

CUSTODIAN AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between \_\_\_\_\_ (“Insurer”), an Arkansas domiciled insurance company, and \_\_\_\_\_ (“Custodian”), a [ ] national bank, [ ] state bank or [ ] trust company with an office and place of business in \_\_\_\_\_, is set forth as follows:

WITNESSETH:

WHEREAS, Insurer is the owner of certain property, including book-entry securities, which property Insurer wishes to place in the custody of Custodian, in order that such properties may be preserved and serviced in the manner hereinafter specified, and Custodian is willing to undertake to preserve and service the same as hereinafter provided; and

WHEREAS, the Arkansas Insurance Department has promulgated Rule and Regulation 26 that prescribes the parameters under which Insurer, as an Arkansas insurer, can enter into this Agreement, and with reference to which certain terms as used herein may be defined.

NOW, THEREFORE, it is agreed between the parties hereto that Insurer employs Custodian as the custodian of such securities as may be transferred to the Custodian from time to time, subject to the following terms and conditions:

(1) Certificated securities held by Custodian shall be held either separate from the securities of Custodian and of all of its other customers or in a fungible bulk of securities as part of a Filing of Securities by Issued (FOSBI) arrangement.

(2) Securities held in a fungible bulk by Custodian and securities in a depository corporation or in the Federal Reserve book-entry system shall be separately identified on Custodian's official records as being owned by Insurer. Said records shall identify which custodied securities are held by Custodian or by its agent and which securities are in a depository corporation or in the Federal Reserve book-entry system. If the securities are in a depository corporation or in the Federal Reserve book-entry system, said records shall also identify where the securities are and if in a depository corporation, the name of the depository corporation and if through an agent, the name of the agent.

(3) All securities and property shall be deposited promptly by Custodian into such accounts of Insurer as may be designated by Insurer from time to time in writing. Absent such written designation, Custodian shall promptly deposit such income in the custody account established at the securities firm for the Insurer that is entitled to such Income. Each such deposit of Income shall identify the securities and property upon which the Income was distributed. (4) Custodian shall not use any of Insurer's securities and property for Custodian's benefit, and none of Insurer's securities and property shall be loaned, pledged or hypothecated to any person or organization. However, this provision does

not apply to transactions agreed upon by the parties hereto that are not prohibited by the Arkansas Insurance Code.

(5) All custodied securities that are registered shall be registered in the name of Insurer, in the name of a nominee of Insurer, or in the name of Custodian or its nominee or, if in a depository corporation, in the name of the depository corporation or its nominee. All taxes and other expenses incidental to any transfer to or from the name of any nominee shall be borne by Insurer.

(6) Custodied securities shall be held subject to the instructions of Insurer and shall be withdrawable upon demand by Insurer pursuant to the provisions of Ark. Code Ann. § 23-69-134.

(7) Custodian shall be required to send or cause to be sent to Insurer a confirmation of all transfers of custodied securities to or from the account of Insurer. In addition, Custodian shall be required to furnish Insurer with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by Insurer.

(8) During the course of the Custodian's regular business hours, the Commissioner shall be entitled to examine on demand, on the premises of Custodian, Custodian's records relating to custodied securities. Any officer or employee of Insurer shall be similarly entitled, but only upon furnishing Custodian with written instructions to that effect from an appropriate officer of Insurer.

(9) To the extent allowed by laws and regulations to which Custodian and its agents are subject, Custodian shall send to Insurer (A) all reports which it or its agents received from a depository corporation or the Federal Reserve book-entry system on their respective systems of internal accounting control, and (B) any reports prepared by outside auditors on Custodian's or its agent's internal accounting control of the custodied securities that Insurer may reasonably request.

(10) Custodian shall agree to exercise the same due care with the securities and property of Insurer which is expected of a fiduciary with the responsibility for the safeguarding of Insurer's securities and property and for compliance with all provisions of the Custodial Agreement, whether Insurer's securities and property are in Custodian's possession or have been deposited or redeposited by Custodian with a subcustodian.

(11) Custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in Insurer's statutorily required Annual Statement and supporting Schedules and information required in any audit of the financial statements of Insurer.

(12) Custodian shall furnish, upon request by Insurer, or by the Commissioner, a confirmation of all purchases, sales or transfers of securities and property to or from the account of Insurer and reports of securities and property sufficient to verify information

reported in Insurer's annual statement filed with the Department, as well as supporting schedules and information required in any audit of Insurer's financial statement.

