate, except as described below in Sections 7, 8 and 9.
6. You understand and agree that, to the extent permitted by law, any telephone conversation with us may be recorded for accuracy.
7. You will have available or deliver sufficient immediately available funds to cover the amount due on any purchases by 2:00 p.m. Eastern Time on the settlement date therefor and you will deliver any securities or other instruments you have in your possession in sufficient time to be processed by us on the settlement date for the sale thereof. If we are unable to settle a transaction by reason of your failure to make payment or deliver securities or other instruments in good form on a timely basis, you authorize us to take any steps necessary to complete the transaction, in which event you shall reimburse us for all costs, losses and liabilities incurred by us and pay us the applicable rate of interest on any debit balance from the settlement date to the date of PNCCM's receipt of your payment or of your delivery.

8. In the event that you become indebted to us, you acknowledge that we may elect at any time, with or without notice, to make any debit balance or other obligation arising under or otherwise related to this agreement immediately due and payable.
9. For your protection, or to satisfy your obligation to us, we are hereby authorized, in our sole discretion and without prior demand or notice to you, to decline your orders or instructions, to cancel any outstanding orders, to setoff any obligations to you against any of your obligations to us (or to our affiliates to the extent not prohibited by law), to realize upon property securing any obligations to us, to close out your account(s), in whole or in part, or to close out any commitment made on behalf of you, and you shall be responsible for any resulting loss, commission, cost or expense (including interest thereon).
10. As security for the payment or performance of all present or future obligations owed to us by you, you grant us a continuing security interest and lien in, and a right to setoff with respect to, all securities, instruments and other property that are now or in the future held, carried or maintained for any purpose in or through the account(s) subject to this agreement and, to the extent of your interest, any present or future brokerage account with us in which you have an interest. All securities, instruments and other property held in or credited to any such account will be treated as financial assets under Article 8 of the Uniform Commercial Code as in effect in the Commonwealth of Pennsylvania (the "UCC") and any such account maintained by you with us shall be a securities account under Article 8 of the UCC. In the event of a breach of or a default under this agreement by you, we shall have, in addition to the rights and remedies provided in this agreement, all rights and remedies available to a secured creditor under the UCC and any other applicable law. All securities, instruments and other property held in or credited to any such account will not be subject to any liens, security interests, mortgages or encumbrances of any nature other than the security interest created in our favor pursuant to this Section 10. You shall execute such documents and take such other actions as we shall reasonably request in order to perfect our rights with respect to any such securities, instruments and other property.
11. Neither party shall have any responsibility nor incur any liability for any failure to carry out, or any delay in carrying out, any of such party's obligations under this agreement resulting from acts, omissions or inaccuracies of third parties not under such party's reasonable control, acts of God (including, but not limited to, fire, floods or adverse weather conditions), labor difficulty, legal constraint, war, terrorism, the unavailability or interruption of transmission or communication facilities or utilities, equipment or other technological failure, emergency conditions, or any other cause beyond such party's reasonable control. Notwithstanding the foregoing, no event or occurrence described in this Section 11 shall relieve you of your obligation to make any payment to us at the time it is due hereunder.
12. Reports of the execution of your orders and statements of your account shall be deemed to be conclusive and binding if not objected to in writing by you within ten (10) days after mailing thereof by PNCCM.
13. You hereby consent to the exchange from time to time by us or any of our affiliates of any information in our or any such affiliate's possession or control.
14. In the event one or more provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
15. Either party's failure to insist at any time upon strict compliance with this agreement or with any of its terms or any continued course of conduct on our part shall not constitute or be considered a waiver by either party of any rights.
16. This agreement and all transactions made in your account by PNCCM shall be governed by the laws of the State of Illinois. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.
17. This agreement may be terminated by either party hereto in its sole discretion upon giving written notice to the other, except that this agreement shall, notwithstanding such notice, remain applicable to any transactions then outstanding. No provision of this agreement shall in any respect be waived, altered, modified or amended except in a writing duly executed by both parties. This agreement shall inure to the benefit of PNCCM, its affiliates (including its parent, The PNC Financial Services Group, Inc.) and you and their and your respective successors and permitted assigns.
18. [RESERVED]
19. Any notice, instruction or other communication required or permitted to be delivered to PNCCM hereunder shall, unless expressly provided otherwise herein, be delivered in writing, or by telephone followed within

one business day by written confirmation thereof. Any such notice, instruction or other communication shall be addressed to the employee of PNCCM handling the customer account(s). Communications may be sent to you at the address given by you in connection with the opening of the first account under this agreement or at such other address as you may hereafter give us in writing. All communications so sent, whether by mail, facsimile, messenger or otherwise, shall be deemed given to you, whether actually received or not, when sent and you waive all claims resulting from failure to receive such communication.

