

**CUSTODIAL SERVICES AGREEMENT**

This Custodial Services Agreement (“*Agreement*”) is entered into this \_\_ day of \_\_\_\_\_ 20\_\_ by and between \_\_\_\_\_, (“*Public Depositor*”), with its principal office at \_\_\_\_\_ and \_\_\_\_\_, (“*Bank*”), with its principal office at \_\_\_\_\_, and \_\_\_\_\_ (“*Custodian*”) with its principal office at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, the Public Depositor has agreed to deposit funds with the Bank pursuant to the terms and provisions of the Depository Collateral Agreement (“*Collateral Agreement*”) by and between the Public Depositor and the Bank dated as of \_\_\_\_\_, 20\_\_;

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

WHEREAS, in order to perfect the Public Depositor’s security interest in the Collateral, Public Depositor and Bank wish to appoint the Custodian, as agent for the Public Depositor, to take possession of and hold in custody solely for the benefit of the Public Depositor Collateral pledged to the Public Depositor by the Bank pursuant to the Collateral Agreement with the terms set forth below.

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 Public 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 Public Depositor all securities tendered by the Bank as Collateral for its obligations under the Collateral Agreement. To perfect the security interest of the Public Depositor in the Collateral, the Bank shall place the Collateral in a joint custody account with the Custodian.

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3. Upon receipt of Collateral from the Bank for the benefit of the Public Depositor, the Custodian shall: (i) immediately notify the Public Depositor, by telephone or otherwise, of the Collateral pledged; and (ii) issue a simultaneous written receipt to the Bank and Public Depositor evidencing that the Bank has pledged and Custodian has received the Collateral. The Custodian should forward any letter of credit, surety bonds, or a private deposit insurance instrument pledged to secure the deposits of the Public Depositor to the Public Depositor.
4. The Custodian shall identify on its books and records as being pledged to the Public Depositor specific securities or a quantity of specific securities received by it for, or for the account of, the Public Depositor. Custodian agrees to hold the Collateral under joint safekeeping receipts and apply the same, or any substitutions therefore, or additions thereto, for the purposes set forth in the Collateral Agreement, upon the terms contained herein. The Custodian's records shall at all times show Public Depositor's security interest in the Collateral. The Custodian shall have no power or authority to transfer, assign, hypothecate, pledge or otherwise dispose of any such securities, except pursuant to instructions from the Public Depositor and pursuant to the terms of this Agreement.
5. This Agreement vests "control" of the Collateral in the Public 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 directing it to transfer or redeem the Collateral originated by the Public Depositor without further consent of the Bank. The Custodian agrees not to take any act that would permit a person other than the Public Depositor to have "control" of the Collateral as that term is defined in the Arkansas Uniform Commercial Code.
6. It is intended that the Custodian act as a "securities intermediary" as such term is defined in the Arkansas Uniform Commercial Code with respect to the Collateral. In addition, the parties intend that the Collateral be treated as "financial assets" and that the Public Depositor is an "entitlement holder" as such terms are defined under the Arkansas Uniform Commercial Code.
7. Bank represents and warrants that it owns the Collateral free and clear of all liens, claims, security interests and encumbrances (except those granted herein and in the Collateral Agreement) and, subject to the terms hereof, hereby grants to Public Depositor a pledge and security interest in all of Bank's right, title, and interest in and to such Collateral, as security for Bank's obligations to Public Depositor pursuant to the Collateral Agreement. Bank represents and warrants that no financing statement covering all or any part of the Collateral is on file at any public office.
8. Other than for the substitution of securities constituting the Collateral, the Custodian will not release or transfer to the Bank any securities constituting the Collateral without prior

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written instructions from the Public Depositor, except that the Custodian may elect to release or transfer to the Bank securities constituting the Collateral upon receipt of verbal instructions from the Public Depositor, if: (i) the verbal instructions are electronically recorded and the Custodian has obtained independent and separate confirmation of the verbal instructions from an authorized officer of the Public Depositor; (ii) the Custodian provides immediate written confirmation of the verbal instructions to the Public Depositor; and (iii) the Public Depositor provides immediate written confirmation of the verbal instructions to the Custodian. The Public Depositor and the Custodian agree that in the case of any conflict between written and verbal instructions, the written instructions will be binding. In cases of authorized substitution of securities constituting the collateral, the Custodian shall, on the first business day following receipt by the Custodian of prior written notice, allow the Bank to withdraw any of the securities constituting the collateral, if the Bank 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.