(13) Custodian shall provide the appropriate affidavits, substantially in the form attached hereto as Exhibits A, B, C, and D, to Insurer or the Commissioner.

(14) Custodian shall be strictly liable for all losses from fire, burglary, robbery, theft and mysterious disappearance, regardless of whether such a loss occurs while the securities are on deposit with Custodian or with any nominee, agent or depository (including the Federal Reserve Book Entry System) of Custodian at the time of loss. Further, for losses resulting from all causes other than the above, Custodian shall be liable for such losses unless Custodian itself can prove that the loss was not due to any dishonesty, negligence or misconduct of itself or its officers, employees or agents (including depository corporations and the Federal Reserve Book Entry System).

(15) In the event that there is a loss of custodied securities for which Custodian shall be obligated as provided in subsection (14) above, Custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities.

(16) Custodian shall not be liable for any failure to take any action required to be taken under this Agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, or laws, regulations, orders or other acts of any governmental authority.

(17) In the event that Custodian intends to gain entry in a depository corporation or in the Federal Reserve Book Entry System through an agent, Custodian shall use efforts that are reasonable in light of all the surrounding circumstances to enter into an agreement with the agent under which the agent shall be subject to the same liability for loss of custodied securities as Custodian. Should the agent with whom Custodian has chosen to do business be unwilling or unable to enter into such an agreement, Custodian agrees to give notice to Insurer of this fact at least 45 days prior to Custodian's beginning to do business with the agent.

(18) The terms and conditions of the Agreement may be amended only in writing agreed to and signed by both parties.

(19) Custodian shall not have any authority to either charge the custodied securities for Custodian's compensation and expenses without specific authorization for each charge, nor to withhold delivery of any custodied securities pending payment, in part or in full, of compensation and/or expenses.

(20) Custodian's use of depository corporations is restricted to those expressly registered with the U.S. Securities and Exchange Commissioner.

(21) Custodian shall deliver promptly to Insurer all proxies, proxy statements, authorizations, notices and stockholder reports that Custodian receives with respect to the custodied securities, and if the securities to which such proxies or other authorizations relate are registered in the name of Custodian or its nominee, such proxies or other authorizations when so delivered to Insurer shall be duly executed in blank by Custodian or its nominee, as the case may be.

(22) With respect to collections or notices respecting custodied securities of foreign issue, Custodian shall not be liable for failure or delay in the collections and providing such notices unless the failure or delay is due to Custodian's negligence or misconduct.

(23) If any cash account, other than a daily operating account, is maintained by Insurer with Custodian for deposit of interest, dividends or proceeds of security sales, such accounts shall be deemed part of this custody account and subject to all terms of this Custodian Agreement.

(24) Custodian will not provide supervision, recommendations or advice to Insurer relative to the investment, purchase, sale, retention or other disposition of the securities held under this agreement. Other than as stated herein, Insurer shall bear sole responsibility for the management of the custodied securities and shall not rely upon Custodian to keep Insurer informed as to calls, options, tenders, refunds, puts, defaults, insolvency or any other act regarding any custodied securities.

(25) Custodian will deposit any monies so collected to Insurer's credit, in such accounts with Custodian as may designate, or remit such monies to Insurer as Insurer may direct.

(26) Custodian will charge Insurer's account for the cost of purchasing custodied securities as instructed by Insurer.

(27) Custodian will present for payment maturing securities, interest coupons and securities called for redemption.

(28) If custodied securities held at depositories or off-site locations are called for partial redemption by the issuer, Custodian will allot the called portion to the respective holders in any manner deemed to be fair and equitable in its judgment.

(29) To the extent possible, Custodian will convert monies received with respect to securities of foreign issue into United States dollars. In effecting such conversion, Custodian may use any method or agency available to it, including the facilities of its own divisions or affiliates. All risk and expense of such conversion shall be borne by Insurer including, without limitation, losses arising from fluctuations in exchange rates.

(30) Custodian is authorized to accept and rely on all written instructions given by Insurer to make disposition, transfer or to otherwise deal with the custodied securities.

Custodian may also accept and rely on instructions transmitted by Insurer or its authorized agent whether given orally, by telephone, cable or telex which Custodian reasonably believes to be genuine. Custodian may electronically record any telephone calls. Written confirmation of oral instructions provided by Insurer shall in no way affect any action Custodian takes in reliance upon the oral instructions.