20. You understand that the cash sweep vehicles available under this agreement include money market mutual funds. You further understand that such funds are not backed or guaranteed by any bank and are not bank deposits, nor are they insured by, issued by, guaranteed by or the obligations of the Federal Deposit Insurance Corporation, the Federal Reserve Board, any government agency or any bank. Securities involve investment risks including the possible loss of the principal amount invested.
21. We shall inform you if we become aware of the occurrence or prospective occurrence of any of the following with respect to any securities in your account(s): conversion, subdivision or consolidation, redemption, a takeover offer, a capitalization issue, a rights issue, a distribution of income in the form of securities or a certificate which may at a future date be exchanged for securities or an entitlement to acquire securities. If we receive notice from you that you wish to act on any of the events referenced in this Section 21 and such notice is received by us within a reasonable time for us to act, we will act in accordance with your wishes. You will at all times keep PNCCM advised of your current mailing address.
22. If any right to vote arises with respect to securities in your account, you may inform us that you wish to exercise such right as you specify. If we receive such notice within a reasonable time to act, we will act in accordance with your wishes. If we do not receive such timely notice from you, we will not vote such securities with respect to such matter.
23. In the event that you are acting as an investment adviser or trustee for your client, you make the following acknowledgments, representations and warranties:
  - (a) You are acting as an investment adviser or trustee for your client. (For purposes of the trustee representations that follow, the term "client" refers to the trust and not any particular person having a beneficial interest in the trust.)
  - (b) You are an investment adviser currently registered and qualified under the Investment Advisers Act of 1940, as amended, or under appropriate state law, or you are not required to be so registered and qualified. You are in compliance with all statutes and regulations, including any books and records requirements, applicable to your advisory activities. You act as an investment adviser with full discretionary power to act as agent and attorney-in-fact for your client to buy and sell the types of securities, instruments and other property that are now or in the future will be held, carried or maintained for any purpose in or through the account(s) subject to this agreement. We are not responsible for your acts or omissions in connection with the obligations you have to your client accounts under applicable law and/or any agreement to which you and your client are parties.
  - (c) You have the resources to make an independent assessment of the opportunities and risks presented by a potential investment, the market factors applicable to the investment and any other considerations relevant to the investment. PNCCM will not exercise investment discretion over your client account, and you are not depending on us to make recommendations for the purchase, sale or exchange of any security for your client accounts.
  - (d) You maintain in your files an executed agreement with, or an executed power of attorney or similar instrument from, your client authorizing you to act on your client's behalf. All such instruments are valid, binding and enforceable to the fullest extent. Such authorizing documents grant you authority to exercise full and continuing discretion to effect securities and other related transactions for your client and, as necessary, to withdraw and/or transfer funds on behalf of your client. You have also examined all other documents you deem appropriate, which documents govern your client, including trust instruments, corporate resolutions and investment policies. In lieu of furnishing PNCCM with specific evidence of your discretionary authority in connection with each of your clients, you shall indemnify PNCCM and hold PNCCM harmless in the event that your client or any other person should make a claim against PNCCM or any of its affiliates in connection with the performance of this agreement that such performance was without authority.
  - (e) You are familiar with the investment objectives and the investment guidelines of your clients, and all securities and related orders placed by us at your direction shall be consistent with those objectives and guidelines and shall be deemed to be suitable for your client or clients. You shall indemnify PNCCM and hold PNCCM harmless in the event that PNCCM or any of its affiliates are the subject of any claim that any securities or other transaction executed by PNCCM pursuant to your instructions was unsuitable or excessive or was inconsistent with the investment objectives and/or guidelines applicable to your client.



(f) You understand that certain types of transactions may require additional documentation and representations from either you or your client. It shall be your responsibility to furnish the appropriate disclosure to or to secure the appropriate documentation from your client and you will be responsible for all applicable tax reporting and withholding for your client. If you fail to secure appropriate documentation from your client, or fail to provide us with copies of any such documents at our request, we may decline to effect any transactions that, in our view, are dependent on such documentation or close your account, without any liability to you or claim against us.

