

**ROTH Individual Retirement Account**  
Custodial Agreement and Disclosure Statement

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Retirement Account***

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## Form 5305-RA

(Rev. March 2002)  
Department of the Treasury  
Internal Revenue Service

## Roth Individual Retirement Custodial Account (Under Section 408A of the Internal Revenue Code)

### Article I

The individual whose name appears on the accompanying IRA Application Form (hereinafter called "Depositor") is establishing a Roth Individual Retirement Account (hereinafter a "Custodial Account", "Depositor's Account", "Account" and/or "Plan") with New Vision Trust Company, a State Chartered South Dakota Trust Company (herein referenced to as "Custodian"). This traditional Individual Retirement Plan is established, under 408A of the Internal Revenue Code, for the exclusive benefit of the Depositor (or his or her beneficiaries) within the meaning of §408A of the Internal Revenue Code ("Code") and the related Treasury regulations ("Regulation(s)"). The Custodian has delegated certain Custodial Account recordkeeping and administrative functions ("Administrative Services") to American IRA, LLC, a North Carolina limited liability company (the "Administrator"). The Custodian and the Depositor hereby make the following agreement ("Agreement"):

The Custodian has made the disclosures to the Depositor as required by Reg. 1.408-6.

- 1.01 Except in the case of a rollover contribution described in section 408A(e), a recharacterized contribution described in section 408A(d)(6), or an IRA Conversion Contribution, the Custodian will accept only cash contributions up to \$3,000 per year for tax years 2002 through 2004. That contribution limit is increased to \$4,000 for tax years 2005 through 2007 and \$5,000 for 2008 and thereafter. For individuals who have reached the age of 50 before the close of the tax year, the contribution limit is increased to \$3,500 per year for tax years 2002 through 2004, \$4,500 for 2005, \$5,000 for 2006 and 2007, and \$6,000 for 2008 and thereafter. For tax years after 2008, the above limits will be increased to reflect a cost-of-living adjustment, if any.

### Article II

- 2.01 The annual contribution limit described in Article I is gradually reduced to \$0 for higher income levels. For a single Depositor, the annual contribution is phased out between adjusted gross income (AGI) of \$95,000 and \$110,000; for a married Depositor filing jointly, between AGI of \$150,000 and \$160,000; and for a married Depositor filing separately, between AGI of \$0 and \$10,000. In the case of a conversion, the Custodian will not accept IRA Conversion Contributions in a tax year if the Depositor's AGI for the tax year the funds were distributed from the other IRA exceeds \$100,000 or if the Depositor is married and files a separate return. Adjusted gross income is defined in section 408A(c)(3) and does not include IRA Conversion Contributions.
- 2.02 In the case of a joint return, the AGI limits in the preceding paragraph apply to the combined AGI of the Depositor and his or her spouse.

### Article III

- 3.01 The Depositor's interest in the balance in the Custodial account is nonforfeitable.

### Article IV

- 4.01 No part of the Custodial account funds may be invested in life insurance contracts, nor may the assets of the Custodial account be commingled with other property except in a common Custodial fund or common investment fund (within the meaning of section 408(a)(5)).
- 4.02 No part of the Custodial account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

### Article V

- 5.01 If the Depositor dies before his or her entire interest is distributed to him or her and the Depositor's surviving spouse is not the designated beneficiary, the remaining interest will be distributed in accordance with (a) below or, if elected or there is no designated beneficiary, in accordance with (b) below:
- (a) The remaining interest will be distributed; starting by the end of the calendar year following the year of the Depositor's death, over the designated beneficiary's remaining life expectancy as determined in the year following the death of the Depositor.
- (b) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Depositor's death.
- 5.02 The minimum amount that must be distributed each year under paragraph 5.01(a) above is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the designated beneficiary using the attained age of the beneficiary in the year following the year of the Depositor's death and subtracting 1 from the divisor for each subsequent year.
- 5.03 If the Depositor's surviving spouse is the designated beneficiary, such spouse will then be treated as the Depositor.

### Article VI

- 6.01 The Depositor agrees to provide the Custodian with all information necessary to prepare any reports required by sections 408(i) and 408A(d)(3)(E), Regulations sections 1.408-5 and 1.408-6, or other guidance published by the Internal Revenue Service (IRS).
- 6.02 The Custodian agrees to submit to the IRS and Depositor the reports prescribed by the IRS.

### Article VII

- 7.01 Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through IV and this sentence will be controlling. Any additional articles inconsistent with section 408A, the related regulations, and other published guidance will be invalid.

### Article VIII

- 8.01 This agreement will be amended as necessary to comply with the provisions of the Code, the related regulations, and other published guidance. Other amendments may be made with the consent of the persons whose signatures appear on the Roth IRA Adoption Agreement.

#### Article IX

9.01 **Custodian and Administrator:**

- (a) The Custodian for the Custodial Account is New Vision Trust Company, a State Chartered South Dakota Trust Company.
- (b) The Administrator for the Custodial Account is American IRA, LLC., a North Carolina Limited Liability Company.

9.02 **Accuracy of Information:** The Depositor represents and warrants that all information and instructions given to the Custodian by the Depositor will be complete and accurate and agrees that the Custodian shall not be responsible for any incomplete or inaccurate information provided by the Depositor or Depositor's beneficiary(ies). The Depositor and the Depositor's beneficiary(ies) agree to be responsible for all tax consequences arising from contributions to, and distributions from, the Depositor's Custodial Account and acknowledge that no tax advice has been, nor will any tax advice be, provided by the Custodian.

9.03 **Affiliated Business Disclosure and Conflict of Interest Waiver:** The Custodian, New Vision Trust Company, a State Chartered South Dakota Trust Company and American IRA, LLC, a North Carolina limited liability company (Administrator) are affiliated companies by reason of their common ownership and management. Because the two companies are under common ownership and management, the owners of American IRA, LLC, a North Carolina limited liability company will enjoy a direct and/or indirect financial benefit from the fees the Depositor pays to New Vision Trust Company, a State Chartered South Dakota Trust Company. By signing the Account Application, the Depositor acknowledges and understands that: 1) New Vision Trust Company, a State Chartered South Dakota Trust Company and American IRA, LLC, a North Carolina limited liability company are under common ownership and control, 2) by retaining New Vision Trust Company, a State Chartered South Dakota Trust Company, the Depositor is providing a financial benefit to the owners of American IRA, LLC, a North Carolina limited liability company 3) The Depositor is under no obligation to retain New Vision Trust Company, a State Chartered South Dakota Trust Company and that the Depositor is free to retain the services of another, unaffiliated Custodian, and 4) the Depositor, does acknowledge and confirm that the Depositor chose New Vision Trust Company, a State Chartered South Dakota Trust Company freely and with no influence from the Custodian and/or Administrator.

9.04 **Agent for the Custodian:** The Custodian has appointed the Administrator to act as agent and/or nominee for the Custodian to perform administrative and/or custodial-related services with respect to the Custodial Account for which the Custodian otherwise has responsibility under this Agreement. All limitations of, and duties owed to the Depositor by the Custodian, and releases or indemnifications of the Custodian by the Depositor in this Agreement shall apply equally to the Administrator. Except where the Depositor is a resident of North Carolina, where all assets shall be vested solely in the name of the Custodian for the benefit of ("FBO") the Depositor, the Administrator may, for administrative convenience, perform duties on behalf of the Custodian which include, but are not limited to, executing applications or adoption agreements, transfers, stock powers, escrow accounts, purchase agreements, notes, deeds, conveyances, liens, placing assets or liabilities in the Administrator's name as Nominee for the Custodian and FBO the Depositor to provide administrative convenience for such transactions, depositing contributions, and income, paying liabilities and distributions and government reporting for Depositors who have established a Custodial Account with the Custodian. Notwithstanding the foregoing, the Custodian shall maintain control over all Account assets.

9.05 **Annual Accounting:** The Custodian shall, at least annually, provide the Depositor or Beneficiary (in the case of Depositor's death) with an accounting of the Depositor's account, consistent with the valuation provisions of 10.12 herein. Such accounting shall be deemed to be accepted by the Depositor or the Depositor's Beneficiary, if the Depositor or Beneficiary do not object in writing within 60 days after delivery of such accounting statement.

9.06 **Amendment:** The Depositor irrevocably delegates to the Custodian the right and power to amend this Custodial Agreement. In the case of an amendment required by law, Depositor's consent is not required. For amendments made by Custodian, Depositor shall be deemed to have consented where Custodian has provided the Depositor 30 days' prior written notice of the amendment, unless the Depositor notifies the Custodian in writing to the contrary no later than 30 days after delivery of notice of the change and Depositor requests a distribution or transfer of the balance in the Depositor's account(s).

9.07 **Termination of Agreement, Resignation and/or Removal of Custodian:**

- (a) Depositor and Custodian may terminate this Agreement at any time upon delivery of written notice to the other party.
- (b) Resignation of Custodian.

i. The Custodian may resign and appoint a successor trustee or custodian to serve under this Agreement, or under another governing agreement selected by the successor trustee or custodian, by delivering written notice to Depositor at least 30 days prior to the effective date of such resignation and appointment. The Depositor shall then have 30 days from the date of such notice to either: 1) request a distribution of the entire balance of Depositor's Account or 2) designate a different successor trustee or custodian and notify the Custodian of such designation. If the Depositor does not request distribution of the account balance or notify the Custodian of the designation of a different successor trustee or custodian within such 30-day period, the Depositor shall be deemed to have consented to the appointment of the successor trustee or custodian and the terms of any new governing instrument, and neither the Depositor nor the successor shall be required to execute any written document to complete the transfer of the account to the successor trustee or custodian. The successor trustee or custodian may rely on any information, including beneficiary designations, previously provided by the Depositor to the Custodian. Where a new governing agreement is selected by the successor trustee or custodian said agreement and related disclosure will be provided to Depositor together with or under separate cover from the notice required in this provision.

ii. The Custodian may resign and demand that the Depositor appoint a successor trustee or custodian for the Custodial Account by giving the Depositor written notice at least 30 days prior to the effective date of such resignation. The Depositor shall then have 30 days from the date of such notice to designate a successor trustee or custodian, notify the Custodian of the name and address of the successor trustee or custodian, and provide the Custodian with appropriate evidence that such successor has accepted the appointment and is qualified to serve as trustee or custodian of an individual retirement account.

A. If the Depositor designates a successor trustee or custodian and provides the Custodian evidence of the successor's acceptance of appointment and qualification within such 30-day period, the Custodian shall then deliver all of the assets held by the Custodian in the account (whether in cash or personal or real property, wherever located, and regardless of value) to the successor trustee or custodian.

B. If the Depositor does not notify the Custodian of the appointment of a successor trustee or custodian within such 30-day period, then the Custodian may distribute all of the assets held by the Custodian in the account (whether in cash or personal or real property, wherever located, and regardless of value) to the Depositor, outright and free of trust, and the Depositor shall be wholly responsible for the tax consequences of such distribution.

C. In either case, the Custodian may expend any assets in the account to pay expenses of transfer (including re-registering the assets and preparation of deeds, assignments, and other instruments of transfer or conveyance) to the successor trustee or custodian or the Depositor, as the case may be. In addition, the Custodian may retain a portion of the assets as a reserve for payment of any anticipated remaining fees and expenses. Upon satisfaction of such fees and expenses, the Custodian shall pay over any remainder of the reserve to the successor trustee or custodian or to the Depositor, as the case may be.

- (c) The Depositor may, at any time, remove the Custodian and replace the Custodian with a successor trustee or custodian of the Depositor's choice by giving 30 days' notice of such removal and replacement. The Custodian shall then deliver the assets of the account as directed by the Depositor. However, the Custodian may retain a portion of the assets of Depositor's Account as a reserve for payment of any anticipated remaining fees and expenses and shall pay over any remainder of this reserve to the successor trustee or custodian upon satisfaction of such fees and expenses.
- (d) Successor Custodian: If the Custodian's organization changes its name, reorganizes, merges with another organization (or comes under the control of any federal or state agency), or if Custodian's entire organization (or any portion which includes Depositor's Account) is bought by another organization, that organization (or agency) shall automatically become the trustee or custodian of Depositor's Account, but only if it is the type of organization authorized to serve as a trustee or custodian as set forth in the Code and/or Regulations.
- (e) After the Depositor's Account with the Custodian is closed, if there are additional assets remaining in, or subsequently credited to, the Depositor's Account, the Custodian will endeavor to distribute or transfer such assets in accordance with the Depositor's prior direction, but after offsetting any applicable administrative expenses and custodial fees.
- (f) The Custodian may establish a policy requiring distribution of the entire balance of the Depositor's Account to the Depositor in cash or property if the balance of the Depositor's Account drops below the minimum balance required under the applicable investment or policy established.