(31) In the event that Custodian makes funds available to Insurer in anticipation of its collection of monies which it is then unable to collect, Insurer agrees to promptly return any such monies to Custodian in immediately available funds.

(32) This agreement may be terminated at any time by either party upon thirty (30) days written notice. If Custodian terminates this agreement, the termination will not be effective until Custodian delivers any and all securities held by it to Insurer or Insurer's agent pursuant to instructions.

(33) Insurer agrees to compensate Custodian for its services hereunder in accordance with Custodian's current fee schedule. This fee schedule may be amended at any time with thirty (30) days notice to Insurer.

(34) Should any adverse or conflicting claims with respect to any security held by Custodian in safekeeping hereunder be made or should Custodian be served with or have notice of any legal process whatsoever affecting, or which in the reasonable judgment of Custodian purports to affect, Insurer's right, interest and title in any or all such securities, Custodian may refuse to deliver such securities. In either or any of said events, Insurer agrees that Custodian shall incur no liability to customer on account of such refusal during the pending of any litigation challenging Insurer's right, title and interest in such securities, and Insurer agrees to hold harmless and indemnify Custodian against all liability, loss, cost, damage, counsel fees and expenses suffered or incurred by Custodian in defending or protecting its interest or rights.

(35) Custodian may, at its discretion, choose to make funds available to Insurer only after it has received such funds.

(36) This section is applicable when Insurer (pledgor) instructs Custodian to pledge securities to a third party (pledgee).

- (a) Unless otherwise instructed in writing, Custodian, at the request of Insurer may substitute pledged securities when said substitution is made of like amount and type.
- (b) Custodian may accept a verbal release from pledgee unless otherwise instructed in writing.
- (c) It is the responsibility of Insurer to secure a proper release from pledgee.
- (d) Interest income is never attributable to a pledgee.

- (e) It is deemed the responsibility of Insurer (pledgor) to make known to the pledgee all facts or information concerning the pledged property.
- (f) Custodian shall supply a pledgor's and pledgee's copy of all safekeeping receipts.
- (g) Funds from securities with periodic paydowns of principal will be paid to Insurer without the requiring of a release from the pledgee. Custodian will not re-issue safekeeping receipt after each periodic payment. Custodian will issue the safekeeping receipt for the original face amount used by its depository.

(37) The parties understand that the Commissioner may terminate this Agreement in the Commissioner's discretion following fifteen (15) days notice in writing to Custodian, whenever it appears to the Commissioner that any person or company or agents thereof, subject to this Agreement, has impaired the financial condition of Insurer so as to threaten its solvency or makes the further transaction of business by it hazardous to policyholders, creditors, shareholders or to the public. Upon termination of the Agreement by the Commissioner, all custodied securities of Insurer subject to the Agreement shall be transferred to Insurer within fifteen (15) days after Custodian receives written notice from the Commissioner terminating the Agreement.

(38) Custodian and Insurer understand that the Agreement is permitted in the discretion of the Commissioner under Ark. Code Ann. § 23-69-134 and that the Agreement may be terminated by the Commissioner at any time upon the breach or failure of Custodian or Insurer to abide by any provision of their Agreement, Ark. Code Ann. § 23-69-134, or other applicable insurance laws or rules.

(39) The Agreement shall be governed by, and construed under, the laws of the State of Arkansas.

[Drafting Note: If a custodian is a bank or trust company that is a member of a bank holding company and the custodian has an indemnification letter or guarantee agreement from the holding company which is approved by the Commissioner, the custodian shall provide in its custodial agreement, information advising the insurer that the custodian is indemnified by their parent corporation.]

NOW THEREFORE, it is so agreed by the undersigned parties effective as of the date first above written.

By:

\_\_\_\_\_

Title:

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ATTEST

By:

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Title:

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ATTEST

EXHIBIT A

CUSTODIAN AFFIDAVIT

(For use by a custodian bank where securities entrusted to its care have not been re-deposited elsewhere.)