(g) In order to comply with the interpretative positions of the Securities and Exchange Commission and its staff concerning our confirmation delivery obligations to clients of managed accounts, such as your clients, you must provide to us the identities (names and addresses) of the beneficial owners of those accounts/sub-accounts that you advise or manage so that we can forward to those beneficial owners duplicate copies of all trade confirmations and statements concerning the securities orders that you direct to us. Your provision of this information to us does not in any way alter our relationship with you, or your responsibilities with respect to the management of the accounts or your clients. All information provided will be treated confidentially.

(h) You will comply with applicable anti-money laundering laws and regulations. Further, you will indemnify PNCCM and hold PNCCM harmless in the event that PNCCM or its affiliates are subject to any claim as a result of your violation of such laws and regulations.

(i) In executing securities and related orders pursuant to your instructions, PNCCM may, in its discretion, quote an average price. PNCCM shall not be responsible for your manner of allocation of such orders among your clients. Upon your request, PNCCM shall provide you with details of the order execution of average price transactions.

(j) To the extent that your client is subject to provisions of ERISA, PNCCM shall rely on your assurance that the securities and related orders placed by PNCCM for your client do not constitute prohibited transactions under ERISA. In this regard, you will indemnify PNCCM and hold PNCCM harmless in connection with any order executed by or through PNCCM pursuant to your instructions that is deemed to be a prohibited transaction under ERISA.

(k) You shall notify PNCCM immediately in writing of any change in your financial condition, registration or qualification status, any change in the representations contained herein, or any other material matters that may directly or indirectly pertain to the services you perform for your client or PNCCM's ability to rely upon your instructions.

(l) PNCCM shall be entitled to rely on such representations and warranties until otherwise notified by you. You shall indemnify PNCCM and hold PNCCM harmless in the event that you fail to notify PNCCM as detailed above.

(m) Your authorization shall be continuing and unqualified and remain in full force and effect until PNCCM's receipt of written revocation. Such revocation, however, shall not affect any liability in any way resulting from transactions initiated prior to our receipt of such revocation. Likewise, all indemnities contained herein shall survive termination of your authorization.

24. The provisions of this Section 24 are applicable only if you or any of your employees or agents access or use any Internet site or on-line or other electronic system operated for or by us for the purpose of account access, trading, order entry, obtaining market or other data or other services (each, a "Service"). The terms and conditions applicable to the specific Service you select are set forth in this Section 24 and in the Annex that describes that Service. We will give you the terms and conditions for a Service before you begin to use it. You and we will be legally bound by the terms and conditions specifically applicable to a Service when you begin to use that Service.

(a) In addition, detailed procedures for the use of certain Services are contained in implementation documents ("Documentation") that, if applicable to a Service, we will supply to you before you begin to use that Service. When you begin to use a particular Service, you will be legally bound by all of the terms stated in the Documentation for that Service. The Documentation is an integral part of this agreement and is incorporated into it by reference. This agreement and the Documentation are to be read together. However, if there is any inconsistency between them, the terms of the Documentation will control.

(b) You shall use the Services solely to carry on your lawful business, and you shall not use any of the Services to process or facilitate transactions for or on behalf of any third party without obtaining our prior written consent.

(c) Our security procedures for utilizing Services ("Security Procedures") are strictly confidential and should be disclosed only to those individuals who are required to know them. If a Security Procedure

involves the use of security codes, personal identification numbers, other confidential information, check stock or other security devices (collectively, "security devices"), you shall safeguard these security devices and make them available only to the individuals to whom they are issued as indicated, if applicable, on a sealed envelope or other package containing the security devices. You shall instruct those individuals that they should not disclose or otherwise make available to anyone the Security Procedures or security devices. You will establish and maintain procedures to assure the confidentiality of and protected access to the Security Procedures and security devices.

(d) All information, including but not limited to technology, know-how, processes, software, databases, employee information, trade secrets, contracts, proprietary information, historical and projected financial information, business strategies, operating data and organizational and cost structures, product descriptions, pricing information, and customer information (including without limitation names, addresses, telephone numbers, account numbers, demographic, financial and transactional information or customer lists), whether received before or after the date hereof, provided by a party (the "Disclosing Party") or its employees, affiliates, agents, consultants or representatives ("Representatives") to the other party (the "Receiving Party") in connection with this agreement is confidential and is owned exclusively by the Disclosing Party or by the third parties from whom the Disclosing Party has secured the right to use such information (collectively, "Confidential Information"). The Receiving Party shall treat the Confidential Information as confidential and not copy (except for back-up purposes), disclose or otherwise make the Confidential Information available in any form to any person or entity except to its Representatives, on a need-to-know basis, and to its applicable regulatory authorities and auditors. The Receiving Party shall inform its Representatives of the confidential and valuable nature of the Confidential Information and of its obligations under this agreement. The Receiving Party will use reasonable controls (but in all events at least the same degree of care and controls that such party uses to protect its own confidential and proprietary information of similar importance) to prevent the unauthorized use, disclosure or availability of Confidential Information. In addition to the foregoing, you and we shall have appropriate policies and procedures to (i) protect the security and confidentiality of the Confidential Information, (ii) protect against any anticipated threats or hazards to the security or integrity of such Confidential Information, (iii) protect against unauthorized access to or use of such Confidential Information that could result in harm or inconvenience to the other or to the other's customers, and (iv) ensure the proper disposal of such Confidential Information as may be required by applicable law. You and we will notify each other of any known unauthorized access to, disclosure of, or use of, the Confidential Information.

