

## CUSTODIAL AGREEMENT

This **Custodial Agreement** (the "Agreement") is entered into by and between \_\_\_\_\_, a company organized and operating under the laws of the State of \_\_\_\_\_, and having its principal place of business at \_\_\_\_\_, (the "Client") and \_\_\_\_\_, a corporation organized and operating under the laws of the State of \_\_\_\_\_, and having its principal place of business at \_\_\_\_\_ (the "Securities Firm").

The parties agree as follows:

1. Appointment and Acceptance. The Client hereby appoints the Securities Firm to hold the Client's "custodied securities" (the "Securities"), with all interest, dividends, distributions, and other income attributable therefrom (the "Property"), and authorizes the Securities Firm to take such action and perform such duties on behalf of the Client, upon the terms and conditions set forth herein, and only to the extent that such Securities and Property are actually delivered to the Securities Firm.

2. Custodied Securities. Securities shall mean certificated securities and uncertificated securities as defined in Ark. Code Ann. § 4-8-102, and assets or investments as defined or regulated pursuant to Ark. Code Ann. §§ 23-63-601, *et seq.*, and Ark. Code Ann. 23-63-801, *et seq.*, and does not include any securities used for deposits under Ark. Code Ann. § 23-63-206.

3. Fiduciary Standard of Liability. The Securities Firm hereby agrees to perform its duties upon the terms and conditions as set forth in this Agreement. The Securities Firm agrees to exercise the same due care with the Securities and Property of the Client which is expected of a fiduciary with the responsibility for the safeguarding of the Client's Securities and Property and for compliance with all provisions of the custodial agreement, whether the Client's Securities and Property are in the Securities Firm's possession or have been deposited or redeposited by the Securities Firm with a subcustodian.

4. Purpose. The intent of the parties is that this Agreement shall comply with Ark. Code Ann. § 23-69-134, to constitute a written custodial agreement between a Qualified Broker Dealer and an Insurer under Ark. Code Ann. § 23-69-134, and other applicable insurance laws or rules.

5. Termination By Insurance Commissioner. The Securities Firm and Client agree that this Agreement is permitted in the discretion of the Arkansas Insurance Commissioner ("Commissioner") under Ark. Code Ann. § 23-69-134. The Securities Firm and Client understand that this Agreement may be terminated by the Commissioner at any time upon the breach or failure of the Securities Firm or Client to abide by any provision of this agreement or Ark. Code Ann. § 23-69-134, or other applicable insurance laws or rules.

6. Choice of Law, Jurisdiction and Venue. This agreement shall be governed by, and construed under, the laws of the State of Arkansas. Any litigation or causes of action derived from, related to, or arising out of a dispute or claim concerning the required performances, non-performances or obligations of either the Securities Firm or Client under this Agreement shall be filed in Pulaski County, Arkansas.

7. Indemnification. The Securities Firm shall indemnify the Client for any loss of Securities and Property occasioned by the negligence or dishonesty of the Security Firm's officers and employees, agents, subcustodians, or officers and employees of agents or subcustodians of the Securities Firm. The Securities Firm shall indemnify the Client for any loss of Securities and Property occasioned by burglary, robbery, hold-up, theft or mysterious disappearance, including loss by damage or destruction to the Client's Securities and Property. In the event of such loss, the Securities Firm must promptly replace the Securities and Property or the value thereof, and the value of any loss of rights or privileges resulting from said loss of Securities and Property. In the event that the Securities Firm gains entry in a depository corporation or in the Federal Reserve book-entry system through an agent, there shall be an agreement between the Securities Firm and the agent under which the agent shall be subject to the same liability for loss of the Securities and Property as the Securities Firm, provided however, that, if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the Securities Firm, the Commissioner of Insurance of the state of domicile of the Client may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the Securities Firm.

8. Replacement of Assets. In the event that there is a loss of custodied securities for which the Securities Firm shall be obligated to indemnify the Client, the Securities Firm shall promptly notify the Commissioner in writing of the loss and promptly replace the Securities and Property or the value thereof and the value of any loss of rights or privileges resulting from said loss of said Securities and Property.

9. Investment Authority.

9.1 The Securities Firm will not be liable for any failure to take any action required to be taken under the 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, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes, or other differences with employees, laws, regulations, orders or other acts of any government authority.

9.2 Custodied securities shall be held subject to the instructions of the Client and shall be withdrawable upon the demand of the Client, or demand of the Commissioner, when applicable under this Agreement.

9.3 All Securities and Property shall be deposited promptly by the Securities Firm into such accounts of the Client as may be designated by the Client from time to time in writing. Absent such written designation, the Securities Firm shall promptly deposit such Income in the custody account established at the Securities Firm for the Client that is entitled to such Income. Each such deposit of Income shall identify the Securities and Property upon which the Income was distributed.