9.08 **Custodian's and Administrator's Fees and Expenses:**

- (a) Depositor agrees, that by opening an account with Custodian, to pay all fees and charges that are made against Depositor's Account in accordance with the Fee Schedule provided and incorporated by reference herein. All fees are due upon presentment. If your Account is unfunded with zero value, Depositor understands that Depositor's Account will continue to incur fees until Depositor provides written notice to Custodian to close the account. Fees shall not be prorated, and the full amount will be due and payable for any year during which the Depositor's Account is open.
- (b) The Depositor agrees to pay the Custodian any and all fees specified in the Custodian's published fee schedule, as amended from time to time by the Custodian in accordance with this Agreement, for establishing and maintaining this Custodial Account, including any fees for distributions from, transfers to and/or from and terminations of this Custodial Account. The Custodian reserves the right to change its fee schedule at any time, in its sole discretion, by giving 30 days' prior notice to Depositor.
- (c) The Depositor agrees to pay any expenses incurred by the Custodian in the performance of its duties in connection with the account. Such expenses include, but are not limited to, administrative expenses, legal fees, accounting fees, regulatory fees and any taxes or assessments of any kind whatsoever that may be levied with respect to the Custodial Account.
- (d) All such fees, taxes, and other administrative expenses charged to the account shall be collected either from the assets in the Custodial Account or from any contributions to or distributions from such Custodial Account if not paid by the Depositor. The Depositor shall be responsible for any deficiency.
- (e) In the event that for any reason the Custodian is not certain as to who is entitled to receive all or part of the assets in the Custodial Account, the Custodian reserves the right to withhold any payment from the Custodial Account, to request a court ruling to determine the disposition of the Custodial assets, and to charge the Custodial Account for any expenses incurred in obtaining such legal determination.
- (f) The Custodian shall be entitled to receive, from the assets held in the Custodial Account, a fee equal in amount to all income that is generated from any Undirected Cash (defined as any cash in the Custodial Account not invested pursuant to a specific investment direction by the Depositor) which has been deposited by the Custodian into State and/or Federal banking institutions. Fees collected by the Custodian in accordance with this provision related to Undirected Cash in the Custodial Account are associated with cash management activities, including, but not limited to, account maintenance, depository bank selection, transaction processing, sub-accounting, record keeping, and other services performed under the terms of this Agreement. The Custodian retains the right, but does not have the obligation, to reduce this fee by rebating a portion of the fee into the Custodial Account. The Depositor agrees that this fee may be retained by the Custodian as compensation for the services provided by the Custodian under this Agreement. The Custodian may pay all or an agreed portion of this fee to the Administrator as agreed between the Custodian and the Administrator. The Custodian makes no representations or warranties as to the financial status of any depository bank or its ability to satisfy its obligations to the Depositor. The Custodian has sole discretion, without any further approval from the Depositor, as to which third party financial organizations to deposit the Depositor's Undirected Cash. The Depositor hereby indemnifies and agrees to hold such financial organization(s) harmless from following the directions received from the Custodian on the Depositor's behalf including, but not limited to, honoring checks drawn on the Depositor's portion of the pooled custodial accounts that are written by the Custodian and agrees that the duties and powers described herein that are exercised by the Custodian are ministerial in nature and will not operate to cause the Custodian to become a fiduciary with respect to the Depositor's account.
- (g) In addition to any portion of the fee collected by the Custodian as provided in Section 9.08(f), the Custodian shall be entitled to fees from the Depositor for account opening, asset purchases and sales, distributions, transfers, terminations, and annual administration of the Custodial Account, along with other miscellaneous fees, as disclosed in a fee schedule provided by the Custodian to the Depositor. If payment is not received within thirty (30) days from the due date reflected on an invoice, a past due notice will be sent to the Depositor and a late fee equal to (a) \$25.00 for every month or partial month that the invoice is outstanding or (b) the maximum late penalty permitted under the state law of South Dakota where the Custodian is organized, shall be assessed to the Custodial Account. Additionally, assets may be liquidated from the account, without further notice, for any outstanding fees which have not been paid within 30 days of the initial past due notice. If fees are not paid within thirty (30) days after the Custodian has provided the past due notice, the Custodian will begin the process of closing the Custodial Account. Any asset distributed directly to the Depositor as part of closing the Custodial Account will be reported to the IRS on Form 1099-R and may subject the Depositor to possible taxes and penalties. Accounts with past due fees, unfunded accounts, and accounts with zero value will continue to incur administration fees until such time as the Depositor notifies the Custodian (on a form prescribed by the Custodian) of the Depositor's intent to close the account and the Depositor's account is closed or until the Custodian resigns.

9.09 **Designation of Beneficiary:**

- (a) Except as may be otherwise required by state law, in the event of the Depositor's death, the balance in the account shall be paid to the beneficiary, or beneficiaries, designated by the Depositor on a Beneficiary Designation Form acceptable to, and filed with, the Custodian. The Depositor may change the Depositor's beneficiary or beneficiaries at any time by filing a new Beneficiary Designation Form with the Custodian. If no beneficiary designation is in effect, if none of the named beneficiaries survive the Depositor or if the Custodian cannot locate any of the named beneficiaries after reasonable search, any balance in the account will be payable to the Depositor's estate.
- (b) If the Custodian permits, in the event of the Depositor's death, any beneficiary may name a subsequent beneficiary(ies) to receive the balance of the account to which such beneficiary is entitled upon the death of the original beneficiary by filing a Subsequent Beneficiary Designation Form acceptable to and filed with the Custodian. Payments to such subsequent beneficiary(ies) shall be distributed in accordance with the payment schedule applicable to the original beneficiary or more rapidly if the subsequent beneficiary requests. In no event, can any subsequent beneficiary be treated as a designated beneficiary of the Depositor. The preceding sentence shall not apply with respect to the subsequent beneficiary(ies), if any, designated by the original spouse beneficiary where the Depositor dies before the Depositor's required Beginning Date. In this case, the original spouse beneficiary is treated as the Depositor. If the balance of the account has not been completely distributed to the original beneficiary and such beneficiary has not named a subsequent beneficiary or no named subsequent beneficiary is living on the date of the original beneficiary's death, such balance shall be payable to the estate of the original beneficiary.

9.10 **Spousal Beneficiary Provisions:** Notwithstanding the provisions of Article 5.03, if the Depositor's only primary beneficiary is the surviving spouse, such spouse may elect to be treated as a non-spouse beneficiary for purposes of the provisions of Articles 5.01 and 5.02, but including the special rule provided under section 401(a)(9)(B)(iv) of the Code. Thus, a surviving spouse beneficiary may remain the beneficiary of the deceased spouse's Roth IRA and be able to take death distributions under the five year rule or the exception to the five year rule, including the ability to wait to begin receiving distributions over his or her single life expectancy by December 31 of the year the deceased spouse would have attained the age of 70½ had he or she lived, if this date is later than the December 31 immediately following the year of death. In addition, if the surviving spouse is not the sole beneficiary of the Roth IRA, in addition to the provisions of Articles 5.01 and 5.02, the surviving spouse beneficiary may elect to treat his or her

- beneficial portion of the deceased spouse's Roth IRA as his or her own Roth IRA.
- 9.11 **Responsibility for Determining Eligibility for Conversion Contributions:** Notwithstanding the provisions of the third sentence of Article II, the Depositor agrees to be solely responsible for determining eligibility to convert any of the Depositor's traditional IRAs or an employer's plan to a Roth IRA. The conversion eligibility requirements are eliminated for years after December 31, 2009.
- 9.12 **Combining Regular Roth IRA Contributions with Roth Conversion Contributions:** The Depositor may combine regular Roth IRA contributions in the same Roth IRA account as Roth IRA conversion contributions. The Depositor agrees to designate each deposit as either a regular Roth IRA contribution (and the tax year to which it relates) or a Roth IRA conversion contribution. The Depositor further agrees that he/she will be solely responsible for any recordkeeping of such deposits as determined or required by the Internal Revenue Service, including but not limited to, the timing, ordering and taxation of any distributions.
- 9.13 **Death Benefit Default Provisions:** If the Depositor dies and the beneficiary does not select a method of distribution described in Article V, Section 5.01(a) or (b) by the December 31st following the year of the Depositor's death, then distributions will be made pursuant to the single life expectancy of the Designated Beneficiary determined in accordance with IRS regulations. However, no payment will be made until the beneficiary provides the Custodian with a proper distribution request acceptable to the Custodian and other documentation that may be required by the Custodian. A beneficiary may at any time request a complete distribution of his or her remaining interest in the Custodial Account. The Custodian reserves the right to require a minimum balance in the account in order to make periodic payments from the account.

## ARTICLE X

### SELF-DIRECTED IRA PROVISIONS

- 10.01 **Investments, Transfers and Withdrawals of Assets in the Custodial Account:**
- (a) **Depositor's Account is "Self-Directed"** What does "Self-Directed" mean? Self-Directed means Depositor, as the Holder of the Custodial Account, is solely responsible for the investment of all assets within Depositor's Account by giving Custodian directives to take any action on behalf of the Custodial Account. That means Depositor is responsible for the selection, management, monitoring and retention of all investments held within Depositor's Account. The investments Depositor selects may involve a high degree of risk, and the Custodian will provide no investment advice nor make any investigation or determination as to the prudence, viability, suitability, legality, or safety of the investments that Depositor selects. The assets selected for investment are solely Depositor's responsibility. This requires that Depositor assures themselves of the financial soundness and appropriateness of the investment for Depositor's Account and retirement objectives and Depositor should have all investments reviewed by a competent legal, tax, and/or financial advisor.
- (b) **The Depositor shall have exclusive responsibility for, and control over, any and all investment of the assets of the Depositor's Custodial Account.** All transactions shall be subject to any and all restrictions or limitations, direct or indirect, which are imposed by the Custodian's charter, articles of incorporation, or bylaws; any and all applicable federal and state laws and regulations; the rules, regulations, customs and usages of any exchange, market or clearing house where the transaction is executed; the Custodian's internal policies, standards and practices; and this Agreement. After the Depositor's death, Depositor's beneficiary(ies) shall have the right to direct the investment of the Depositor's Custodial Account assets, subject to the same conditions that applied to the Depositor in the Depositor's lifetime under this Agreement. The Custodian shall be under no obligation to and will not exercise the voting rights and other shareholder rights with respect to investments in the Depositor's account unless the Depositor provides timely written directions acceptable to the Custodian in accordance with the Custodian's then current policies and procedures. The Depositor shall select the type of investment for the Depositor's assets, provided, however, that the Depositor's selection of investments shall be limited to those types of investments that the Custodian is authorized by its charter, articles of incorporation, or bylaws to offer and comply with the Custodian's internal policies, practices, and standards and are deemed administratively feasible by the Custodian. Cash balances in the Depositor's account, for which no investment instructions have been received, shall be placed in one or more state or federal banking institutions.
- (c) **Responsibility for determining eligibility and tax consequences:** Depositor assumes complete responsibility for 1) determining that Depositor is eligible to make a contribution to Depositor's Account; 2) ensuring that all contributions Depositor makes are within the limits set forth by the relevant sections of the Internal Revenue Code; and 3) the tax consequences of any contribution (including a rollover contribution) and distributions.
- (d) **Custodian Acting in Passive Capacity Only.**
- i. **The Custodian is acting solely as a passive custodian** to hold the Depositor's assets and the Custodian shall have no discretion to direct any investment in the Depositor's Custodial Account. Accordingly, the **Custodian is not a fiduciary (as said term is defined in the Internal Revenue Code, The Employee Retirement Income Security Act of 1974 ("ERISA"), or any other applicable federal, state or local laws)** with respect to the Depositor's Custodial Account. However, through the Custodian's affiliates, the Custodian may receive a commission in connection with the unsolicited purchase or sale of a publicly-traded securities.
  - ii. The Custodian shall bear no responsibility to review the prudence, merits, viability or suitability of any investment directed by Depositor and/or Depositor's agent(s) or to determine whether the investment is suitable for the Depositor or acceptable under ERISA, the Internal Revenue Code or any other applicable law. The Custodian shall not offer any investment advice, nor endorse any investment, investment product or investment strategy; and the Custodian does not endorse any investment advisor, representative, broker, or other party selected by the Depositor. The Custodian shall have no responsibility to question any investment directions given by the Depositor and/or by any representative/agent appointed by the Depositor.
  - iii. It is the Depositor's sole responsibility to perform any and all prudent due diligence with regard to any such representative, investment advisor, broker or other party. The Custodian will follow the directions of any such investment advisor, representative, broker or other party authorized by the Depositor in a manner acceptable to the Custodian, and the Custodian will be entitled to all the same protections and indemnities in our reliance upon and execution of the directives of such agent or other party as if such directives were given by the Depositor.
  - iv. The Custodian shall be under no obligation or duty to investigate, analyze, monitor, verify title to, or otherwise evaluate or perform due diligence for any investment directed by the Depositor and/or the Depositor's investment advisor, representative or agent; nor shall the Custodian be responsible to notify the Depositor or take any action should there be any default with regard to any investment.
  - v. Any review performed by the Custodian with respect to an investment shall be solely for the Custodian's own purposes of determining compliance with our internal policies, practices and standards, as are determine from time to time and the administrative feasibility of the investment and neither such review nor its acceptance should be construed in any way as an endorsement of any investment, investment company or investment strategy. The Custodian also has the right to refuse any transaction/investment which the Custodian deems, in its sole discretion, to be beyond the scope of the Custodian's administrative responsibilities, capabilities or expertise or that the Custodian determines in its sole discretion does not comport with the Custodian's internal policies, practices or standards.
  - vi. The Custodian shall have no duty or obligation to notify you with respect to any information, knowledge, irregularities or our concerns relating to the Depositor's investment or the Depositor's investment advisor, broker, agent, promoter, or representative, and any failure to do so shall not result in any liability as the Custodian.
  - vii. The Custodian will use reasonable efforts to acquire or sell investments in accordance with the Depositor's directions within a reasonable period of time after the Custodian has received an acceptable investment direction and the Custodian will make reasonable efforts to notify the Depositor if the Custodian is unable or unwilling to comply with an investment direction. Subject to the foregoing, the Custodian shall remit funds as directed, but has no responsibility to verify or assure that such funds have been invested to purchase or acquire the asset selected by the Depositor.
  - viii. The Custodian reserves the right to refuse to follow any investment direction made by the Depositor that the Custodian determines may be a violation of any Federal or State Law.

