

## **Custodial Services Agreement**

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This Custodial Services Agreement (“Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_ (“Depositor”), with its principal office at \_\_\_\_\_, and \_\_\_\_\_ (“Institution”), with its principal office at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and First National Bankers Bank, (“Custodian”), with its principal office at 7813 Office Park Blvd.; Baton Rouge, Louisiana 70809, with an Arkansas Division located at 325 West Capitol Avenue, Suite 300; Little Rock, Arkansas 72201.

### **WITNESSETH**

**WHEREAS**, the Depositor has agreed to deposit funds with the Institution pursuant to the terms and provisions of a depository collateral agreement or similar security agreement in which Institution intended to grant to Depositor a security interest in certain property (“Collateral Agreement”), said Collateral Agreement by and between the Depositor and the Institution dated as of \_\_\_\_\_, \_\_\_\_\_; and

**WHEREAS**, pursuant to the terms and provisions of the Collateral Agreement, the Institution has agreed to assign, transfer, pledge and convey to the Depositor a perfected security interest in certain eligible securities owned by the Institution (the “Collateral”); and

**WHEREAS**, in order to perfect the Depositor’s security interest in the Collateral, the Custodian, as agent for the Depositor, will accept from the Institution, take possession of and hold such Collateral solely for the benefit of the Depositor.

**NOW, THEREFORE**, in consideration of the mutual covenants and premises herein contained, the parties do hereby agree as follows:

1. The Custodian hereby accepts employment as the Depositor’s custodian and depository pursuant to the terms of this Agreement.
2. The Custodian shall accept and retain as Custodian solely for the benefit of the Depositor all securities tendered by the Institution as Collateral for its obligations under the Collateral Agreement. Upon receipt of Collateral from the Institution for the benefit of the Depositor, the Custodian shall immediately notify the Depositor of the Collateral pledged by issuing a written custody receipt simultaneously to the Institution and the Depositor evidencing that the Institution has pledged, and the Custodian has received, the Collateral.
3. The Custodian shall identify on its books and records as being pledged to the Depositor specific securities or a quantity of specific securities received by it for, or for the account

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of, the Depositor. Neither the Institution nor the Custodian shall have any power or authority to, and shall not, transfer, assign, hypothecate, pledge or otherwise dispose of any such securities, except pursuant to instructions from the Depositor and pursuant to the terms of this Agreement. Custodian warrants and represent that no third-party has a right to give an entitlement order regarding the Collateral, and Custodian agrees to notify Depositor and the Institution simultaneously if another person claims a property interest in the Collateral. Upon receipt of such notice, the Institution shall immediately substitute unencumbered Collateral of equivalent value that is free and clear of all adverse claims.

4. If at any time the total fair market value of the Collateral is less than \_\_\_\_\_% of the total amount of cash funds on deposit with the Institution that is in excess of current FDIC insurance coverage (the "Maintenance Percentage"), then the Institution shall assign, pledge and convey a security interest to the Depositor in and transfer to the Custodian, solely for the benefit of the Depositor, securities of the type eligible to be pledged pursuant to Arkansas Code Annotated §23-47-203, §23-47-401(a) and §19-8-203 as amended, and in such amount so that the ratio of the total fair market value of such pledged securities to the amount of funds on deposit shall be at least equal to the Maintenance Percentage. The failure by the Institution to provide securities of the type eligible to be pledged pursuant to Arkansas Code Annotated §23-47-203, §23-47-401(a) and §19-8-203, as amended, in such amount so that the ratio of the total fair market value of such pledged securities to the amount of funds on deposit is at least equal to the Maintenance Percentage, shall, at the discretion of the Depositor, result in all funds of the Depositor held by the Institution becoming subject to immediate withdrawal without penalty and with interest being due and payable to the date of withdrawal.
5. The Custodian shall, on the first business day following receipt by the Custodian of prior written notice from the Institution, allow the Institution to withdraw any of the securities constituting the Collateral, if the Institution shall simultaneously deliver to the Custodian as additional Collateral securities of the same type and having at least the same market value as the securities withdrawn.
6. The Custodian is hereby authorized and directed to promptly distribute to the Institution any cash received by the Custodian as payment of accrued interest on any of the securities constituting the Collateral.
7. This Agreement vests "control" of the Collateral in the Depositor as required under the Arkansas Uniform Commercial Code. From and after the date of this Agreement, the Custodian will comply with all notifications and instructions it receives originated by the Depositor directing it to transfer or redeem the Collateral without further consent of the Institution. Upon receipt of any such notification and instruction from the Depositor, the Custodian shall promptly forward a copy of the notification or instruction to the

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Institution. The Custodian agrees not to take any act that would permit a person other than the Depositor to have “control” of the Collateral as that term is defined in the Arkansas Uniform Commercial Code. Except as specifically provided in the foregoing paragraphs 4 - 6, the Custodian will not release or transfer to the Institution any securities constituting the Collateral without prior instructions from the Depositor, either written or verbal. The Depositor and the Custodian agree that in the case of any conflict between written and verbal instructions, the written instructions will be binding.