Upon termination of this agreement, the Receiving Party shall return all Confidential Information to the Disclosing Party; provided, however, that each party may retain such limited media and materials containing Confidential Information of the other party for customary archival and audit purposes (including with respect to regulatory compliance) only for reference with respect to the prior dealings between the parties and subject to the terms of this agreement.

It is understood and agreed that no information shall be within the protection of this agreement where such information: (i) is or becomes publicly available through no fault of the Receiving Party or its Representatives; (ii) is released by the Disclosing Party to anyone without restriction; (iii) is rightly obtained from third parties, who, to the best of the Receiving Party's knowledge, are not under an obligation of confidentiality; (iv) was known to the Receiving Party prior to its disclosure without any obligation to keep it confidential; or (v) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

You and we acknowledge and agree that any breach of these confidentiality provisions may result in immediate and irreparable injury to the other party, and so you and we agree that each of the parties shall be entitled, upon demonstration of the likelihood of breach of these confidentiality provisions by the other party, to equitable relief, including injunctive relief and specific performance, without necessity of posting bond, in addition to all other remedies available at law.

In addition to, and not by way of limitation on, such disclosures of Confidential Information as may be otherwise permitted under this Section 24, the Receiving Party may disclose Confidential Information if legally compelled to do so pursuant to a requirement or request of a governmental agency or pursuant to a court or administrative deposition, interrogatory, request for documents, subpoena, civil investigative demand or other similar legal process or requirement of law, or in defense of any claims or cause of action asserted against it; provided, however, that it shall (i) first notify the Disclosing Party of such request or requirement, or use in defense of a claim, (ii) attempt to obtain the Disclosing Party's consent to such disclosure, and (iii) in the event consent is not given, agree to permit a motion to quash, or other similar procedural step, to seek protection against the production or publication of information; provided, that the Receiving Party shall not be required to act in accordance with (i), (ii) or (iii) above if to do so would be prohibited by statute, rule or court order. In making any disclosure under such legal process or requirement

of law, each of the parties shall use reasonable efforts to preserve the confidential nature of such information and to cooperate with the other party in an effort to reasonably limit the nature and scope of any required disclosure of Confidential Information. Nothing herein shall require either you or us to fail to honor a subpoena, court or administrative order, or a similar requirement or request, on a timely basis.

(e) We shall be liable to you only for your actual, direct damages resulting from our failure to exercise ordinary care in performing each of the Services. Substantial compliance by us with our standard procedures for providing a Service shall be deemed to constitute the exercise of ordinary care.

You are responsible for selecting hardware, software and communications facilities that are compatible for use with the Services, and we shall have no liability to you for the selection, operation or maintenance of your equipment, software or communications facilities. We shall have no responsibility, and shall incur no liability, for any act or omission of yours, or for any error, omission or inaccuracy in the information contained in any instruction provided by you when using a Service.

Notwithstanding the foregoing, in no event shall we, any affiliate or subcontractor of ours (or any other party with whom we may be claimed to be jointly liable) be liable for any loss of profits or data or for any indirect, consequential, incidental, punitive, exemplary or special losses or damages, or expenses (including without limitation attorneys' fees), which you may incur or suffer including, without limitation, any loss, damage or expense from subsequent dishonor or rejection of any transaction (such as dishonor of checks or other items), whether or not the possibility of such damage was known or contemplated by us or them. In no event shall we or any affiliate or subcontractor of ours (or any other party with whom we may be claimed to be jointly liable) be liable to you for any claim or cause of action, whether based on contract, tort, strict liability or any other legal theory, (i) in the case of an instruction for the transfer of money or other payment that is misdirected, lost or otherwise paid to the wrong person as a result of our failure to comply with the terms of this agreement or applicable law, for an amount in excess of the face amount of such payment and (ii) in all other cases, for an amount in excess of twelve (12) times the fees you have paid us for the Services to which the claim or cause of action relates during the month immediately prior to the month in which the act or omission giving rise to the claim occurred.

WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN CONNECTION WITH ANY OF THE SERVICES OR ANY SOFTWARE OR EQUIPMENT WE MAY SUPPLY TO YOU, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO THIRD PARTY SHALL HAVE ANY RIGHTS OR CLAIMS AGAINST US UNDER THIS AGREEMENT.

25. The provisions of this Section 25 are applicable only if PNCCM is being asked to open a safekeeping account for and in the name of you and hold therein all securities and other instruments ("Securities") from time to time deposited with PNCCM or collected by us for such safekeeping account, subject to the following terms:
- (a) PNCCM will keep safe, account for and deliver the Securities, together with the proceeds of sales, redemptions, collections and other receipts, including interest and other income ("Proceeds") that are received by PNCCM, as you may reasonably direct in writing. Unless otherwise directed, we are to deposit said Proceeds into an account established by you with a bank affiliated with us. The captions of the safekeeping account and the cash account will at all times be identical.
- (b) Subject only to the other provisions of this agreement, all Securities and Proceeds held by us pursuant hereto shall be subject to the full and exclusive control of you.
- (c) Your instructions or directions are to be in writing and signed by you, but we are entitled to accept and rely on oral or unsigned instructions or directions and, in doing so, shall not be liable for executing any such instructions or directions which we believe in good faith to be genuine. You will furnish confirmations, in writing and signed by you, of any previous oral or unsigned instructions or directions. If you are not an individual, you will designate in an appropriate certificate the persons who are authorized as your agents to perform any and all acts contemplated in this Section 25 on your behalf. The authority of said agents shall remain in full force and effect until written notice of the termination of such authority shall have been delivered to us.
- (d) We are authorized to hold the Securities, in bearer form, book entry form, registered in the undersigned's name or registered in nominee name as we deem appropriate. We are also authorized to deposit and register the Securities with any securities depository or in custody with a banking institution. We are authorized to exchange Securities for other Securities where the exchange is purely ministerial as, for example, the exchange of securities in temporary form for securities in definitive form or the mandatory exchange of certificates.

(e) In the event PNCCM advances Proceeds and credits them to your cash account prior to our collection of such from a paying agent and we do not receive such Proceeds from the paying agent within a reasonable time thereafter (said reasonable time to be determined by us in our sole discretion), you will repay the credited Proceeds upon our demand, and PNCCM shall have the right to debit your cash account, any other deposit account at an affiliated bank of ours maintained by you or your safekeeping account, if necessary, to effect such repayment.

(f) We are authorized in your name and on your behalf to execute any reports, forms, notices or statements which are or may hereafter be required by the Internal Revenue Service or any other governmental authority or commission, so far as the same are required in connection with any Securities or Proceeds.

(g) You will pay PNCCM compensation for its services rendered hereunder, which compensation shall be in accordance with the rates determined by PNCCM from time to time and which rates shall include late fees regarding your failure, after demand, to pay such compensation. We are authorized in our discretion to charge such compensation to your cash account, any other deposit account at an affiliated bank of ours maintained by you or your safekeeping account, if necessary. We are also authorized to debit such accounts for the costs and expenses of purchases and sales made upon your instructions and other items chargeable in connection with the safekeeping account.

(h) You will indemnify PNCCM and hold PNCCM harmless from any liability, loss, claim, damage or expenses that may occur as a result of your failure to comply with the terms of this Section 25. We may at our option insure ourselves against any such loss but shall be under no obligation to insure for your benefit.

(i) With respect to any instructions authorizing the receipt of Securities in connection with transactions not placed through PNCCM, PNCCM shall have no duty to advise you of non-receipt of, or to take steps to obtain delivery of, Securities from third parties either against payment or free of payment. With respect to any instructions authorizing the delivery of Securities in connection with transactions not placed through PNCCM, PNCCM shall have no duty to meet the delivery date for such Securities or, if payment is involved, credit your cash account with Proceeds, unless proper authorization is received by PNCCM within a reasonable and sufficient amount of time prior to the settlement date.

(j) PNCCM and each of PNCCM's affiliates at which you have accounts is hereby requested, authorized and instructed to transfer money, securities, financial instruments and other property, as appropriate, between such accounts and your account with PNCCM in accordance with instructions given by PNCCM in order to make payments and deliveries.

Agreed:

\_\_\_\_\_  
Name of Customer

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_