- (e) **Investment Documentation.** Any direction from the Depositor, the Depositor's agent and/or Designated Representative to the Custodian with respect to any investment, withdrawal and/or transfer of an asset from the Depositor's Custodial Account, shall be in writing on a form acceptable to the Custodian ("Direction of Investment"). The Custodian may remit funding for the Depositor's investment upon receipt of such Direction of Investment, without regard to any supporting documentation. The Custodian shall be fully protected in acting upon any instrument, certificate, paper or transmission believed to be genuine and to be signed or presented by the proper person or persons whether or not by facsimile or other form acceptable to the Custodian, and the Custodian shall be under no duty to make any investigation or inquiry as to any statement contained in any such communication, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. The Depositor authorizes and directs the Custodian to execute and deliver, on behalf of the Depositor's Custodial Account, any and all documents delivered to the Custodian in connection with the Depositor's investments; although the Custodian shall have no duty to deliver such documents and the Custodian shall have no responsibility to verify or determine that any such documents are complete, accurate or constitute the documents necessary to comply with the Depositor's Investment Direction, unless said directions from the Depositor comply with the requirements of this Agreement. Depositor authorizes and directs the Custodian to correct scrivener errors in investment titling and other minor clerical errors with telephone or email consent from the Depositor, the Depositor's agent and/or Designated Representative upon verification of the Depositor, Depositor's agent and/or Designated Representative's identity.
- (f) **Deposit Investments.** The deposit investments available through the Custodian may include, but are not limited to, marketable securities traded on a recognized exchange or "over the counter" (excluding any securities issued by the Custodian), covered call options, certificates of deposit, real estate, deeds of trust, mortgages, unsecured notes, limited partnerships, limited liability companies, private stock, other private placement offerings, and other investments to which the Custodian consents. Any cash in the Depositor's Custodial Account shall be invested in accordance with the instructions of the Depositor, or the Depositor's designated representative, subject to the other terms of this Custodial Agreement. If the Depositor does not instruct the Custodian with regard to any Undirected Cash, such cash will be deposited pursuant to paragraph 9.08(f). The Depositor may direct the Custodian to transfer any un-invested funds to an institution of the Depositor's choice at any time.
- (g) **Any Request for a withdrawal or transfer must include the following:** 1) the method of distribution, and 2) the tax identification number of the recipient. Withdrawals and transfers shall be subject to all applicable tax and other laws and regulations, including possible early withdrawal penalties or surrender charges and withholding requirements. The Depositor acknowledges that a distribution of a non-traditional asset, such as real estate, requires an appraisal prior to distribution and all associated fees shall be the sole responsibility of the Depositor. **For those custodial assets where fair market value is not readily ascertainable, the Depositor agrees that the Depositor will provide to the Custodian a qualified independent appraisal of the asset. If the Depositor does not provide such an appraisal, we may report the asset's value at its last known fair market value or at its acquisition cost.** The Custodian reserves the right to reject any withdrawal and/or transfer request it may deem, in its sole discretion, not an appropriate withdrawal and/or transfer and to apply to a court of competent jurisdiction to make a determination with respect to the proper party eligible to receive a distribution from the account. All fees and/or costs, including all reasonable attorney fees incurred by the Custodian associated with an application to the court for a determination distribution subject to a request for withdrawal and/or transfer shall be the responsibility of the Depositor and may be collected by the Custodian from the assets of the Depositor's Account.
- (h) **Payment Instructions** Depositor agrees to furnish payment instructions to the Custodian regarding any invoice, assessment, fee or any other disbursement notification received the Custodian on behalf of Depositor's investments, and Depositor understands that the Custodian has no duty or responsibility to disburse any payment until such instructions are received from Depositor and/or Depositor's Designated Representative. Written direction shall include signature by facsimile or by electronic signature.
- (i) **Investment Funding Requirements** Depositor understands and agrees that Depositor cannot make investments without having available liquid funds in Depositor's Account. In addition, if any investment contains provisions for future contractual payments or assessments, (including margin calls), Depositor acknowledges and agrees that such payments or assessments shall be borne solely by Depositor's Account to the extent such payment is authorized by Depositor and/or Depositor's Designated Representative and may reduce or exhaust the value of Depositor's Account. Depositor further agrees to indemnify the Custodian for any and all payments or assessments which may be imposed as a result of holding the investment within Depositor's Account, and Depositor agrees that the Custodian shall be under no obligation to extend credit to Depositor's Account or otherwise disburse payment beyond the cash balance of Depositor's Account for any payment or assessment related to the investment. Depositor agrees that Depositor is solely responsible for verifying that any bills to be paid from Depositor's Account, and accompanying payment instructions, have been received by the Custodian. Depositor further agrees that the Custodian shall not be responsible for late fees assessed by any third party where Depositor has not verified that payment instructions have been received, or where the receipt of instructions or documentations has been delayed
- (j) **Investment Funds Availability** Any funds received into Depositor's Account which are made by check may be subject to an eleven (11) business day clearing period before funds are available to invest. ALL NEW ACCOUNTS are subject to a seven (7) calendar day waiting period before any funds can be invested.

#### 10.02 Investment Contributions:

- (a) At the direction of the Depositor (or the direction of the beneficiary upon the Depositor's death), and in accordance with the Custodian's obligations under this Agreement, the Custodian shall invest all contributions to the Custodial Account, and earnings thereon, in investments that are acceptable to the Custodian, and that are considered administratively feasible by the Custodian, which may include, but are not limited to, marketable securities traded on a recognized exchange or "over the counter" (excluding any securities issued by the Custodian), covered call options, certificates of deposit, real estate, deeds of trust, mortgages, unsecured notes, limited partnerships, limited liability companies, private stock, other private placement offerings, and other investments to which the Custodian consents, in such amounts as are specifically selected and specified by the Depositor in a Direction of Investment, without any duty to diversify and without regard to whether such property is authorized by the laws of any jurisdiction as a trust investment. The Custodian shall be responsible for the execution of such orders and for maintaining adequate records thereof. However, if any such orders are not received as required, or, if received, are unclear in the opinion of the Custodian, or if there is insufficient Undirected Cash in the Custodial Account to comply with such orders, all or a portion of the contribution may be held un-invested without liability to Custodian for loss of income or appreciation, and without liability to Custodian for interest pending receipt of such orders or clarification, or the contribution may be returned to the Depositor. The Custodian shall have no duty other than to follow the written investment directions of the Depositor and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by the Depositor under any circumstances.
- (b) The Depositor hereby acknowledges and agrees that the Custodian will deposit all Undirected Cash in the Custodial Account into pooled deposit accounts at one or more State and Federal banking institutions or in United States government securities pending further investment direction by the Depositor. All income generated by Undirected Cash in the Custodian's pooled deposit accounts shall be retained by the Custodian as fees, as described in paragraph 9.08(f) above. The Depositor authorizes the Custodian to transfer any Undirected Cash in the Custodial Account into any State and Federal banking institution or in United States government securities or in securities that are insured or guaranteed by the United States government without any further approval or direction by the Depositor.

- (c) **Non- FDIC Insurance for Investments:** Depositor recognizes that investments purchased and/or held within Depositor's Account: 1) are not insured by the Federal Deposit Insurance Corporation (FDIC); 2) are not a deposit or other obligation of, or guaranteed by, the Custodian; and 3) are subject to substantial risk, may lack liquidity, and may result in a total loss of the investment. You acknowledge and confirm that all risk and loss sustained in your Retirement Account will not affect your retirement income standard; and if a mandatory distribution arises, that Depositor will meet any mandatory distribution requirements by utilizing Depositor's Account and/or other retirement accounts.
- 10.03 **Indemnification:** The Custodian shall have no duty other than to follow the written instructions of the Depositor, the Depositor's agents, investment advisors and/or Designated Beneficiaries, and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by the Depositor under any circumstances. By performing services under this Agreement, the Custodian is acting as the agent of the Depositor, and nothing in this Agreement shall be construed as conferring fiduciary status on the Custodian. The Depositor agrees to release, defend, indemnify and hold harmless the Custodian from any and all liability, claims, damages, actions, costs, expenses (including, without limitation, all reasonable attorneys' fees) arising from or related to the Custodial Agreement and/or Custodial Account, including but not limited to, losses to the Depositor and/or to the Depositor's beneficiary(ies) as a result of any action taken (or omitted to be taken) pursuant to and/or in connection with any investment transaction directed by the Depositor, the Depositor's agents, investment advisors and/or Designated Beneficiaries, including, without limitation, claims, damages, liability, actions and losses asserted by the Depositor or the Depositor's beneficiary(ies). The Depositor agrees to reimburse and/or advance to us, on demand, all legal fees, expenses, costs, fines, penalties and obligations incurred or to be incurred in connection with the defense, contest, prosecution or satisfaction of any claim made, threatened or asserted pertaining to any investment or action the Depositor, or the Depositor's agent, directed through the Custodian, including, without limitation, claims asserted by the Depositor, any state or federal regulatory authority or self-regulatory organization. In the event of claims by others related to the Depositor's account and/or investment wherein the Custodian is named as a party, the Custodian shall have the full and unequivocal right, at their sole discretion, to select their own attorneys to represent them in such litigation and deduct from the Depositor's account any amounts to pay for any costs and expenses, including, but not limited to, all reasonable attorneys' fees, and costs and internal costs (collectively "Litigation Costs"), incurred by the Custodian in the defense of such claims and/or litigation. The Custodian shall have the full and unequivocal right to freeze the Depositor's account, liquidate the Depositor's assets, and/or initiate legal action in order to obtain the Custodian's Litigation Costs. The Depositor also understands and agrees that the Custodian will not be responsible to take any action should there be any default with regard to any investment directed by the Depositor. The Depositor understands that no one at the Custodian has authority to agree to anything different than the Depositor's foregoing understandings of the Custodian's policy. No changes to the Custodian's policy are effective unless made in accordance with the terms of this Agreement. The term Custodian includes New Vision Trust Company, a State Chartered South Dakota Trust Company, its agents, assigns, nominees, delegates, joint ventures and/or affiliates including, but not limited to American, IRA, LLC a North Carolina limited liability Company, its affiliates and/or assigns.
- 10.04 **Registration:** All assets of the Custodial Account shall be registered in the name of the Custodian or of a suitable nominee. The Custodian reserves the right to appoint a nominee for the purposes of holding title to assets of the Custodial Account. The same nominee of the Custodian, with respect to the holding of assets of other investors, whether held under agreements similar to this one or in any capacity whatsoever; and the Custodian may commingle the assets so held to the extent permitted by law. However, the Custodial Account and each other account or asset so held shall each be separate and distinct; a separate account therefore shall be maintained by the Custodian (or by the nominee on behalf of the Custodian). The assets of the Custodial Account may be held by the Custodian in individual or bulk segregation either in the Custodian's vaults or vaults of the Custodian's agent or through brokerage accounts of entities permitted to hold assets of the applicable type under the Securities Exchange Act of 1934 or the Commodities Exchange Act.
- 10.05 **Investment Advisor:** The Depositor may appoint an Investment Advisor, qualified under Section 3(38) of the Employee Retirement Income Security Act of 1974, to direct the investment of the Custodial Account or any specified portion of the Custodial Account. The Depositor shall notify the Custodian in writing of any such appointment by providing the Custodian a copy of the instruments appointing the Investment Advisor and evidencing the Investment Advisor's acceptance of such appointment, an acknowledgment by the Investment Advisor that it is a fiduciary of the account, and a certificate evidencing the Investment Advisor's current registration under the Investment Advisor's Act of 1940. The Custodian shall comply with any investment directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Depositor that the Investment Advisor's appointment has been terminated. The Custodian shall have no duty other than to follow the written investment directions of such Investment Advisor and shall be under no duty to question said instructions, and the Custodian shall not be liable for any investment losses sustained by the Depositor as a result of following the written investment directions of the Depositor's Investment Advisor.
- 10.06 **No Investment Advice:** The Depositor acknowledges and agrees that the Custodian does not provide or assume responsibility for any tax, legal or investment advice with respect to the investments and assets in the Custodial Account and shall not be liable for any loss which results from the Depositor's exercise of control over the Custodial Account. The Depositor further understands and agrees that the Custodian neither sells or endorses any investment products. If the services of the Custodian were marketed, suggested or otherwise recommended by any person or entity, such as a financial representative or investment promoter, the Depositor understands that such promoters and/or marketers are not in any way agents, employees, representatives, affiliates, partners, independent contractors, consultants, or subsidiaries of the Custodian, and that the Custodian is not responsible for and are not bound by any statements, representations, warranties or agreements made by any such promoter, marketer or entity. The Depositor agrees to consult with the Depositor's own CPA, attorney, financial planner and/or any other professionals the Depositor deems necessary or advisable, prior to directing the Custodian to make any investment in the Depositor's account. The Depositor and the Depositor's beneficiary(ies) release, indemnify and agree to hold the Custodian harmless in the event that any investment or sale of the assets in the Custodial Account, pursuant to a direction by the Depositor or the Depositor's Investment Advisor, violates any federal or state law or regulation or otherwise results in a disqualification, penalty, tax or fine imposed upon the Custodian, the Administrator, the Depositor or the Custodial Account.
- 10.07 **Alternative Investments:** The Depositor may, at the Depositor's discretion, direct the Custodian to purchase "alternative" investments which shall include, but not be limited to, investments which are individually negotiated by the Depositor and/or the Depositor's agent, or part of a private placement of securities offered in reliance upon exemptions provided by Sections 3(B) and 4(2) of the Securities Act of 1933 and Regulation D promulgated thereunder. It is the Depositor's sole responsibility to determine whether or not the Depositor's selected investment(s) is required to be registered as a security with any applicable federal and/or state regulatory authority. The Custodian reserves the right to not follow such direction or process such investment(s) for administrative reasons. Such action should not be construed as investment advice or an opinion by the Custodian as to the investment's prudence or viability. If the Depositor or the Depositor's agent should direct the Custodian to purchase an alternative investment, as defined above, the following special certifications and provisions shall apply:
- The Depositor agrees to submit or cause to be submitted all offering documentation related to the alternative investment for an administrative review by the Custodian, if so requested. The Custodian reserves the right to charge a reasonable fee for such administrative review.
  - If the alternative investment(s) contains a provision for future contractual payments or assessments, including margin calls, the Depositor acknowledges that such payments shall be borne solely by the Depositor's Account, that authorization to make such payments shall come from the Depositor or the Depositor's agent, and that making such payments may reduce or exhaust the value of the Depositor's Account. The Depositor further agrees to maintain sufficient liquid funds in the Depositor's Account to cover any such payments or assessments and agrees that the Custodian is not responsible for monitoring the balance of the account to verify compliance with this Section.

