

DEPOSITORY AGREEMENT – BANK CAPTIVE INSURANCE COMPANIES

This Agreement made this _____ day of _____, 20____, among the Commissioner of Commerce and Insurance, State of Tennessee, and his successor or successors (the "Commissioner"); (the "Custodian");
and _____ (the "Insurer"), an insurance corporation organized under the laws of the State of _____ with its principal place of business at _____.

WITNESSETH:

WHEREAS, the Insurer is required to make a deposit of cash or securities eligible for deposit under Tennessee Code Annotated, § 56-13-103(c)(1)(C) and § 56-13-105, for the protection of its policyholders wherever located; and

WHEREAS, in accordance with said law and the laws of some other states where Insurer does business which require or permit the Insurer to make a deposit (the "Deposit") with the Commissioner of its state of domicile, the Insurer, with the approval of the Commissioner, has selected the Custodian as custodian of the Deposit and the Custodian has agreed to act as a depository under the Agreement; and

WHEREAS, the Insurer is simultaneously with the execution of this Agreement delivering to the Custodian cash or eligible securities with a par value of \$_____; and

WHEREAS, the Custodian is a member bank of the Federal Reserve System, or a Tennessee state chartered bank that is a member of the FDIC and is authorized to use and participate in the Federal Book - Entry Accounting System, established and maintained by the Federal Reserve, with respect to United States Treasury or Federal agency securities under the Agreement and has agreed to serve as Custodian solely for purposes of Tennessee Code Annotated § 56-13-103(c)(1)(C) and § 56-13-105.

NOW, THEREFORE, the parties to this Agreement, in consideration of the premises and the mutual promises herein expressed, covenant and agree as follows:

1. The Deposit. (a) The Insurer shall maintain the value of the Deposit in an amount not less than the amount of deposit Tennessee Law requires the Insurer to maintain. The Insurer shall transfer and deliver to the Custodian cash and/or securities in the amount specified above and directs the Custodian to establish, keep and manage this Depository Account in the name and for the benefit of the Commissioner and the Insurer. Securities constituting the Depository Account shall be fully paid and free of any liens or other claims of the Custodian, any judgment creditor or other claimant of the Insurer. All transfer taxes, custodian fees and other costs with respect to the transfer or management of the Deposit shall be paid by the Insurer.

(b) When a Federal book-entry deposit is made to the account, the Custodian shall provide to the Commissioner and the Insurer such evidence as is customarily issued by the Custodian that the aforementioned securities are credited by the Custodian to this Depository Account. The parties agree that such evidence shall be provided in a statement provided by the Custodian, at least quarterly, which shall specify the funds and securities comprising the Depository Account at the end of the statement period, and the debits, credits and

transactions in the Depository Account during such period. The statement shall be considered approved and ratified unless written objection is made to the Custodian within sixty (60) days of receipt of the statement.

(c) Rule 14b-2 of the Securities Exchange Act of 1934 enables issuers of registered securities to learn the identity of their security holders whose securities are held by the Custodian and registered in "nominee" or "street" name, unless the beneficial owner specifically indicates its objection to such disclosure. The Insurer hereby indicates its objection to disclosure by the Custodian of its name, address and security position to all issuers whose securities are held in the Depository Account and are registered in nominee or street name.

(d) The Custodian utilizes various standard industry pricing services and brokerage contacts to provide current pricing information for active publicly traded securities. Assets not publicly traded may reflect the initial acquisition value or cost and not a current market value. Many fixed income securities are priced on a matrix system, resulting in an approximation of price derived by computer. Although the Custodian attempts to provide accurate pricing, in some instances prices may not reflect the most accurate pricing readily available or the true value of the asset. The Custodian shall have no liability for such an occurrence.

2. Security Interest in Deposit. The Insurer hereby grants to the Commissioner an interest in the Deposit to secure all present and future obligations of the Insurer to the policyholders of the Insurer wherever located. Such security interest shall continue until such obligations are fully satisfied or until the Deposit is released by the Commissioner.
3. Authority and Agreement to Act on Court Orders. The Custodian is hereby authorized and agrees to obey or act in accordance with any order, judgment, decree, subpoena, writ or levy of any court of competent jurisdiction which relates in whole or in part to the Deposit. The Custodian shall not be liable to the Commissioner or the Insurer for any such action or omission to act, even if any such order, decree, judgment, subpoena, writ or levy is thereafter reversed, modified, withdrawn, set aside or vacated.
4. Income Received From Deposit. (a) The Custodian shall separately account for the Income with respect to the securities held in the Depository Account ("Deposited Securities"). For purposes of this Depository Agreement, "Income" shall include interest, income, dividends, other distributions and realized gains attributable to the Deposited Securities.