*(Note: The parties should agree to the substitution procedure to be followed and prescribe those procedures in this paragraph, making changes as appropriate)*

9. The Custodian agrees to provide to the Public Depositor, at no charge, and Bank a periodic statement of holdings reflecting the securities pledged by the Bank and the market value price valuation of the securities constituting the Collateral. The market value must be obtained from a securities pricing service, a primary dealer in securities, or a publication recognized as a reliable source of securities valuation.

*(Note: The parties should agree to the frequency and cost of the reports as well as how market value is to be determined and prescribe those terms in this paragraph, making changes as appropriate.)*

10. The Collateral cannot be re-pledged by the Custodian or Bank until it has been substituted and released as provided in the Collateral Agreement.
11. Collateral shall not be held in a margin account and no margin or other credit will be extended to the Bank with respect to the Collateral.
12. The Custodian subordinates in favor of Public Depositor any security interest, lien, or right to setoff it may have, now or in the future, against the Collateral.
13. Custodian warrants and represents that it does not know of any claims to or interest in the Collateral except for those of the parties to this Agreement, and Custodian will not enter into any other control agreement with regard to the Collateral while this Agreement remains in effect.

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14. Custodian warrants and represent that no third-party has a right to give an entitlement order regarding the Collateral and Custodian shall notify Public Depositor if another person claims a property interest in the Collateral.
15. Custodian warrants and represents that it is not, and shall not be at any time, an “affiliate” of the Bank as that term is defined in Rule 2012-A. In the event the Custodian becomes an affiliate of the Bank subsequent to the date of this Agreement, the Custodian shall immediately notify the Public Depositor.
16. The Custodian is hereby authorized and directed to promptly distribute to the Bank any cash received by the Custodian as payment of accrued interest on any of the securities constituting the Collateral.
17. The duties of the Custodian as provided in this Agreement shall continue in effect until the security interest has been terminated and the Public Depositor shall notify the Custodian of the termination in writing.
18. The Custodian acknowledges receipt of a copy of the Collateral Agreement governing the terms and conditions under which the Bank will receive and maintain deposits of the Public Depositor and provide Collateral to secure such deposits. This Agreement is subject to the terms, conditions, and provisions of the Collateral Agreement (including exhibits), which Collateral Agreement is expressly incorporated herein by reference.
19. The Custodian and Bank agree that if, upon termination of this Agreement, the Public Depositor’s deposit requires collateral as provided in the Collateral Agreement, the Collateral will be transferred to an account under the exclusive control of the Public Depositor.
20. This Agreement shall further serve as a power of attorney, authorizing the Public Depositor to transfer or liquidate the Collateral in the event of a default, financial failure, or insolvency of the Bank. In the event of a default, failure or insolvency of the Bank, the Public Depositor shall be deemed to have vested full title to all securities pledged under this Agreement, and shall send a written demand to Custodian notifying Custodian of the nature of the Bank’s default. After receipt from Public Depositor of a written demand, Custodian shall immediately deliver to Public Depositor the Collateral held hereunder, or such portion thereof as may be demanded, for the purpose of protecting Public Depositor against loss by reason of the default of Bank; and Custodian shall immediately disregard any further notice or instruction by or on behalf of Bank. Such demand shall state the dollar amount of the collected balance of Public Depositor’s accounts with Bank as of the date of the demand and any costs or expenses for which Public Depositor is entitled to reimbursement, and the request that Custodian deliver to Public Depositor, for sale by

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Public Depositor, securities with a market value equal to or greater than such reported balance and costs and expenses. The Public Depositor is empowered to take possession of and transfer and or sell any and all securities. This power is in addition to other remedies which the Public Depositor may have under this Agreement and without prejudice to its rights to maintain any suit in any court for redress of injuries sustained by the Public Depositor under this Agreement.