- c) If the alternative investment(s) contain administrative and/or management requirements or duties beyond the Custodian's capabilities or expertise to provide, then the Depositor agrees to seek out suitable agents or counsel necessary to perform such duties and deliver a written service agreement acceptable to the Custodian for execution on behalf of the Depositor's Account.
- d) If the Depositor directs the Custodian to enter into an individually-negotiated debt instrument, including a promissory note, deed of trust, real estate contract, mortgage note or debenture, the Custodian strongly encourages the Depositor to retain the services of a third-party Note Servicing Agent Agreement with a third-party Agent, on a form acceptable to the Custodian. Said Note Servicing Agent shall be the Depositor's agent and not the Custodian's agent and shall be responsible for administering the terms of the debt instrument on behalf of the Depositor's Account. Should the Note Servicing Agent ever become unwilling or unable to perform the duties outlined in the Note Servicing Agent Agreement, then the Depositor understands and agrees that all duties of the Note Servicing Agent shall revert to the Depositor until a successor Agent is named. The Custodian will not act as a Note Servicing Agent, i.e., the Custodian does not monitor the Depositor's account to ensure receipt of note payments, notify the Depositor in the event of default, prepare or compute payoff balances, prepare or file Form 1098, etc.
- e) The Custodian is responsible for safekeeping only those documents which the Depositor or the Depositor's agent deliver to the Custodian.
- f) The Depositor agrees to be responsible for any and all collection actions, including contracting with a collection agency or instituting legal action, and bring any other suits or actions which may become necessary to protect the rights of the account as a result of the operation or administration of the investment(s).
- g) Once the Depositor or the Depositor's agent authorize funds to be distributed from the Depositor's account for purposes of investment, the Depositor agrees to be responsible for the following:
  - i. verifying that the individual or investment company that the Depositor selected placed the Depositor's funds into the proper investment;
  - ii. obtaining the necessary documentation from the individual or investment company to verify that the funds are correctly invested, including, but not limited to, shares or units, proper recordation, loan to value ratio, etc.; and
  - iii. sending the original documentation evidencing the investment to the Custodian or, in the case of a promissory note investment, to a third-party servicing agent. The Custodian will not monitor the account to ensure receipt of such documentation and will rely solely on the Depositor to provide this information.

10.08 **Prohibited Transactions:** The Depositor acknowledges and agrees that the Custodial Account is subject to the provisions of section 4975 of the Code which defines certain prohibited transactions. The Depositor acknowledges and agrees that the Custodian shall make no determination as to whether any transaction or investment in the Custodial Account is prohibited under sections 4975, 408(e) or 408A of the Code, or under any other state or federal law. The Depositor understands that should the Custodial Account engage in a prohibited transaction and depending on the type of prohibited transaction, certain assets of the Custodial Account will be deemed to have been distributed and will be subject to taxes as well as possible penalties. The Depositor agrees that the Depositor will consult with a tax and/or legal professional of the Depositor's choice to ensure that none of the investments in the Custodial Account will constitute a prohibited transaction and that the investments in the Custodial Account comply with all applicable federal and state laws, and/or regulations. The Custodian shall bear no responsibility for determining any investment directed by the Depositor is compliant with any applicable regulations, federal, state and/or local laws.

The Depositor understands and acknowledges that the Plan can lose its exemption from federal income tax if the Depositor and/or the Depositor's beneficiary engages in a "Prohibited Transaction." If any other "Disqualified Person" engages in a Prohibited Transaction with The Plan, the Disqualified Person will be subject to an excise tax equal to 15% of the amount involved each year until the transaction is corrected.

**A Disqualified Person may be any of the following:**

- (a) The Depositor, (as the owner of the plan);
- (b) A member of the Depositor's family (i.e., the Depositor's spouse, ancestors, lineal descendants and their spouses);
- (c) The Custodian of the plan;
- (d) Any person providing services or is a fiduciary to the plan;
- (e) Any corporation, partnership, trust, or estate in which the Depositor owns (either directly or indirectly) 50% or more; and/or
- (f) An officer, director, shareholder holding 10% or more, or highly compensated employee of the 50% or more owned entity described above.

The above list is for reference purposes only and the Depositor acknowledges and agrees to review IRS Code Section 4975(e) for the complete definition of "Disqualified Person."

**The term Prohibited Transaction means any direct or indirect:**

- (a) sale or exchange, or leasing, of any property between a plan and a Disqualified Person;
- (b) lending of money or other extension of credit between a plan and a Disqualified Person;
- (c) furnishing of goods, services, or facilities between a plan and a Disqualified Person;
- (d) transfer to, or use by or for the benefit of, a Disqualified Person of the income or assets of a plan;
- (e) act by a Disqualified Person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or
- (f) receipt of any consideration for his own personal account by any Disqualified Person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

The above list is for reference purposes only and the Depositor acknowledges and agrees to review IRS Code Section 4975(c) for the complete definition of "Prohibited Transaction."

If the Custodial Account loses its tax exemption because of a prohibited transaction, the fair market value of the Custodial Account assets (net of any nondeductible contributions remaining in the Custodial Account) as of the first day of the year of the transaction must be included in the Depositor's gross income for the taxable year in which the loss of exemption occurs. If this takes place before the Depositor has attained age 59 1/2, the Depositor will also be subject to the 10% premature distribution penalty tax on the amount so included in gross income unless there is an applicable exception. If the Depositor pledges any part of The Plan as security for a loan, the part so pledged will be treated as a distribution in the taxable year in which the pledging occurs and will be taxed accordingly.

10.09 **Unrelated Business Income Tax:** The Depositor acknowledges and agrees that the Custodial Account is subject to the provisions of Internal Revenue Code Sections 511-514 relating to Unrelated Business Taxable Income (UBTI) of tax-exempt organizations. If the Depositor directs the Custodian to make an investment in the Custodial Account which generates UBTI, the Depositor agrees to prepare or have prepared the required IRS Form 990-T tax return, an application for an Employer Identification Number (EIN) for the Custodial Account (if not previously obtained), and any other documents that may be required, and to submit them to the Custodian for filing with the Internal Revenue Service at least ten (10) days prior to the date on which the return is due, along with an appropriate directive authorizing the Custodian to execute the forms on behalf of the Custodial Account and to pay the applicable tax from the assets in the Custodial Account. The Depositor understands and acknowledges that the Custodian will not make any determination of whether or not investments in the Custodial Account generate UBTI; has no duty to and does not monitor whether or not the Custodial Account has incurred UBTI; and does not prepare Form 990-T on behalf of the Custodial Account.

- 10.10 **Disclosures and Voting:** The Custodian, where requested by the Depositor in writing, shall deliver, or cause to be executed and delivered, to the Depositor all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to assets credited to the account. The Custodian shall not vote any shares of stock or take any other action, pursuant to such documents, with respect to such assets except upon receipt from the Depositor to the Custodian of written instructions acceptable to the Custodian.
- 10.11 **Miscellaneous Expenses:** In addition to those expenses set out in Article VIII, section 8.8 of this Agreement, the Depositor agrees to pay any and all expenses incurred by the Custodian in connection with the Custodial Account, including expenses of preparation and filing any returns and reports with regard to UBTI, including taxes and estimated taxes, as well as any transfer taxes incurred in connection with the investment or reinvestment of the assets of the Custodial Account. The Custodian, in its sole discretion, and at the Depositor's expense, may request a taxpayer identification number for the Custodial Account, file any returns, reports, and applications for extension, and pay any taxes or estimated taxes owed with respect to the Custodial Account. The Custodian may retain suitable accountants, attorneys, or other agents to assist it in performing such responsibilities.
- 10.12 **Valuations:** The assets in the Custodial Account shall be valued annually at the end of each calendar year in accordance with Section 408(i) and other guidance provided by the IRS, and that the total value of Depositor's Account will be reported to the IRS on Form 5498 each year. However, the Custodian retains the right to value the assets in the Custodial Account more frequently. In valuing the assets of the Custodial Account for record keeping and government reporting purposes, the Custodian will ascertain the fair market value of each investment, where such valuation is readily ascertainable, through utilizing various third-party pricing sources and designated valuation agents. However, the Custodian does not guarantee the accuracy of prices obtained from these sources. Where assets are illiquid, or their value is not readily ascertainable on either an established exchange or generally recognized market, the valuation is by necessity not a true market value and is merely an estimate of value, and the Depositor agrees not to rely on any such valuation for any other purposes. The Depositor agrees to provide the year end value of any illiquid and/or non-publicly traded investments, which may include without limitation limited partnerships, limited liability companies, privately held stock, real estate investment trusts, hedge funds, real estate, secured and unsecured promissory notes, and any other investments as the Custodian shall designate, by no later than the following January 31st. If the Custodian does not receive a current year end fair market value by the following January 31st for any such investment, the Custodian may, within its sole discretion take appropriate actions to receive the fair market value from an independent third party that specializes in valuations, paying the cost of such valuation from the liquid assets held in the Custodial Account, or in the alternative after having first received the cost of the valuation from the Depositor or the Depositor's beneficiary(ies) if liquid investments in the Custodial Account are otherwise insufficient. Unless the Custodian has received a written fair market valuation to the contrary, promissory notes and privately offered corporate debt will have valuations reflected at the face value shown on the original note or debt instrument, or if the note is subject to an amortization schedule and the amortization schedule has been provided to the Custodian by the Depositor, valuation may be shown at the principal amount shown on the amortization schedule as of the end of the previous year. For those custodial assets where fair market value is not readily ascertainable, the Depositor agrees that the Depositor will provide to the Custodian a qualified independent appraisal of the asset. If the Depositor does not provide such an appraisal, the Custodian may report the asset's value at its last known fair market value or at its acquisition cost. The Depositor shall have no recourse against the Custodian for any damages arising from and/or related to such valuation. The Depositor, and upon the Depositor's death, the Depositor's beneficiary(ies), agree to indemnify and hold harmless the Custodian from any and all losses, expenses, settlements, or claims with regard to investment decisions, distribution values, tax reporting or any other financial impact or consequence arising from or arising from the valuation of assets in the Custodial Account.
- 10.13 **Insurance, Tax and Other Payments:** The Depositor bears sole responsibility for obtaining insurance coverage for the assets in the Custodial Account. The Custodian shall not bear or assume any responsibility to notify the Depositor or to secure or maintain any fire, casualty, liability or other insurance coverage, including but not limited to title insurance coverage, on any real or personal property owned in the Custodial Account or on any property which serves as collateral under any mortgage, deed of trust, or other security instrument with respect to any promissory note or other evidence of indebtedness in the Custodial Account. The Depositor acknowledges and agrees that it is the sole responsibility of the Depositor to decide what insurance is necessary or appropriate for any investment in the Custodial Account, and to direct the Custodian in writing (on a form acceptable to the Custodian) to pay the premiums for any such insurance. The Custodian shall not be responsible for notification or payments of any real estate taxes, homeowners' association dues, utilities or other charges with respect to any investment held in the Custodial Account unless the Depositor specifically directs the Custodian to pay the same in writing (on a form acceptable to the Custodian) within a sufficient period of time for such direction to be accomplished in accordance with the Custodian's normal business practices, and sufficient funds are available to pay the same from the Custodial Account. The Depositor acknowledges and agrees that it shall be the Depositor's responsibility to provide to the Custodian and/or to ensure that the Custodian has received any and all bills for insurance, taxes, homeowners' dues, utilities or other amounts due for assets held in the Custodial Account. Furthermore, the Depositor agrees that it shall be the Depositor's responsibility to determine that payments have been made by verifying the payments on the Depositor's Custodial Account statements. The Depositor shall bear any, and all risk associated with the failure to obtain and/or maintain proper insurance coverage to protect the assets of the Custodial Account and/or fees and penalties associated with the Depositor's failure to pay taxes or other payments related to the assets of the Custodial Account.
- 10.14 **Nonbank Custodian Provision:** If the Custodian is a nonbank Custodian, the Depositor shall substitute another trustee or custodian in place of the Custodian upon receipt of notice from the Commissioner of the Internal Revenue Service or his delegate that such substitution is required because the Custodian has failed to comply with the requirements of Income Tax Regulations Section 1.408-2(e), or is not keeping such records, making such returns, or rendering such statements as are required by applicable law, regulations, or other rulings. The successor trustee or custodian shall be a bank, insured credit union, or other person satisfactory to the Secretary of the Treasury pursuant to Section 408(a)(2) of the Code. Upon receipt by the Custodian of written acceptance by its successor of such successor's appointment, Custodian shall transfer and pay over to such successor the assets of the account (less amounts retained pursuant to Section 9.04 of the Custodial Agreement) and all records (or copies thereof) of the Custodian pertaining thereto, provided that the successor trustee or custodian agrees not to dispose of any such records without the Custodian's consent.