9.4 All custodied securities that are registered shall be registered in the name of the Client, or in the name of the nominee of the Client, or in the name of the Securities Firm or its nominee, or, if in a depository corporation, in the name of the depository corporation or its nominee.

9.5 The Securities Firm shall not use any of the Client's Securities and Property for the Securities Firm's benefit, and none of the Client'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.

9.6 Securities Depository. The Securities Firm may utilize the services of a Federal Reserve Bank, The Depository Trust Company of New York, or any other depository which is registered as a clearing agency under the Securities Exchange Act of 1934, as amended,

and the rules and regulations promulgated thereunder as the Securities Firm's agent (the "Depository") for the purposes of book-entry deposit and maintenance in the Depository of securities eligible to be held in book-entry form under applicable laws, regulations, and rulings, except as limited by written instructions from the Client to the Securities Firm. The Securities Firm may authorize the Depository to hold the deposited securities, to receive the income and principal becoming due thereon, to surrender for payment maturing obligations and those called for redemption and to disburse and/or otherwise dispose of said deposited securities and the income thereof upon and pursuant to instructions given, through the Securities Firm, by the Client or its designated representative. Any income received from the surrender of coupons for payment will be credited as directed by the Client through the Securities Firm. Custodied federal securities usually will be held in book-entry form through a Federal Reserve Bank. The Federal Reserve Bank maintaining such book-entry federal securities shall be a custodian for the Securities Firm or for a custodian or depository for the Securities Firm.

Property held in a Depository or in the Federal Reserve book-entry system shall be separately identified on the Securities Firm's official records as being owned by the Client. Such records, or the records of a custodian or depository for the Securities Firm, shall identify which deposited securities are held by the Securities Firm or by its subcustodian and which securities are in a Depository or in the Federal Reserve book-entry system. If the securities are in a Depository or in the Federal Reserve book-entry system, the records shall also identify where the securities are and if in a Depository, the name of the Depository and if through a subcustodian, the name of the subcustodian. The Securities Firm shall, upon request from the Client, or the Commissioner, send to the Client (a) all reports which it receives from a Depository or the Federal Reserve book-entry system relating to the Client's Property and (b) any reports prepared by outside auditors on the Securities Firm's internal accounting control of the Client's Property.

9.7 Nominee Authorized. The Securities Firm may transfer into the name of the Securities Firm or its nominee or to the Depository all registered securities from time to time held under this Agreement. The Securities Firm shall be responsible to the Client for the acts of its nominee with respect to such securities to the same extent that it is responsible for its own acts.

To effect the transfer of registered securities into the name of the Securities Firm's nominee, to facilitate the collection of any payment thereon and to effect any other action in relation thereto or in order to meet any requirement thereof, the Client authorizes the Securities Firm to execute in the Client's name, and to deliver, any instrument determined by the Securities Firm to be appropriate in furtherance of the purposes hereof, and to guarantee in the Securities Firm's name as the signature of the Client any signature so placed on such instrument.

The Securities Firm will not permit securities issued or issuable in bearer form to be transferred to any depository which is not the Depository under Section 9.6 of this Agreement.

9.8 Institutional Delivery System. The Securities Firm may settle all securities transactions effected by the Client through the use of an institutional delivery system. The Securities Firm may deliver or receive securities in accordance with appropriate trade reports or statements received through an institutional delivery system without having received written direction directly from the Client.

## 10. Records and Reporting.

10.1 The Commissioner, or his designee, or the Client, shall at all times be entitled to receive copies of or examine the Securities Firm's records relating to the Properties and Securities of the Client. In addition, the Securities Firm and Client hereby agree to honor any requests made by the Arkansas Insurance Department (the "Department"), on behalf of the Commissioner, for information concerning the Client's Securities and Property subject to this agreement. The Securities Firm and the Client understand that the Department, from time to time, may request, and the Securities Firm is required to furnish, a detailed listing of the Client's

Securities and Property and an affidavit by the Securities Firm certifying the Securities Firm's safekeeping responsibilities relative to the Securities and Property of the Client. The Securities Firm's response to such requests shall be made directly to the Department and shall encompass all of the Client's Securities and Property held by the Securities Firm, or agent or subcustodian of the Securities Firm, under this Agreement.

10.2 The Securities Firm shall deliver promptly to the Client all proxies, proxy statements, authorizations, notices and stockholder reports which the Securities Firm receives with respect to the Securities and Property, and if the securities to which such proxies or other authorization relate are registered in the name of the Securities Firm or its nominee, such proxies or other authorizations when so delivered to the Client shall be duly executed in blank by Securities Firm or its nominee, as the case may be.

10.3 All activities involving the Client's Securities and Property shall be subject to the Client's instructions and the Securities and Property shall be withdrawable upon demand by the Client, or by the Commissioner, at any time.