If and when a receiver or conservator is appointed for Custodian under federal and/or state banking or similar law, or there is commenced by or against Custodian any liquidation or dissolution proceeding, Custodian shall as soon as practicable transfer the Collateral to such other custodian as is designated by Public Depositor upon receipt of written demand by Public Depositor. If the Collateral is delivered to the Bank, the Bank shall hold the Collateral in trust as trustee on behalf of Public Depositor and Bank shall, as soon as practicable transfer the Collateral to such other custodian as is designated by Public Depositor.

21. In the event the Bank shall (a) fail to pay the Public Depositor any funds which the Public Depositor has on deposit, (b) fail to pay and satisfy when due any check, draft, or voucher lawfully drawn against any deposit of the Public Depositor, (c) fail or suspend active operations, (d) become insolvent, or (e) fail to maintain adequate Collateral as required by this Agreement, the Bank shall be in default, the Public Depositor's deposits in such Bank shall become due and payable immediately, the Public Depositor shall have the right to unilaterally direct the Custodian to liquidate the Collateral held in the Custody Account and pay the proceeds thereof to the Public Depositor and to exercise any and all other security entitlements with respect to the Custody Account and the other Collateral, to withdraw the Collateral, or any part thereof, from the Custody Account and deliver such Collateral to the Public Depositor or to transfer the Collateral or any part thereof into the name of the Public Depositor or into the name of the Public Depositor's nominee, and ownership of the Collateral shall transfer to the Public Depositor. The Bank authorizes the release, withdrawal, and delivery of the Collateral to the Public Depositor upon default by the Bank, and authorizes the Custodian to rely without verification on the written statement of the Public Depositor as to the existence of a default and to comply with entitlement orders originated by the Public Depositor without further consent of that Bank.

In the event of default, the Public Depositor shall also have the right to sell Collateral at any public or private sale at its option without advertising such sale, upon not less than three (3) days' notice to the Bank and the Custodian. In the event of such sale, the Public Depositor, after deducting all legal expenses and other costs, including reasonable attorney's fees, from the proceeds of such sale, shall apply the remainder on any one or

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more of the liabilities of the Bank to the Public Depositor, including accrued interest, and shall return the surplus, if any, to the Bank, or its receiver or conservator.

22. 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 Public Depositor and the Bank, then the Custodian may, at its election and without liability to either the Public Depositor or the Bank, interplead the securities constituting the Collateral in a court of competent jurisdiction, and the Public Depositor's and Bank's sole recourse shall be against each other and the securities constituting the Collateral so interpled.
23. The Bank shall pay, without reimbursement by the Public Depositor, all fees, expenses, and costs charged by the Custodian in connection with the safekeeping and maintenance of the Collateral in its performance under this Agreement.
24. This Agreement may be terminated thirty (30) days after receipt of written notice by Custodian or Public Depositor. The Bank cannot terminate this Agreement.
25. This Agreement may be amended at any time by written Agreement between the Public Depositor and the Custodian, with prior written notice to the Bank.
26. This Agreement shall be subject to and construed in accordance with the laws of the State of Arkansas.
27. This Agreement may be simultaneously executed in two or more counterparts, each of which shall be deemed to be an original.
28. Notices and other writings shall be delivered or mailed postage prepaid to the parties at the addresses set forth on the signature page hereof.

IN WITNESS WHEREOF, the parties hereto, have executed this Agreement as of the date indicated above.

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**PUBLIC DEPOSITOR:** Department of Finance and Administration

Address for Notices:

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

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

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

**BANK:**

Address for Notices:

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

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

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

**CUSTODIAN:**

Address for Notices:

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

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

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