## Article XI

### Miscellaneous Provisions

- 11.01 **Electronic Communications, Signatures, and Records:** Subject to any limitations contained in Treasury Regulation section 1.401(a)-21 and any other applicable federal or state law or regulation, the Depositor acknowledges and agrees that the Custodial Account shall be subject to the provisions of the Uniform Electronic Transactions Act, as passed in the state where the Custodian is organized (South Dakota Codified Law Sections 53-12 et. seq.), and the federal Electronic Signature in Global and National Commerce Act (ESIGN Act, as contained in 15 U.S.C. 7001), as those laws pertain to electronic communication, electronic signatures, and electronic storage of Custodial Account records. In lieu of the retention of the original records, the Custodian may cause any, or all, of its records, and records at any time in its custody, to be photographed or otherwise reproduced to permanent form, and any such photograph or reproduction shall have the same force and effect as the original thereof and may be admitted in evidence equally with the original.
- 11.02 **Applicable Law; Waiver; Venue and Arbitration:**

- a) This Agreement is subject to all applicable federal laws and regulations and shall be governed by and construed under the applicable laws of the state of South Dakota. The laws of the State of South Dakota shall govern any procedural matters, excluding any applicable limitation period.
  - b) EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY PERFORMANCE OR FAILURE TO PERFORM OF ANY OBLIGATION HEREUNDER.
  - c) The Depositor agrees that any claim or cause of action against the Custodian, arising out of or relating in any way to this Agreement or the Custodian's role as custodian, must be filed within one (1) year after the claim or cause of action accrued, or the shortest duration permitted under applicable law if such period is greater than one (1) year. The Depositor agrees to waive any statute of limitation to the contrary. The Depositor further agrees that the Custodian shall not be liable for special, indirect, consequential or punitive damages, and the Depositor agrees to waive any such claims or damages against the Custodian to the maximum extent permitted by applicable law. The Depositor agrees that any action filed against the Custodian, arising out of or relating in any way to this Agreement or the Custodian's role as the Custodian, shall be exclusively brought in the county courts of Minnehaha County, South Dakota or in the U.S. District court for the Second Circuit of South Dakota Southern Division-Sioux Falls, and the Depositor agrees to submit to the jurisdiction of these courts both in connection with any such action the Depositor, or the Depositor's beneficiaries may file and in connection with any action which the Custodian may file against the Depositor or the Depositor's beneficiaries.
  - d) **MANDATORY ARBITRATION:** Any dispute, claim or controversy arising out of or relating to this Agreement or the Custodial Account or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement or the Custodial Account to arbitrate, shall be determined by binding arbitration in Sioux Falls, South Dakota before a former judge. The arbitration shall be administered either by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures or at the sole discretion of the Custodian by an arbitrator, who is a former judge, acceptable to the Custodian pursuant to its rules that shall govern. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a Court of appropriate jurisdiction. Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.
- 11.03 **Severability:** If any provision of this Custodial Account Agreement is found to be illegal, invalid, void or unenforceable, such provision shall be severed and such illegality or invalidity shall not affect the remaining provisions which shall remain in full force and effect. Neither the Depositor's or the Custodian's failure to enforce, at any time or for any period of time, any of the provisions of this Agreement shall be construed as a waiver of such provisions, or the Depositor's right or the Custodian's right to enforce each and every such provision
- 11.04 **Telephone Recording Acknowledgment of and Authorization for Telephone Recordings:** The Custodian reserves the right to install and/or maintain automatic telephone recording equipment on telephone lines used by personnel servicing the Custodial Account. By signing this Agreement, the Depositor acknowledges the Custodian's rights and expressly authorize the Custodian to record, play back and use for the Custodian's interest any and all telephone calls between the Depositor, the Depositor's agents and/or designated beneficiaries and the Custodian.
- 11.05 **Nonbank Trustee Provision:** If the Custodian is a nonbank Trustee, the Depositor shall substitute another custodian or trustee in place of the Custodian upon receipt of notice from the Commissioner of the Internal Revenue Service or his delegate that such substitution is required because the Custodian has failed to comply with the requirements of Income Tax Regulations Section 1.408-2(e), or is not keeping such records, making such returns, or rendering such statements as are required by applicable law, regulations, or other rulings. The successor trustee or custodian shall be a bank, insured credit union, or other person satisfactory to the Secretary of the Treasury pursuant to Section 408(a)(2) of the Code. Upon receipt by the Custodian of written acceptance by its successor of such successor's appointment, the Custodian shall transfer and pay over to such successor the assets of the account (less amounts retained pursuant to Article VIII of this Agreement).
- 11.06 **Publicly-Traded Securities:** If publicly-traded securities are to be included in the Depositor's Custodial Account, orders shall be executed through a securities broker/dealer registered under the Securities Exchange Act of 1934 and designated by the Depositor upon such form as the Custodian may require. Any brokerage account maintained in connection herewith shall be in the Custodian's name as the custodian of the Depositor's account. The Custodian shall be authorized to honor transactions within the brokerage account without obligation to verify prior authorization of same by the Depositor. Any cash received by the brokerage account, whether as income or proceeds of transactions, may be held by the brokerage account pending directions, and the Custodian shall have no obligation to direct the broker to remit such cash until directed to do so by the Depositor, in writing, but may receive remittances without direction if the same are made by the broker. Investments outside the brokerage account shall be made in accordance with the other provisions of this Agreement. Any brokerage commissions attributable to the assets in the Depositor's Account will be charged to the Depositor's Account through the Depositor's brokerage account. The Depositor cannot reimburse the Custodial Account for such commissions. Commissions or other fees may be received by the Custodian and/or the Custodian's affiliates from third parties for assistance in performing certain services for the Depositor's Account.
- 11.07 **Notices and Method of Notice:** All notices required under this Agreement must be in writing, signed by a person duly authorized to provide such notice and delivered by one of the following methods: (i) personal delivery, (ii) a nationally-recognized, next-day courier service, with signature of recipient required, (iii) first-class registered or certified mail, postage prepaid, (iv) facsimile/fax or (v) electronic mail to the party's address specified as follows:  
(a) **If to Depositor** – Notice shall be provided to the address, fax and/or email provided by the Depositor on the Depositor's Application unless a different address is provided by the Depositor in writing to the Custodian.  
(b) **If to Custodian** – Notice shall be provided to New Vision Trust Company, a State Chartered South Dakota Trust, East 8th Street, Suite 200R, Sioux Falls, South Dakota, 57103, with a copy mailed to Administrator, American IRA, LLC at 135 Broad Street, Asheville, NC 28801.  
Notice shall be deemed effective (a) upon receipt, (b) when delivered in person, (c) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail (d) upon delivery where dispatch by registered or certified mail, postage prepaid or (e) on the next Business Day if transmitted by national overnight courier with confirmation of delivery.
- 11.08 **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Furthermore, signatures delivered via facsimile or E-mail shall have the same force and effect as the originals thereof.
- 11.09 **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties and supersedes any prior agreements between the Parties pertaining to the subject matter of this Agreement, including the Contract.
- 11.10 **No Representations:** The Depositor acknowledges that, except as expressly set forth herein, no representations of any kind or character have been made by the Custodian and/or the Custodian's agents, and/or representatives to induce the execution of this Agreement.
- 11.11 **No Modification:** No modification of the terms of this Agreement shall be effective unless in a writing signed by the Custodian.
- 11.12 **USA Patriot Act Notice: IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT UNDER THE USA PATRIOT ACT OF**

**2001.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for Depositor: When Depositor opens an account, Custodian will ask for Depositor's name, address, date of birth, and other information that will allow us to identify you. Custodian will also ask to see a photo-bearing, government-issued identification, such as driver's license, military, passport, veteran or similar ID.

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### General Instructions

(Section references are to the Internal Revenue Code unless otherwise noted.)

#### Purpose of Form

Form 5305-RA is a model Custodial account agreement that meets the requirements of section 408A and has been pre-approved by the IRS. A Roth individual retirement account (Roth IRA) is established after the form is fully executed by both the individual (Depositor) and the Custodian. This account must be created in the United States for the exclusive benefit of the Depositor and his or her beneficiaries.

**Do not** file Form 5305-RA with the IRS. Instead, keep it with your records.

Unlike contributions to traditional individual retirement arrangements, contributions to a Roth IRA are not deductible from the Depositor's gross income; and distributions after 5 years that are made when the Depositor is 59½ years of age or older or on account of death, disability, or the purchase of a home by a first-time homebuyer (limited to \$10,000), are not includible in gross income. For more information on Roth IRAs, including the required disclosures the Custodian must give the Depositor, see Pub. 590, Individual Retirement Arrangements (IRAs).

#### Definitions

**IRA Conversion Contributions.** IRA Conversion Contributions are amounts rolled over, transferred, or considered transferred from a nonRoth IRA to a Roth IRA. A nonRoth IRA is an individual retirement account or annuity described in section 408(a) or 408(b), other than a Roth IRA.

**Custodian.** The Custodian must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as Custodian.

**Depositor.** The Depositor is the person who establishes the Custodial account.

#### Specific Instructions

**Article I.** The Depositor may be subject to a 6% tax on excess contributions if **(1)** contributions to other individual retirement arrangements of the Depositor have been made for the same tax year, **(2)** the Depositor's adjusted gross income exceeds the applicable limits in Article II for the tax year, or **(3)** the Depositor's and spouse's compensation is less than the amount contributed by or on behalf of them for the tax year. The Depositor should see the disclosure statement or Pub. 590 for more information.

**Article V.** This article describes how distributions will be made from the Roth IRA after the Depositor's death. Elections made pursuant to this article should be reviewed periodically to ensure they correspond to the Depositor's intent. Under paragraph 3 of Article V, the Depositor's spouse is treated as the owner of the Roth IRA upon the death of the Depositor, rather than as the beneficiary. If the spouse is to be treated as the beneficiary, and not the owner, an overriding provision should be added to Article IX.

**Article IX.** Article IX and any that follow it may incorporate additional provisions that are agreed to by the Depositor and Custodian to complete the agreement. They may include, for example, definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian's fees, state law requirements, beginning date of distributions, accepting only cash, treatment of excess contributions, prohibited transactions with the Depositor, etc. Attach additional pages if necessary.

## ROTH IRA DISCLOSURE STATEMENT

### RIGHT TO REVOKE YOUR ROTH IRA ACCOUNT

You may revoke your Roth IRA within 7 days after you sign the Roth IRA Adoption Agreement by hand-delivering or mailing a written notice to the name and address indicated on the Roth IRA Adoption Agreement. If you revoke your account by mailing a written notice, such notice must be postmarked by the 7th day after you sign the Adoption Agreement. If you revoke your Roth IRA within the 7 day period you will receive a refund of the entire amount of your contributions to the Roth IRA without any adjustment for earnings or any administrative expenses. If you exercise this revocation, we are still required to report the contribution on Form 5498 (except transfers) and the revoked distribution on Form 1099-R.

### GENERAL REQUIREMENTS OF A ROTH IRA

- Your contributions must be made in cash, unless you are making a qualified rollover or transfer contribution and the Custodian accepts non-cash rollover or transfer contributions.
- The annual contributions you make on your behalf to all of your Roth IRAs and traditional IRAs may not exceed the lesser of 100% of your compensation or the "applicable annual dollar limitation" (defined below), unless you are making a qualified rollover or transfer contribution.
- Your regular annual Roth IRA contributions for any taxable year may be deposited at any time during that taxable year and up to the due date for the filing of your Federal income tax return for that taxable year, no extensions. This generally means April 15th of the following year.
- The Custodian of your Roth IRA must be a bank, savings and loan association, credit union or a person who is approved to act in such a capacity by the Secretary of the Treasury.
- No portion of your Roth IRA funds may be invested in life insurance contracts.
- Your interest in your Roth IRA is nonforfeitable at all times.
- The assets in your Roth IRA may not be commingled with other property except in a common Custodial fund or common investment fund.
- You may not invest the assets of your Roth IRA in collectibles (as described in Section 408(m) of the Internal Revenue Code.) A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the IRS. However, if the Custodian permits, specially-minted US gold, silver, and platinum coins and certain state-issued coins are permissible Roth IRA investments. Beginning on 1/1/98, you may also invest in certain gold, silver, platinum or palladium bullion, if the trustee or custodian permits. Such bullion must be in the physical possession of the Roth IRA trustee or custodian.

### WHO IS ELIGIBLE TO MAKE A REGULAR ROTH IRA CONTRIBUTION?

You are permitted to make regular contributions to your Roth IRA for any taxable year if you receive compensation for such taxable year. Compensation includes salaries, wages, tips, commissions, bonuses, alimony, royalties from creative efforts and "earned income" in the case of self-employeds. Members of the Armed Forces who serve in combat zones who receive compensation that is otherwise non-taxable, are considered to have taxable compensation for purposes of making regular Roth IRA contributions. The amount which is permitted to be contributed depends upon your modified adjusted gross income (Modified AGI); your marital status; and your tax filing status discussed below.

### CONTRIBUTIONS TO A ROTH IRA

**Regular Roth IRA Contributions** - The maximum amount you may contribute for any year is the lesser of 100% of your compensation or the "applicable annual dollar limitation" (described below). Your actual contribution limit depends upon your marital status, tax filing status, and your Modified AGI.

**Applicable Annual Dollar Limitation**

<u>Tax Year</u>	<u>Contribution Limit</u>
2001	\$2,000
2002 through 2004	\$3,000
2005 through 2007	\$4,000
2008 through 2012	\$5,000
2013 through 2017	\$5,500

After 2017, the \$5,500 annual limit will be subject to cost-of living increases in increments of \$500, rounded to the lower increment. This means that it may take several years beyond 2016 for the \$5,500 annual limit to increase to \$6,000.

**Catch-up Contributions** - Beginning for 2002, if an individual has attained the age of 50 before the close of the taxable year for which an annual contribution is being made and meets the other eligibility requirements for making regular Roth IRA contributions, the annual Roth IRA contribution limit for that individual would be increased as follows:

<u>Tax Year</u>	<u>Normal Limit</u>	<u>Additional Catch-up</u>	<u>Total Contribution</u>
2002	\$3,000	\$ 500	\$3,500
2003	\$3,000	\$ 500	\$3,500
2004	\$3,000	\$ 500	\$3,500
2005	\$4,000	\$ 500	\$4,500
2006	\$4,000	\$1,000	\$5,000
2007	\$4,000	\$1,000	\$5,000
2008 - 2012	\$5,000	\$1,000	\$6,000
2013 - 2017	\$5,500	\$1,000	\$6,500

The additional catch-up amount for Roth IRAs is not subject to COLAs.

**Special IRA Catch-up Contributions for Certain Section 401(k) Participants** - Special Roth IRA catch-up contributions are permitted for each of years 2007, 2008 and 2009 equal to the applicable year's age-50 catch-up limit multiplied by 3. To be eligible for this special catch-up Roth IRA contribution, the individual must have been a participant in an employer's §401(k) plan where employer-matching contributions were being made at the rate of at least 50% of the participant's deferrals with employer stock and such employer is in bankruptcy and is subject to an indictment or conviction. The individual is not required to be age 50 in order to take advantage of this rule. However, if the individual is age 50 or over, he or she may not contribute the age-50 catch-up amount in addition to this special catch-up.

The deadline for making such special catch-up contributions is the normal deadline for the applicable year. For example, an eligible individual takes advantage of this rule for calendar year 2008. The normal regular Roth IRA contribution limit for 2008 is \$5,000 and the normal age-50 catch-up contribution limit for 2008 is \$1,000. The eligible individual could contribute the \$5,000 normal limit plus a special catch-up contribution of \$3,000 for a total of \$8,000. The deadline for making this contribution is the 2008 tax filing deadline, no extensions.

All regular contributions (including catch-up contributions) to a Roth IRA are nondeductible. The maximum amount you may contribute to a Roth IRA is reduced by any contributions you make to all of your traditional IRAs for the same tax year.