10.4 The Securities Firm shall furnish, upon request by the Client, or by the Commissioner, a confirmation of all purchases, sales or transfers of Securities and Property to or from the account of the Client, and reports of Securities and Property sufficient to verify information reported in the Client's annual statement filed with the Department, as well as supporting schedules and information required in any audit of the Client's financial statement.

10.5 The Client or its designee, or the Commissioner, shall at all times be entitled to examine any records maintained by the Securities Firm relating to the Client's Securities and Property governed under this Agreement.

11. Segregation of Custodied Securities. The Client and the Securities Firm hereby agree that the Securities and Property shall be segregated at all times from the proprietary assets of the Securities Firm. The Securities Firm's official records shall separately identify custodied securities and Property owned by the Client.

12. Amendment and Termination of Agreement.

12.1 Amendment. This Agreement may be amended only by a written agreement executed by both the Securities Firm and the Client and approved in advance by the Commissioner.

12.2 Termination By A Party. This Agreement may be terminated by either party at any time upon 60 days written notice to the other party. Upon the appointment of a replacement custodian by the Client, the Securities Firm shall have a reasonable time to transfer the Securities and Property, along with records pertaining to the Securities and Property, to the new custodian, in accordance with the written instructions of the Client, the Commissioner, or the person or entity legally entitled to receive such Securities and Property.

12.3 Termination By The Commissioner For Failure of Securities Firm To Meet Licensing Requirements. This Agreement may be terminated by the Commissioner for any of the following reasons following fifteen (15) days notice in writing to the Securities Firm: (a) the Securities Firm is not currently registered with the Securities and Exchange Commission; (b) the Securities Firm is not currently a member in the Securities Investor Protection Corporation ("SIPC"); (c) the tangible net worth of the Securities Firm does not equal or exceed one hundred million dollars (\$100,000,000.00); (d) the tangible net worth of the Securities Firm does not equal or exceed fifty million dollars (\$50,000,000.00), and, the Securities Firm has failed to maintain excess SIPC coverage equal to or greater than the market value of the Client's securities held by the Securities Firm and in the form approved by Commissioner; or (e) any other failure by the Securities Firm to meet its qualifications to handle or manage the assets of the Client in Ark. Code Ann. § 23-69-134(b)(4). All parties hereby agree that, where any of the above requirements are not maintained by the Securities Firm, the Commissioner shall be provided notice in writing

from the Securities Firm within twenty-four (24) hours from the failure of the Securities Firm to meet any of the above requirements.

12.4 Termination By The Commissioner Due To Impaired Financial Condition Of The Client. The Commissioner may terminate this Agreement, in his discretion, following fifteen (15) days notice in writing to the Securities Firm, whenever it appears to the Commissioner, that any person or company, or agents thereof, subject to this agreement, has impaired the financial condition of the Client so as to threaten its solvency or makes the further transaction of business by it hazardous to policyholders, creditors, shareholders, or the public.

12.5 Transfer of Securities And Property Following Termination By Commissioner. Upon termination of this agreement by the Commissioner, all custodied securities of the Client subject to this agreement shall be transferred to the Client within fifteen (15) days after the Securities Firm receives written notice from the Commissioner terminating this Agreement.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties. All previous agreements, and instructions whether written or oral, between the Securities Firm and the Client are hereby superseded.

14. Notices.

14.1 Mailing of Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed as having been duly given on the date of service, if served personally on the party to whom notice is to be given, or on the third business day after mailing, if mailed to the party to whom notice is to be given and properly addressed as indicated below.

14.2 Change of Address. Any party may change the address however such notice must be provided to the Department in writing within ten (10) days before such change takes place.

14.3 Notice. All notices shall be addressed as follows:

If to the Securities Firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to the Client:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

15. Securities All Risk Coverage. The Securities Firm and Client hereby agree to maintain "securities all risks coverage" or other insurance satisfactory to the Commissioner at levels considered reasonable and customary for the custodian banking industry covering the Security Firm's duties and activities as custodian for the Client's assets. Prior to the effective date of this Agreement, the Securities Firm or Client agree to separately provide to the Department a written filing describing the nature and extent of such insurance protection.

16. Insurance Department Rules and Regulations. The Securities Firm and Client hereby agree to abide by any administrative rule or regulation hereafter promulgated by the Department which governs the handling and safekeeping of an Insurer's investments with a security broker or dealer, as may hereafter be promulgated under Ark. Code Ann. § 23-69-134. If any administrative rule or regulation conflicts with this Agreement, both the Securities Firm and

Client agree to re-submit to the Department an amended custodial agreement in compliance with the rule or regulation.