(b) So long as the Insurer is solvent and complies with the applicable laws of the State of Tennessee, it may collect and dispose of all Income received by the Custodian on the Deposited Securities. The Insurer may withdraw all or part of the Income by submitting a written request therefor to the Custodian, with a copy to the Commissioner.

(c) The Custodian, at the direction of the Insurer, shall pay all assessments or other charges upon or with respect to such Deposited Securities from the Income. To the extent that the Income is not sufficient to pay such assessments or charges, the Insurer shall pay such amounts. The Insurer shall pay all taxes with respect to such Deposited Securities.

(d) Subject to the foregoing, the Custodian shall promptly credit to the account of the Insurer all payments or distributions of cash or property which are earned, declared, granted, or made on or with respect to the Deposited Securities.

5. Withdrawal or Substitution of Deposited Securities. The Insurer shall have the right at any time to withdraw the whole or any part of the Deposited Securities and to substitute other eligible securities therefor; provided that the total value of the Deposited Securities (including the substituted securities) is at least equal to the amount of Deposit required by Tennessee law to be maintained by the Insurer. Withdrawal of securities from the Depository Account may be made only upon proper written instructions signed by an authorized official of the Insurer and the Commissioner and/or the Commissioner's Deputy. The Insurer agrees to indemnify the Custodian and hold it harmless as to any actions reasonably taken to comply with or to implement any instructions provided by the Insurer under this Depository Agreement.
6. Verification of Deposit. At any time upon notice by the Commissioner to the Custodian, the Custodian shall furnish verification of the securities held under this Depository Agreement by completing, executing and acknowledging Custodian Affidavits, Form B and/or Form C, attached hereto and made a part of this Agreement, as appropriate.
7. Custodian as Custodian of the Deposit. The Deposit shall be held by the Custodian in accordance with the terms hereof, to assure the faithful performance by the Insurer of its obligations to policyholders wherever located, in a book-entry account established by the Federal Reserve System. The Custodian shall be accountable to the Commissioner and the Insurer for the safekeeping of the securities held by it under this Depository Agreement. The Custodian shall forward to the Insurer any proxies of capital action notices it receives with respect to the Deposited Securities.
8. Waiver of Set-Off. Securities in the Deposit shall at no time be subject to any right, claim, security interest, lien or claim of any kind or right of set-off in favor of the Insurer, the Custodian or any person claiming through the Insurer or the Custodian and such parties hereby irrevocably waive their respective rights, if any, to assert such claims against the Deposit.
9. Compensation of Custodian. Custodian agrees to hold Commissioner harmless from any liability for fees and expenses of the Custodian for services rendered hereunder.
10. Notices. All notices under this Agreement shall be sufficient if in writing and sent to the party entitled to receive such notice at the last known address of each of the parties or to such other addresses as any party may furnish the other parties by written notice under this Section.
11. Assignability: Governing Law. This Agreement may not be assigned without the prior written consent of all parties. Subject to the foregoing sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement shall not be changed, except by an instrument in writing signed by all of the parties. This Agreement shall be governed by the laws of the State of Tennessee.

12. **Waiver of Jury Trial.** The parties to this Agreement acknowledge that the right to trial by jury is a constitutional one, but that it may be waived. Each party, after consulting (or having had the opportunity to consult) with counsel of its choice, knowingly and voluntarily, and for their mutual benefit, waives any right to trial by jury in the event of litigation involving the performance or enforcement of, or in any way related to, this Agreement.
13. **Force Majeure.** The Custodian shall not be liable for failure to take an action required under this Agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether or not declared and including existing wars), terrorist activity, 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 governmental authority, or any other cause whatsoever beyond its reasonable control.
14. This Agreement is entered into without prejudice to the right of the Commissioner to exercise any powers conferred upon the Commissioner by law in the exercise of the Commissioner's statutory responsibilities.
15. This Agreement shall be executed in triplicate and shall become effective as between the Commissioner and the Insurer upon execution by the Commissioner, and upon execution by the Insurer, evidenced by signature of an authorized officer of the Insurer, and upon agreement and execution by the Custodian, evidenced by the signature of an authorized officer.

Executed this _____ day of _____, 20____.

**State Of Tennessee
Commissioner of Commerce and Insurance**

Signed: _____

Date: _____, 20____

Custodian:

Signed: _____

Printed Name: _____

Title: _____

Date: _____, 20____

Custodian Contact Information:

Address: _____

Telephone: _____

Email: _____

Insurer:

Signed: _____

Printed Name: _____

Title: _____

Date: _____, 20____