**Modified Adjusted Gross Income** - The amount of your regular annual Roth IRA contribution depends upon your Modified Adjusted Gross Income (MAGI) for the taxable year and your marital status. If your MAGI is below a certain amount, you can contribute the entire contribution subject to the dollar limit. If your MAGI is above a certain amount, you cannot make any regular contribution to a Roth IRA. If your MAGI is between certain amounts, you are entitled to making a partial Roth IRA contribution. You are responsible for keeping track of your Roth IRA contributions so that you can report Roth IRA distributions on IRS Form 8606. Refer to the chart below for the MAGI ranges. Beginning in 2007, the MAGI ranges are subject to cost-of-living adjustments. Also refer to IRS Publication 590 for additional information.

	<u>Married Participants Filing Jointly</u>	<u>Unmarried Participants</u>	<u>Married Participants Filing Separately</u>
1998 – 2006	\$150,000 - \$160,000	\$ 95,000 - \$110,000	\$0 - \$10,000
2007	\$156,000 - \$166,000	\$ 99,000 - \$114,000	\$0 - \$10,000
2008	\$159,000 - \$169,000	\$101,000 - \$116,000	\$0 - \$10,000
2009	\$166,000 - \$176,000	\$105,000 - \$120,000	\$0 - \$10,000
2010	\$167,000 - \$177,000	\$105,000 - \$120,000	\$0 - \$10,000
2011	\$169,000 - \$179,000	\$107,000 - \$122,000	\$0 - \$10,000
2012	\$173,000 - \$183,000	\$110,000 - \$125,000	\$0 - \$10,000
2013	\$178,000 - \$188,000	\$112,000 - \$127,000	\$0 - \$10,000
2014	\$181,000 - \$191,000	\$114,000 - \$129,000	\$0 - \$10,000
2015	\$183,000 - \$193,000	\$116,000 - \$131,000	\$0 - \$10,000
2016	\$184,000 - \$194,000	\$117,000 - \$132,000	\$0 - \$10,000
2017	\$186,000 - \$196,000	\$118,000 - \$133,000	\$0 - \$10,000

**Spousal Roth IRAs**- If you and your spouse file a joint tax return and have unequal compensation (including no compensation for one spouse or one spouse who chooses to be treated as receiving no compensation) you may establish separate Roth IRAs for each spouse. The total annual contribution limit for both Roth IRAs may not exceed 100% of the combined compensation for both spouses, but neither Roth IRA may accept more than the Applicable Annual Dollar Limitation per spouse, plus the additional catch-up amount, if applicable.

The maximum Roth IRA contribution for the spouse is then reduced by:

- (1) regular traditional IRA contributions made on behalf of such spouse; and
- (2) Roth IRA contributions made on behalf of such spouse.

This annual limit may be further reduced if the Modified AGI exceeds the levels discussed above.

**\$200 Minimum Roth IRA Contribution** - If you fall into any of the categories listed above, your minimum allowable Roth IRA contribution will be \$200 until phased out under the appropriate marital status. In other words, if your Roth IRA contribution amount calculated under the appropriate dollar amounts discussed above results in a contribution between \$0 and \$200, your permitted contribution is \$200 instead of the calculated amount. If the result is not a multiple of \$10, round up to the nearest \$10.

**Modified AGI** - Modified AGI does not include any conversions to a Roth IRA and included in income. Modified AGI is determined before deductible traditional IRA contributions. Effective for distributions after December 31, 2004, Modified AGI does not include any amounts that are required minimum distributions pursuant to section 408(a)(6) only for purposes of determining eligibility for conversion contributions.

**Miscellaneous Contribution Rules** - Contributions are permitted after you attain age 70½, so long as you have compensation and meet the AGI limits described above. Contributions are permitted regardless of whether you are an active participant in an employer-sponsored plan.

**Special Rules for Qualified Reservist Distributions** – Qualified Reservist Distributions withdrawn from a Roth IRA are eligible to be repaid to a Roth IRA within a 2-year period after the end of active duty. A Qualified Reservist Distribution is a distribution received from a Roth IRA by members of the National Guard or reservists who are called to active duty for a period of at least 180 days and such distribution is taken during the period of such active duty. This provision is retroactively effective with respect to distributions after September 11, 2001, for individuals called to active duty after September 11, 2001. The repayments are not treated as tax-free rollovers. Instead, the repayments become basis in the Roth IRA.

**EXCESS CONTRIBUTIONS TO A ROTH IRA**

Generally, an excess Roth IRA contribution is any contribution which exceeds the contribution limits. Such excess amount is subject to a 6% excise tax on the

principal remaining amount of the excess each year until the excess is corrected.

**Method of Withdrawing Excess in a Timely Manner** - This 6% excise tax may be avoided, if the excess amount plus the earnings attributable to the excess are distributed to you by your tax filing deadline including extensions for the year during which the excess contribution was made. If you decide to correct your excess in this manner, the principal amount of the excess returned to you is not taxable; however, the earnings attributable to the excess are taxable to you in the year in which the contribution was made. In addition, if you are under age 59½, the earnings attributable to the excess amount are subject to a 10% additional income tax. This is the only method of correcting an excess contribution that will avoid the 6% excise tax. The earnings attributable to an excess contribution will always be taxable, even if you would otherwise meet the definition of a "qualified distribution" discussed later.

**Undercontribution Method** - If an excess is not corrected by the tax filing deadline, including extensions, for the year during which the excess contribution was made, such excess contribution may be applied, on a year-by-year basis, against the annual limit for regular Roth IRA contributions. However, in order to "carry over" the excess contribution and treat it as a contribution made for a subsequent year, the participant must meet the eligibility requirements for the subsequent year. In addition, the taxpayer is subject to the 6% excise tax for the initial year and each subsequent year until the excess is used up.

## CONTRIBUTION RECHARACTERIZATIONS

You may be able to recharacterize certain contributions under the following two different circumstances:

1. By recharacterizing a current year regular contribution plus earnings explained in this section; or
2. By recharacterizing a conversion made to a Roth IRA by transferring the amount plus earnings back to a traditional IRA discussed in the next section under the heading "Conversion from a Traditional IRA or an Employer Plan to a Roth IRA".

If you decide by your tax filing deadline (including extensions) of the year for which the contribution was made to transfer a current year contribution plus earnings from your traditional IRA to a Roth IRA, no amount will be included in your gross income as long as you did not take a deduction for the amount of the contribution. You may also recharacterize a current year contribution plus earnings from your Roth IRA to a traditional IRA by your tax filing deadline including extensions of the year for which the contribution was made.

In order to recharacterize a regular contribution from one type of IRA to another type of IRA, you must be eligible to make a regular contribution to the IRA to which the contribution plus earnings is recharacterized. All recharacterizations must be accomplished as a direct transfer, rather than a distribution and subsequent rollover.

You are also required to report recharacterizations to the IRS in accordance with the instructions to IRS Form 8606. Prior year excess contributions made to an IRA that are carried over to a subsequent year cannot be recharacterized as a current year contribution to another IRA. Only actual contributions made for a taxable year may be recharacterized. Any recharacterized contribution (whether a regular contribution or a conversion) cannot be revoked after the transfer. You are required to notify both Custodians (or trustees) and to provide them with certain information in order to properly effectuate such a recharacterization.

## ROLLOVER ROTH IRAS

**Rollover Contribution from Another Roth IRA** - A rollover contribution from another Roth IRA is any amount you receive from one Roth IRA and within 60 days roll some or all of it over into another Roth IRA. You are not required to roll over the entire amount received from the first Roth IRA. However, any taxable amount (generally earnings) you do not roll over will be taxed at ordinary income tax rates for Federal income tax purposes and may be subject to the 10% additional income tax.

The following special rules also apply to rollovers between Roth IRAs:

- The rollover must be completed no later than the 60th day after the day the distribution was received by you from the first Roth IRA. However, if the reason for distribution was for qualified first time home buyer expenses and there has been a delay or cancellation in the acquisition of such first home, the 60 day rollover period is increased to 120 days. This 60 day rollover period is also extended in cases of disaster or casualty beyond the reasonable control of the taxpayer.
- Beginning in 2015, you can make only one rollover from an IRA to another (or the same) IRA in any 12-month period, regardless of the number of IRAs you own. The limit will apply by aggregating all of an individual's IRAs, including SEP and SIMPLE IRAs as well as traditional and Roth IRAs, effectively treating them as one IRA for purposes of the limit. (See IRS Publication 590-A for more information).
  - The same property you receive in a distribution from the first Roth IRA must be the same property you roll over into the second Roth IRA. For example, if you receive a distribution from a Roth IRA of property, such as stocks, that same stock must be the property rolled over into the second Roth IRA.
  - You are required to make an irrevocable election indicating that this transaction will be treated as a rollover contribution.
  - You are not required to receive a complete distribution from your Roth IRA in order to make a rollover contribution into another Roth IRA, nor are you required to roll over the entire amount you received from the first Roth IRA into the second Roth IRA.
  - If you inherit a Roth IRA due to the death of the participant, you may not roll this Roth IRA into your own Roth IRA unless you are the spouse of the deceased Roth IRA participant.

**Rollovers From a Designated Roth Contribution Account Under Employer-Sponsored Plans** – Effective for Eligible Rollover Distributions after December 31, 2005, amounts attributable to the participant's Designated Roth Contribution Account under an employer's §401(k) plan or §403(b) plan are eligible to roll over to a Roth IRA as either a direct rollover or a 60-day rollover. After such amounts have been rolled over to a Roth IRA, these amounts cannot be subsequently rolled back to an employer's plan.

**Effect of 5-Year Aging** – If the Roth IRA owner has already started the 5-year aging on any Roth IRA, the rollover of the Designated Roth Contribution Account under the employer's plan has the same 5-year period start date. However, if the Roth IRA owner establishes a Roth IRA for the first time with the rollover of the Designated Roth Contributions Account under the employer's plan, a new 5-year aging period starts with respect to the rollover amount, regardless of the period of participation in the employer's plan.

**Effect on Ordering Rules for Subsequent Distributions from the Roth IRA** – If a Roth IRA owner rolls over his or her Designated Roth Contributions Account under an employer’s plan, the Roth IRA owner is responsible for keeping track of the rollover in the following manner for purposes of determining taxable distributions from the Roth IRA:

- If the distribution from the employer’s plan is a “nonqualified distribution”, the Roth IRA owner adds the basis amount (contributions) to his or her other regular Roth IRA contributions, and adds the earnings to the earnings.
- If the distribution from the employer’s plan is a “qualified distribution”, the Roth IRA owner adds the entire amount of the rollover to his or her other regular Roth IRA contributions.

**Partial Rollovers** - If a distribution representing the participant’s Designated Roth Contribution Account is eligible to roll over and it is paid to the participant, and the participant rolls over to a Roth IRA only a portion of the distribution, the amount not rolled over is treated as first consisting of the nontaxable portion (the contributions). Thus, the amount rolled over is treated first as the taxable earnings and no amount is taxable to the participant if the amount of the rollover is equal to or greater than the amount of the earnings attributable to the distribution received by the employee. Proper adjustments to the ordering rules explained above are necessary in the case of a partial rollover.

**Special Rollover Rules for Qualified Hurricane Distributions and the Kansas Disaster Area** – Qualified Hurricane and Kansas Disaster Area Distributions withdrawn from a Roth IRA are eligible to be rolled over to a Roth IRA within a 3-year period after the eligible individual received such distribution. More information on Qualified Hurricane Distributions and other tax relief provisions applicable to affected individuals of Hurricanes Katrina, Rita or Wilma is in IRS Publication 4492. Taxpayers using these tax relief provisions must file Form 8915 with his or her Federal income tax return. More information on the Kansas Disaster Area is in IRS Publication 4492-A, including instructions for modifying Form 8915.

**Special Rollover Rules for Midwestern Disaster Area Distributions referred to as “Qualified Disaster Recovery Assistance Distributions”** – Qualified Disaster Recovery Assistance Distributions are eligible to be rolled over to a Roth IRA within a 3-year period after the eligible individual received such distribution. More information on the Midwestern Disaster Area is in IRS Publication 4492-B and Form 8930.

**Special Rules for Qualified Settlement Income Received from Exxon Valdez Litigation** - Any qualified taxpayer who receives qualified settlement income during the taxable year, at any time before the end of the taxable year in which such income was received, make one or more contributions to an eligible retirement plan of which such qualified taxpayer is a beneficiary in an aggregate amount not to exceed the lesser of: (a) \$100,000 (reduced by the amount of qualified settlement income contributed to an eligible retirement plan in prior taxable years); or (b) the amount of qualified settlement income received by the individual during the taxable year.

The contribution will be deemed made on the last day of the taxable year in which such income is received if the contribution is made on account of such taxable year and is made not later than the deadline for filing the income tax return for such year, not including extensions thereof.

If the settlement income is contributed to a Roth IRA such income is currently includible in the taxpayer’s gross income and becomes basis in such Roth IRA.

A qualified taxpayer means:

1. Any individual who is a plaintiff in the civil action *In re Exxon Valdez*, No. 89-095-CV (HRH) (Consolidated) (D. Alaska); or
2. Any individual who is a beneficiary of the estate of such a plaintiff who acquired the right to receive qualified settlement income from that plaintiff and was the spouse or an immediate relative of that plaintiff.

**Special Rollover Rules for Military Death Gratuity and SGLI Payments** – In general the beneficiary of Death Gratuity and the SGLI (Servicemember’s Group Life Insurance) may roll these payments into a Roth IRA in the name of the recipient of such payments, without regard to any adjusted gross income limitations. Such Roth IRA will not be an inherited IRA but rather the Roth IRA will be in the beneficiary’s own name. Such rule is effective with deaths occurring after June 17, 2008. However, if the payment was made due to a death that occurred after October 7, 2001, and before June 17, 2008, a recipient can still roll such amounts over to a Roth IRA as long as the rollover is completed by June 17, 2009.