17. Effective Date. This Agreement shall be effective upon the date the Securities Firm receives the Property from the Client following approval of this agreement by the Commissioner.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**[THE CLIENT]**

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

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

**[THE SECURITIES FIRM]**

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

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

EXHIBIT "A"

**CUSTODIAN AFFIDAVIT**

(For use by a custodian entity where securities entrusted to its care have not been redeposited elsewhere.)

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

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

That my duties involve supervision of certain activities of the Securities Firm as custodian for certain Assets of the Insurance Company (as hereinafter defined) and records relating thereto;

That the Securities Firm is custodian for certain securities of \_\_\_\_\_, with a place of business at \_\_\_\_\_ (hereinafter called "Insurance Company"), pursuant to a custodial agreement between the Securities Firm 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 Securities Firm for the account of the Insurance Company as of the close of business on \_\_\_\_\_ (the "Statement Date"); 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 Securities Firm, or were in the process of being registered in such form;

That the Securities Firm as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the custodial agreement between the Securities Firm as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule on the Statement Date, said securities were the property of said Insurance Company and were free of all liens, claims or encumbrances of any other persons whatsoever.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\_\_\_\_\_  
TYPED NAME

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
TITLE

**EXHIBIT "B"**

**CUSTODIAN AFFIDAVIT**

(For use in instances where a custodian entity 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 \_\_\_\_\_, organized under and pursuant to the laws of the \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter called the "Securities Firm");

That my duties involve supervision of certain activities of the Securities Firm as custodian for certain Assets of the Insurance Company (as hereinafter defined) and records relating thereto;

That the Securities Firm is custodian for certain securities of \_\_\_\_\_, with a place of business at \_\_\_\_\_ (hereinafter called "Insurance Company"), pursuant to a custodial agreement between the Securities Firm and the Insurance Company;

That the Securities Firm has caused certain of such securities to be deposited with a depository for the Securities Firm, (hereinafter called "Depository"); and that the schedule attached hereto is a true and complete statement of the securities of the Insurance Company of which the Securities Firm was custodian as of the close of business on \_\_\_\_\_ (the "Statement Date"), and which were so deposited with Depository at such date;

That the Securities Firm as custodian has the same responsibility for the safekeeping of such securities whether in the possession of the Securities Firm or deposited with a subcustodian, as the responsibility is specifically set forth in the custodial agreement between the Securities Firm as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule on the Statement Date, said securities were the property of said Insurance Company and were free of all liens, claims or encumbrances of any other persons whatsoever.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

\_\_\_\_\_  
TYPED NAME

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
TITLE



**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 \_\_\_\_\_, organized under and pursuant to the laws of the \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter called the "Securities Firm");

That my duties involve supervision of certain activities of the Securities Firm as custodian for certain Assets of the Insurance Company (as hereinafter defined) and records relating thereto;

That the Securities Firm is custodian for certain securities of \_\_\_\_\_, with a place of business at \_\_\_\_\_ (hereinafter called "Insurance Company"), pursuant to a custodial agreement between the Securities Firm and the Insurance Company;

That the Securities Firm or a custodian of the Securities Firm has caused certain of such securities to be credited to its book-entry account with a Federal Reserve Bank 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 Securities Firm was custodian as of the close of business on \_\_\_\_\_ (the "Statement Date"), which were in a book-entry account maintained in the name of the bank on its books and records at such date;

That the Securities Firm has the same responsibility for the safekeeping of such securities whether in the possession of the Securities Firm or in said book-entry account as responsibility is specifically set forth in the custodial agreement between the Securities Firm as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, as of the Statement Date said securities were the property of said Insurance Company and were free of all liens, claims or encumbrances of any other persons whatsoever.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
TYPED NAME

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
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 \_\_\_\_\_, organized under and pursuant to the laws of the \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter called the "Securities Firm");

That my duties involve supervision of certain activities of the Securities Firm as custodian for certain Assets of the Insurance Company (as hereinafter defined) and records relating thereto;

That the Securities Firm is custodian for certain securities of \_\_\_\_\_, having a place of business at \_\_\_\_\_ (hereinafter called "Insurance Company"), pursuant to a custodial agreement between the Securities Firm and the Insurance Company;

That the schedule attached hereto is a true and complete statement of securities which were in the custody of the Securities Firm for the account of the Insurance Company as of the close of business on \_\_\_\_\_ (the "Statement Date");

That the Securities Firm as custodian has the responsibility for the safekeeping of such securities (whether in the possession of the Depository Trust Company, deposited with a Federal Reserve Bank or deposited with another person acting as custodian for the Securities Firm) as that responsibility is specifically set forth in the custodial agreement between the Securities Firm as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule on the Statement Date, said securities were the property of said Insurance Company and were free of all liens, claims or encumbrances of any other persons whatsoever.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\_\_\_\_\_  
TYPED NAME

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
TITLE