STATE OF )

) SS.:

COUNTY OF )

\_\_\_\_\_, being duly sworn deposes and says that I am an officer of \_\_\_\_\_, a banking corporation organized under and pursuant to the laws of the \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter called "bank");

That my duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of \_\_\_\_\_, with a place of business at \_\_\_\_\_ (hereinafter called "insurance company"), pursuant to an agreement between the bank and the insurance company;

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with a depository institution registered with the U.S. Securities and Exchange Commission or a Federal Reserve Bank under the Federal Reserve book-entry procedure) which were in the custody of the bank for the account of the insurance company as of the close of business on \_\_\_\_\_; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or a nominee of the bank, or were in the process of being registered in such form;

That the bank as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to

\_\_\_\_\_(L.S.)

before me this \_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_

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NOTARY PUBLIC

TYPED NAME

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TITLE

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EXHIBIT B

CUSTODIAN AFFIDAVIT

(For use in instances where a custodian bank maintains securities on deposit with a depository institution registered with the U.S. Securities and Exchange Commission.)

STATE OF )

) SS.:

COUNTY OF )

\_\_\_\_\_, being duly sworn deposes and says that I am an officer of \_\_\_\_\_, a banking corporation organized under and pursuant to the laws of the \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter called "bank");

That my duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of \_\_\_\_\_, with a place of business at \_\_\_\_\_ (hereinafter called "insurance company"), pursuant to an agreement between the bank and the insurance company;

That the bank has caused certain of such securities to be deposited with (name and address) \_\_\_\_\_

\_\_\_\_\_ (hereinafter called "\_\_\_\_\_"); and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on \_\_\_\_\_, and which were so deposited with \_\_\_\_\_ at such date;

That the bank as custodian has the same responsibility for the safekeeping of such securities whether in the possession of the bank or deposited with \_\_\_\_\_ as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to  
\_\_\_\_\_(L.S.)

before me this \_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_

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NOTARY PUBLIC

TYPED NAME

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TITLE

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EXHIBIT C

CUSTODIAN AFFIDAVIT

(For use where ownership is evidenced by book-entry at a Federal Reserve Bank.)

STATE OF \_\_\_\_\_ )

) SS.:

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn deposes and says that I am an officer of \_\_\_\_\_, a banking corporation organized under and pursuant to the laws of the \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter called "bank");

That my duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of \_\_\_\_\_, with a place of business at \_\_\_\_\_ (hereinafter called "insurance company"), pursuant to an agreement between the bank and the insurance company; That it has caused certain of such securities to be credited to its book-entry account with the Federal Reserve Bank of \_\_\_\_\_ under the Federal Reserve book-entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on \_\_\_\_\_, which were in a book-entry account maintained in the name of the bank on which the books and records of the Federal Reserve Bank of \_\_\_\_\_ as such date;

That the bank has the same responsibility for the safekeeping of such securities whether in the possession of the bank or in said book-entry account as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to \_\_\_\_\_(L.S.)

before me this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC

TYPED NAME

\_\_\_\_\_

TITLE

\_\_\_\_\_

EXHIBIT D

CUSTODIAN AFFIDAVIT

(For use in instances where securities are deposited directly with a depository corporation registered with the U.S. Securities and Exchange Commission.)

STATE OF \_\_\_\_\_ )

) SS.:

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn deposes and says that I am an officer of \_\_\_\_\_, a banking corporation organized under and pursuant to the laws of the \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter called "bank");

That my duties involve supervision of activities of \_\_\_\_\_ as custodian and records relating thereto;

That \_\_\_\_\_ is custodian for certain securities of \_\_\_\_\_, with a place of business at \_\_\_\_\_ (hereinafter called "insurance company"), pursuant to an agreement between \_\_\_\_\_ and the insurance company; That the schedule attached hereto is a true and complete statement of securities which were in the custody of \_\_\_\_\_ for the account of the insurance company as of the close of business on \_\_\_\_\_;

That \_\_\_\_\_ as custodian has the responsibility for the safekeeping of such securities (whether in the possession of \_\_\_\_\_, deposited with a Federal Reserve Bank or deposited with another person acting as custodian for \_\_\_\_\_) as that responsibility is specifically set forth in the agreement between \_\_\_\_\_ as custodian and the insurance company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to \_\_\_\_\_(L.S.)

before me this \_\_\_\_\_ day

Subscribed and sworn to \_\_\_\_\_(L.S.)

before me this \_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

NOTARY PUBLIC

TYPED NAME

\_\_\_\_\_

TITLE

\_\_\_\_\_