The rollover to the Roth IRA must generally be completed within one year following the receipt of the payment. These payments are not taxable to the recipient. The trustee, custodian or issuer of the Roth IRA is not required to independently verify that such amounts are eligible to roll over to the Roth IRA. It is also important to note that recipients these amounts may be a spouse or other family member, and the rollover would go into the Roth IRA as the recipient’s own Roth IRA, not an inherited Roth IRA. Whether or not distributions from the Roth IRA are “qualified distributions” where the earnings would be tax-free would depend upon the 5-year aging period and reason for distribution applicable to any Roth IRA distribution that is a “qualified distribution”.

For purposes of the ordering rules applicable to nonqualified distributions from Roth IRAs, these amounts are treated as contributions to the Roth IRA, not as conversions. This means that these amounts may be immediately withdrawn for any purpose and not be taxed or subject to penalty.

**Rollover of Amounts Received in Airline Carrier Bankruptcy** – Effective December 11, 2008, a “qualified airline employee” may contribute any portion of an “airline payment” amount to a Roth IRA within 180 days of receipt of such payment (or, if later, within 180 days of the enactment of the Worker, Retiree and Employer Recovery Act of 2008). Such contribution is treated as a qualified rollover contribution to the Roth IRA, and as such, the airline payment is includible in gross income of the recipient to the extent it would be so includible were it not part of the rollover contribution.

An “airline payment” means any payment by a commercial airline carrier to a “qualified airline employee” that is paid: (1) under an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007; and (2) in respect of the employee’s interest in a bankruptcy claim against the airline carrier.

In determining the amount that may be contributed to a Roth IRA, any reduction in the airline payment on account of employment tax withholding is disregarded. A “qualified airline employee” is an employee or former employee of a commercial passenger airline who was a participant in a qualified defined benefit plan maintained by the airline carrier that was terminated or became subject to the benefit accrual and other restrictions applicable to plans maintained by commercial passenger airlines.

Effective February 14, 2012, under the FAA Modernization and Reform Act of 2012 ("The Act") certain qualified airline employees may rollover or recharacterize to a Traditional IRA in lieu of a Roth IRA. The Act permits 'qualified airline employees' and their surviving spouses, who received an 'airline payment amount', and did *not* roll over any portion of such payment to a Roth IRA:

- To rollover now to a Traditional IRA 90% of the payment received, and the amount rolled over is excludible from income in the taxable year payment was made;
- The rollover must take place within 180 days after the receipt of the 'airline payment amount' or within 180 days of February 14, 2012, the date of enactment i.e. August 13, 2012, whichever is later.

Additionally, the Act permits 'qualified airline employees' and their surviving spouses who contributed all or a portion of an 'airline payment amount' previously to a Roth IRA:

- To recharacterize up to 90% of such amounts, to a traditional IRA;
- The recharacterization transfer must be made within 180 days of February 14, 2012, the date of enactment i.e. August 13, 2012;
- The IRA owner can then claim a refund of the Federal taxes they previously paid on such transferred funds if made under certain time frames;
- The amount rolled over will be excluded from income in the taxable year payment was made;
- The transfer must be 'trustee to trustee';
- The contribution amount (including any net income allocable to it), rolled into the traditional IRA, will be deemed to have been rolled over at the time of the rollover to the ROTH.

The Act does *not* apply to employees who in the taxable year or any preceding years, when payment were made, were chief executive officers ("CEO") or one of the 4 highest compensated officers (other than the CEO), whose total compensation had to be reported to shareholders (as required by Securities and Exchange Commission Act of 1934).

**Special Rules for Nonspouse Beneficiaries** – For distributions prior to 2007, any distribution from a Designated Roth Contribution Account to a beneficiary other than a surviving spouse was not eligible to be rolled over to a Roth IRA. Beginning in 2007, eligible rollover distributions from a Designated Roth Contribution Account payable to a nonspouse beneficiary are eligible for direct rollover into an Inherited Roth IRA. Such amounts must be paid in the form of a direct rollover, rather than a distribution and subsequent rollover. Thus, if the distribution is paid directly by the plan to the nonspouse beneficiary, no rollover is permitted. Also, the Roth IRA receiving the direct rollover must be an Inherited Roth IRA, rather a Roth IRA owned by the nonspouse beneficiary. The Inherited Roth IRA is subject to the same required minimum distributions that apply to beneficiaries under the employer's plan and carries over to the Inherited Roth IRA. The Roth IRA must be established and titled in a manner that identifies it as a Roth IRA with respect to a deceased individual and also identifies the deceased individual and the beneficiary, for example, "Tom Smith as beneficiary of John Smith".

For these purposes, a nonspouse beneficiary includes an individual beneficiary and a trust beneficiary that meets the special "look through" rules under the IRS regulations. A nonindividual beneficiary (such as an estate or charity) or a non-look through trust is not eligible for direct rollover. Any required minimum distributions applicable to the employer's plan for the year in which the direct rollover occurs and any prior year is not eligible for direct rollover.

**Conversion from a Traditional IRA or an Employer Plan to a Roth IRA** – Prior to 2010, you are permitted to make a qualified rollover contribution from a traditional IRA or an employer plan to a Roth IRA if your Modified AGI (not including the taxable amount converted) for the year during which the distribution is made does not exceed \$100,000 and you are not a married person filing a separate tax return. This is called a "conversion" and may be done at any time without waiting the usual 12 months. After 2009, the conversion eligibility requirements are eliminated. You are also permitted to recharacterize a conversion made to a Roth IRA if the amount plus earnings is transferred back to a traditional IRA before your tax filing deadline including extensions for the year the amount was distributed from the traditional IRA that was converted to the Roth IRA.

**Taxation in Completing a Conversion from a Traditional IRA or an Employer Plan to a Roth IRA** - If you complete a conversion from a traditional IRA or an employer plan to a Roth IRA, the conversion amount (to the extent taxable) is generally included in your gross income for the year during which the distribution is made that is converted to a Roth IRA. However, the 10% additional income tax for premature distributions does not apply. For taxable conversions made during 1998, you may include the taxable amount of the traditional IRA distribution in income "ratably" over a four-tax-year period beginning in 1998, or include the entire taxable amount of the traditional IRA distribution in income the year of the conversion. Any taxable conversions from a traditional IRA to a Roth IRA after 1998 will be fully includible in income the year in which you receive the distribution that is converted to a Roth IRA. If a taxpayer converts an eligible plan to a Roth IRA in 2010, the entire taxable amount of the conversion can be either: (a) included in gross income for the year of the conversion or (b) included in gross income by including only ½ of the taxable amount the year following the conversion and the remaining ½ of the taxable amount the next year.

**Reconversions** - Once an amount has been properly converted and then is recharacterized back to a traditional IRA, any subsequent conversion of that amount is called a "reconversion". Effective January 1, 2000, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during any taxable year and then recharacterizes that amount back to a traditional IRA may not reconvert that amount from the traditional IRA to a Roth IRA before the later of: (a) the taxable year following the taxable year in which the amount was first converted to a Roth IRA; or, (b) the end of the 30-day period beginning on the day on which the IRA owner recharacterizes the amount from the Roth IRA back to a traditional IRA. Any amount previously converted is adjusted for subsequent net income in determining the amount subject to the limitation on subsequent reconversions. Since adverse tax consequences could arise, it is recommended that you seek the advice of your own tax advisor.

**Death of Taxpayer** - With respect to 1998 conversions to which the 4-year income spread applied, if the taxpayer dies before including the taxable amounts in income over a 4-year period, all remaining taxable amounts will be included in gross income on the return filed on behalf of the decedent for the taxable year of death. However, if the surviving spouse of such deceased Roth IRA participant is the sole beneficiary of all of the decedent's Roth IRAs, the surviving spouse may elect to continue including the remaining amount in income over the 4-year period as if the surviving spouse were the Roth IRA owner. Conversions in 2010 that are subject to the 2-year income spread are treated in this same manner.

**Income Acceleration** - If a distribution is deemed from a 1998 conversion amount and the taxpayer is spreading the distribution over four years, a special rule applies. If such distribution occurs before all taxable conversion amounts have been included in gross income, such distribution is accelerated in income for that year in addition to that year's one-fourth amount until the original taxable conversion amount has been includible in gross income. These same rules apply to 2010

conversions subject to the 2-year income spread.

**Change in Status** - A change in filing status or a divorce does not affect the application of the 4-year spread for 1998 conversions. Thus, if a married Roth IRA participant who is using the 4-year spread and who was married in 1998 subsequently files separately or divorces before the full taxable conversion has been included in gross income, the remainder of the taxable conversion must be included in the owner's gross income over the remaining years in the 4-year period, unless accelerated due to a distribution or death. These same rules apply to 2010 conversions subject to the 2-year income spread.

**Substantially Equal Payments** - If a taxpayer converts a traditional IRA to a Roth IRA where the traditional IRA was subject to the substantially equal periodic payment exception, the same periodic payments must continue from the Roth IRA. However, for 1998 conversions where the taxpayer is using the 4-year spread rule, the payments from the Roth IRA will be subject to the income acceleration rule. Thus, in addition to the normal 1/4th amount, the substantially equal amount is also includible in the participant's gross income for each year until the full taxable conversion has been so included. This rule also applies to 2010 conversions subject to the 2-year income spread.

**Types of Plans Permitted to be Converted** - Traditional regular IRAs, Rollover "conduit" IRAs, and SEP IRAs may be converted to a Roth IRA, so long as the taxpayer meets the eligibility requirements until 2010 when the conversion eligibility rules are eliminated. A SIMPLE IRA may also be converted to a Roth IRA, but only after such SIMPLE IRA is no longer subject to the 2-year holding period applicable to SIMPLE IRAs. Also, qualified plans §403(b) plans and governmental §457(b) plans may be converted to a Roth IRA.

**Required Minimum Distributions** - Any required minimum amount must first be distributed before any of the remaining amounts can be converted to the Roth IRA.

## DISTRIBUTIONS FROM A ROTH IRA

### Taxation of Distributions

"Qualified distributions" are neither subject to Federal income tax nor the 10% additional income tax for premature distributions. Nonqualified distributions are taxable to the extent such distribution is attributable to the income earned in the account. When you start withdrawing from your Roth IRA, you may take the distributions in regular payments, random withdrawals or in a single sum payment.

**Qualified Distributions** - A Qualified Distribution is one that is both made:

1. on or after you attain age 59½;
2. to a beneficiary after your death;
3. on account of you becoming disabled (defined under Section 72(m)(7) IRC); or
4. for qualified first time homebuyer expenses.

**AND** made after the end of the five year period beginning with the taxable year for which you first make any contribution to a Roth IRA.

If your first contribution is a conversion from a traditional IRA to a Roth IRA, the five year period begins with the year in which the conversion was made from the traditional IRA. If your first contribution is a regular contribution, the five year period begins with the year for which the contribution was made. You may maintain only one Roth IRA plan which accepts regular contributions and conversions. Additional contributions or conversions in subsequent years will not start the running of another five year period for purposes of determining whether or not you have received a "Qualified Distribution". If the entire Roth IRA account balance is distributed before any other Roth IRA contributions are made, the 5-year aging period does not start over when future contributions are made.

However, if any of the following situations occur, the 5-year aging period has not yet started:

- a. the initial Roth IRA contribution is revoked within its first 7-day period;
- b. the initial Roth IRA contribution is recharacterized to a traditional IRA; or
- c. an excess contribution, plus earnings, is timely distributed in accordance with section 408(d)(4), by the tax filing deadline including extensions, unless other eligible contributions were made.

**Nonqualified Distributions** - Distributions from a Roth IRA which are made as a nonqualified distribution are treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA (whether or not they were qualified distributions), and reduced by the taxable amount of such previous distributions, does not exceed the aggregate amount of contributions to the Roth IRA.

In other words, nonqualified distributions are treated as taken from the nontaxable portion first (the contributions) until the aggregate distributions exceed the aggregate contributions. When the aggregate distributions exceed the aggregate contributions, then the earnings will be treated as part of the distribution for taxation purposes. The portion of the nonqualified distribution that represents earnings will be taxable and subject to the 10% additional income tax for premature distributions, unless an exception applies. You are responsible for keeping records on the contributions you make to your Roth IRA and for figuring any taxable, nonqualified distributions from your Roth IRA.

**Distributions Made Before the End of the Five Year Period** - Distributions taken before the end of the five year period are taxable (to the extent you receive the earnings attributable) and are subject to the 10% additional income tax if the participant is not age 59½. However, the 10% additional income tax is avoided if the distribution meets any one of the exceptions under Section 72(t).

**Recapture of the 10% Additional Tax** - The 10% additional tax on early distributions will apply to conversions if the taxpayer is deemed to withdraw any portion of the taxable conversion amount before the end of the five year period commencing the year of conversion contribution, unless an exception under Section 72(t) applies. This is true even if none of the distribution is otherwise taxable.

**Basis Recovery Rules for Distributions from Different IRA Plans** - The taxation of distributions from a Roth IRA shall be treated separately from the taxation of a distribution from other IRA plans. In other words, nondeductible contributions made to your traditional IRA will continue to be recovered tax-free on a ratable basis.

**Ordering Rules - Distributions** from any of your Roth IRAs are to be "deemed" withdrawn in the following order: first from Roth IRA contributions (other than conversions); second from converted amounts on a first-in, first-out basis (with the taxable conversion amount first and then the nontaxable conversion amount);

and last from the earnings. In determining these ordering rules, any amount distributed from an individual's Roth IRA is determined as of the end of a taxable year and exhausting each category before moving to the next category. The taxpayer will be required to keep track of these ordering provisions by using IRS Form 8606.

**Multiple Beneficiaries** - At the Roth IRA owner's death and where multiple beneficiaries are named, each type of contribution must be allocated to each beneficiary on a pro-rata basis. Thus, for example, if a Roth IRA owner dies when the Roth IRA contains a regular contribution of \$2,000, a conversion contribution of \$6,000 and earnings of \$1,000, and the owner leaves his Roth IRA equally to four children, each child will receive one quarter of each type of contribution. Pursuant to the ordering rules, an immediate distribution of \$2,000 to one of the children will be deemed to consist of \$500 of regular contributions, and \$1,500 of conversion contributions.