8. The Custodian agrees, on a monthly basis, to provide simultaneously to the Depositor and the Institution a current statement reflecting pledged Collateral. The Custodian agrees to provide in such statements its own current fair market price valuations of the securities constituting the Collateral as determined by the methods set forth in the Collateral Agreement; provided, however, the final market value used to determine whether the Institution has satisfied its obligation to maintain sufficient Collateral to meet or exceed the Maintenance Percentage and for any other related audit of the Institution may be those valuations which either the Institution or Custodian, at the sole discretion of the Institution, obtains at a month’s end from independent pricing companies in accordance with the Collateral Agreement. The costs of the preparation and delivery of such periodic statements by the Custodian to the Depositor shall be the responsibility of the Institution.
9. In the absence of bad faith on the part of the Custodian, the Custodian shall be permitted to rely upon the authenticity of, and the truth of the statements and the accuracy of the opinions expressed in, and will be protected in acting upon, any document believed by the Custodian to be genuine and to have been signed, affixed or presented by the proper party or parties. The Custodian shall not be liable with respect to any action taken or omitted to be taken by it in accordance with any instruction or request of the Depositor. In addition, the Custodian shall not be liable for any error of judgment made in good faith by an officer of this Custodian, unless it shall be proved that the Custodian was grossly negligent in ascertaining the pertinent facts. In the event the Custodian receives substantially contemporaneously contrary written instructions from the Depositor and the Institution, then the Custodian may, at its election and without liability to either the Depositor or the Institution, interplead the securities constituting the Collateral in a court of competent jurisdiction, and the Depositor’s and the Institution’s sole recourse shall be against each other and the securities constituting the Collateral so interplead.
10. The Collateral shall be held in a joint custody account for the benefit of the Depositor; provided, however, this shall in no way restrict the release of said Collateral in accordance with the terms of this Agreement as may be otherwise set forth herein, including, without limitation, the procedures for substitution of such Collateral. The Collateral shall not be held in a margin account, and no margin or other credit will be extended to the Institution with respect to the Collateral. The Custodian waives its right

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to a security interest in the pledged Collateral and subordinates in favor of Depositor any security interest, lien, or right to setoff it may have, now or in the future, against the Collateral.

11. This Agreement may be amended at any time by written agreement between the Depositor and the Custodian, with prior written notice to the Institution.
12. This Agreement shall be subject to and construed in accordance with the laws of the State of Arkansas.
13. This Agreement may be simultaneously executed in two or more counterparts, each of which shall be deemed to be an original.
14. Notices and other writings shall be delivered or mailed postage prepaid to the parties at the addresses set forth on the signature page hereof.
15. The duties of the Custodian as provided in this Agreement shall continue in effect until the security interest has been terminated, and the Depositor shall notify the Custodian within a reasonable time of the termination in writing. This Agreement may be terminated thirty (30) days after receipt of written notice by the Custodian or the Depositor. The Institution may not terminate this Agreement. The Custodian and the Institution agree that if, upon termination of this Agreement, the Depositor's deposit with the Institution continues to require collateral as provided in the Collateral Agreement, the Collateral will be transferred to an account under the exclusive control of the Depositor.

*[Remainder of Page Intentionally Blank; Signature Page Follows]*

## Custodial Services Agreement

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**IN WITNESS WHEREOF**, the parties hereto, each acting through its respective duly authorized representative, have caused this Agreement to be signed in their name and delivered as of the date first above written.

**DEPOSITOR:**

Address for Notices: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**CUSTODIAN:**

**First National Bankers Bank**

Address for Notices: \_\_\_\_\_

325 West Capitol Avenue, Suite 300; Little Rock, AR 72201

Signature: \_\_\_\_\_

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

**INSTITUTION:**

Address for Notices: \_\_\_\_\_

Signature: \_\_\_\_\_

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