For purposes of the ordering rules upon distribution, a beneficiary's inherited Roth IRAs may not be aggregated with any other Roth IRAs maintained by such beneficiary, except for other Roth IRAs that the beneficiary inherited from the same decedent. However, if the surviving spouse is the sole beneficiary of a Roth IRA and such surviving spouse elects to treat the Roth IRA as his or her own Roth IRA, the spouse can aggregate contributions with his or her other Roth IRAs for purposes of determining the ordering rules when distributions are taken. The term "spouse as sole beneficiary" means either the only primary beneficiary of the entire plan, or the only primary beneficiary of a segregated portion of the plan.

**Premature Distributions** - If you are under age 59½ and receive a "nonqualified" distribution from your Roth IRA, a 10% additional income tax will apply to the taxable portion (generally the earnings portion) of the distribution unless the distribution is received due to death; disability; a qualifying rollover distribution; the timely withdrawal of the principal amount of an excess; substantially equal periodic payments; certain medical expenses; health insurance premiums paid by certain unemployed individuals; qualified higher education expenses; qualified first time homebuyer expenses; due to an IRS levy; qualified hurricane distributions received prior to January 1, 2007; qualified disaster recovery assistance distributions; or qualified reservist distributions.

**Required Distributions** - Unlike a traditional IRA, you are not required to begin distributions when you attain age 70½. Also, the incidental death benefit requirements (referred to as MDIB) do not apply to the Roth IRA.

**Death Distributions** - If you die and you have a designated beneficiary, the balance in your Roth IRA will be distributed to your beneficiary over the beneficiary's single life expectancy. These distributions must commence no later than December 31<sup>st</sup> of the calendar year following the calendar year of your death. However, if your spouse is your sole beneficiary, these distributions are not required to commence until the December 31<sup>st</sup> of the calendar year you would have attained the age of 70½, if that date is later than the required commencement date in the previous sentence. If you die and you do not have a designated beneficiary, the balance in your Roth IRA must be distributed no later than the December 31<sup>st</sup> of the calendar year that contains the fifth anniversary of your death.

#### PROHIBITED TRANSACTIONS WITH A ROTH IRA

If you or your beneficiary engage in a prohibited transaction (as defined under Section 4975 of the Internal Revenue Code) with your Roth IRA, it will lose its tax exemption and you must include the taxable portion of your account in your gross income for that taxable year and may also be subject to the 10% additional tax. If you pledge any portion of your Roth IRA as collateral for a loan, the amount so pledged will be treated as a distribution and the taxable portion will be included in your gross income for that year and may also be subject to the 10% additional tax.

#### ADDITIONAL TAXES AND PENALTIES

If you are under age 59½ and receive a nonqualified premature distribution from your Roth IRA, an additional 10% income tax will apply on the taxable amount of the distribution (generally the earnings portion only), unless an exception under Section 72(t) applies. A 10% additional tax will be assessed if you are under age 59½ if you are deemed to withdraw any portion of a conversion that you made to your Roth IRA before five years have lapsed from the conversion year, even if such distribution is otherwise nontaxable. If you make an excess contribution to your Roth IRA and it is not corrected on a timely basis, an excise tax of 6% is imposed on the excess amount. This tax will apply each year to any part or all of the excess which remains in your account.

If you should die, and the appropriate required death distributions are not made from your Roth IRA, an excise tax of 50% is assessed to your beneficiary based upon the difference between the amount that should have been distributed and the amount that was actually distributed. You may be required to file IRS Form 5329 with the Internal Revenue Service for any year an additional tax is due.

#### INCOME TAX WITHHOLDING

All withdrawals from your Roth IRA (except the earnings attributable to a return of excess contributions) are not subject to Federal income tax withholding.

#### TRANSFERS

A direct transfer of all or a portion of your funds is permitted from this Roth IRA to another Roth IRA or visa versa. Transfers do not constitute a distribution since you are never in receipt of the funds. The monies are transferred directly to the new trustee or custodian. Transfers are neither subject to the 12-month restriction nor the 60 day rollover period usually associated with rollovers.

If you should transfer all or a portion of your Roth IRA to your former spouse's Roth IRA under a divorce decree (or under a written instrument incident to divorce) or separation instrument, you will not be deemed to have made a taxable distribution, but merely a transfer. The portion so transferred will be treated at the time of the transfer as the Roth IRA of your spouse or former spouse.

If your spouse is the beneficiary of your Roth IRA, in the event of your death, your spouse may "assume" your Roth IRA. The assumed Roth IRA is then treated as your surviving spouse's Roth IRA.

**Qualified Charitable Distributions** - If a Roth IRA owner is exactly age 70½ or over, the Roth IRA owner may direct the Roth IRA trustee or custodian to transfer up to \$100,000 per year from the Roth IRA to a qualified charity. Such transfer will not be subject to Federal income taxes. Qualified Charitable Distributions may also be made by a beneficiary who is exactly age 70½ or over. Qualified Charitable Distributions are not subject to Federal income tax withholding. On-going SEP IRAs or SIMPLE IRAs are not permitted to be transferred under this rule.

The amount transferred will be treated as coming from the taxable portion of the Roth IRA and will be an exception to the ordering rules applicable to distributions

from Roth IRAs. The tax-free transfer to a qualified charity applies only if the Roth IRA owner could otherwise receive a charitable deduction with respect to the transferred amount. In other words, it must be made to a qualified charitable organization that the taxpayer would have otherwise been able to take a tax deduction for making the charitable contribution. However, since such transfer will be tax-free, the taxpayer may not also take a charitable deduction on his or her tax return.

This provision is effective with respect to distributions transferred directly to a qualified charity beginning in 2006 through the end of 2009. The Tax Relief, Unemployment Compensation Reauthorization, and Job Creation Act of 2010 extended Qualified Charitable Distributions for 2010 and 2011 under the same rules that originally applied. Eligible taxpayers who make a Qualified Charitable Distribution during January 2011 may elect to treat such Qualified Charitable Distribution as made on December 31, 2010. On January 2, 2013, the President signed the American Taxpayer Relief Act of 2012 ("ATRA") which extended QCDs through the end of 2013 and on December 16, 2014, the President signed the Tax Increase Prevention Act of 2014 to extend QCDs through the end of 2014 only. Although the Roth IRA trustee or custodian must pay the Qualified Charitable Distribution directly to the qualified charity, the taxpayer is responsible for substantiating and reporting the Qualified Charitable Distribution on his or her Federal income tax return. The trustee or custodian of the Roth IRA will report the amount transferred on IRS Form 1099-R as if the Roth IRA owner withdrew the money. After the Roth IRA trustee or custodian issues the payment in the name of the charity, the trustee or custodian may deliver the payment to the Roth IRA owner, who then would deliver the payment to the charity.

**Qualified HSA Funding Distribution** - Beginning for contributions made for 2007 and thereafter, a special one-time, tax-free transfer from a Roth IRA to an HSA is permitted. This one-time transfer counts toward the eligible individual's HSA contribution limit for the year of the transfer.

Prior to 2007, if a Roth IRA owner wanted to use the money in a Roth IRA to make an annual HSA contribution, any nonqualified distribution from the Roth IRA was taxable (to the extent attributable to the earnings) and subject to the 10% additional tax if the individual was under the age of 59½. Prior law did not provide for a tax-free transfer from a Roth IRA to an HSA.

Beginning for annual HSA contributions made for 2007 or thereafter, an HSA-eligible individual may make an irrevocable once-in-a-lifetime, tax-free "qualified HSA Funding distribution" from a Roth IRA to an HSA, subject however to strict requirements. The amount of the HSA funding distribution must be made in the form of a Custodian-to-Custodian transfer from the IRA to the HSA. The amount of the transfer cannot exceed the maximum HSA contribution limit for the year that the amount is transferred. Consequently, this one-time transfer from a Roth IRA to an HSA counts toward the individual's total HSA contribution limit for the year depending upon the type of coverage under the HDHP (self-only or family).

#### FEDERAL ESTATE AND GIFT TAXES

Generally there is no specific exclusion for Roth IRAs under the Federal estate tax rules. Therefore, in the event of your death, the value of your Roth IRA will be includible in your gross estate for Federal estate tax purposes. However, if your surviving spouse is the beneficiary of your Roth IRA, the value of your Roth IRA may qualify for the marital deduction available under Section 2056 of the Internal Revenue Code. A transfer of property for Federal gift tax purposes does not include an amount which a beneficiary receives from a Roth IRA plan.

#### IRS APPROVAL AS TO FORM

This Roth IRA Custodial Agreement has been approved by the Internal Revenue Service as to form. This is not an endorsement of the plan in operation or of the investments offered.

#### ADDITIONAL INFORMATION

You may obtain further information on Roth IRAs and traditional IRAs from your District Office of the Internal Revenue Service. In particular, you may wish to obtain IRS Publication 590 (Individual Retirement Arrangements).

#### ROTH IRA FINANCIAL DISCLOSURE

**In General** - IRS regulations require the Custodian to provide you with a financial projected growth of your Roth IRA account based upon certain assumptions.

**Growth in the Value of Your Roth IRA** - Growth in the value of your Roth IRA is neither guaranteed nor projected. The value of your Roth IRA will be computed by totaling the fair market value of the assets credited to your account. At least once a year the Custodian will send you a written report stating the current value of your Roth IRA assets. The Custodian shall disclose separately a description of:

- (a) the type and amount of each charge;
- (b) the method of computing and allocating earnings, and
- (c) any portion of the contribution, if any, which may be used for the purchase of life insurance.

**Custodian Fees** - The Custodian may charge reasonable fees or compensation for its services and it may deduct all reasonable expenses incurred by it in the administration of your Roth IRA, including any legal, accounting, distribution, transfer, termination or other designated fees. Any charges made by the Custodian will be separately disclosed on an attachment hereto. Such fees may be charged to you or directly to your custodial account. In addition, depending on your choice of investment vehicles, you may incur brokerage commissions attributable to the purchase or sale of assets.

## ROTH IRA ADOPTION AGREEMENT

### PARTICIPANT INFORMATION

Name: \_\_\_\_\_ Account No: \_\_\_\_\_  
Address: \_\_\_\_\_  
SSN: \_\_\_\_\_ Home Phone #: \_\_\_\_\_ Bus. Phone #: \_\_\_\_\_  
Birthdate: \_\_\_\_\_ Date Age 59½: \_\_\_\_\_ Year Age 50: \_\_\_\_\_

### ACCOUNT INFORMATION

Initial Contribution \$ \_\_\_\_\_ Custodian: \_\_\_\_\_  
Type of Contribution:  
 Regular Roth IRA (including spousal) for tax year \_\_\_\_\_ . Notice of revocation must be delivered or mailed to:  
 Rollover Conversion from traditional IRA or employer plan Contact Person's Name: \_\_\_\_\_  
 Recharacterization (Complete separate recharacterization form) Address: \_\_\_\_\_  
 Transfer from another Roth IRA \_\_\_\_\_  
 Rollover within 60 days from another Roth IRA. Phone #: \_\_\_\_\_  
 Rollover from Designated Roth Account

### BENEFICIARY(IES) DESIGNATION

Primary	Contingent	Name: _____	SSN: _____	Birthdate: _____
<input type="checkbox"/>	<input type="checkbox"/>	Address: _____	Relationship: _____	Share: _____ %
Primary	Contingent	Name: _____	SSN: _____	Birthdate: _____
<input type="checkbox"/>	<input type="checkbox"/>	Address: _____	Relationship: _____	Share: _____ %
Primary	Contingent	Name: _____	SSN: _____	Birthdate: _____
<input type="checkbox"/>	<input type="checkbox"/>	Address: _____	Relationship: _____	Share: _____ %

In the event of my death, the balance in the account shall be paid to the Primary Beneficiaries who survive me in equal shares (or in the specified shares, if indicated). If the Primary or Contingent Beneficiary box is not checked for a beneficiary, the beneficiary will be deemed to be a Primary Beneficiary. If none of the Primary Beneficiaries survive me, the balance in the account shall be paid to the Contingent Beneficiaries who survive me in equal shares (or in the specified shares, if indicated). If any Primary or Contingent Beneficiary does not survive me, such beneficiary's interest and the interest of such beneficiary's heirs shall terminate completely, and the share for any remaining Primary or Contingent Beneficiary shall be increased on a pro rata basis.

### CONSENT OF SPOUSE

I consent to the above Beneficiary Designation.

Signature of Spouse: \_\_\_\_\_ Date: \_\_\_\_\_  
(Note: Consent of the Participant's Spouse may be required in a community property or marital property state to effectively designate a beneficiary other than or in addition to the Participant's Spouse.)

**Disclaimer For Community and Marital Property States:** The Participant's Spouse may have a property interest in the account and the right to dispose of the interest by will. Therefore, the Custodian disclaims any warranty as to the effectiveness of the Participant's beneficiary designation or as to the ownership of the account after the death of the Participant's Spouse. For additional information, please consult your legal advisor.

### SIGNATURES

Under penalties of perjury, I certify that the above information (including my social security number) is correct. I hereby agree to participate in the Roth Individual Retirement Custodial Account offered by the Custodian. I acknowledge receipt of a copy of the plan document under which this Roth Individual Retirement Account is established, a copy of this Adoption Agreement, and a copy of the Disclosure Statement with respect to this Roth Individual Retirement Account. I direct that my contribution be invested as indicated above and that all benefits upon my death be paid as indicated above. In the event that this is a rollover contribution, the undersigned hereby irrevocably elects, pursuant to the requirements of Section 1.402(a)(5)-1T of the IRS regulations, to treat this contribution as a rollover contribution. If I named a beneficiary which is a trust, I understand I must provide certain information concerning such trust to the Custodian.

New Vision Trust Company  
401 E. 8<sup>th</sup> Street, Suite 200R  
Sioux Falls, South Dakota 57103  
Phone: (605) 679-4949



NEW VISION TRUST  
COMPANY

Custodian,  
A South Dakota Trust Company

Witness: \_\_\_\_\_ Participant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Attest: \_\_\_\_\_ Signature of Custodian: \_\_\_\_\_ Date: \_\_\_\_\_