

[NAME OF TRUST]

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[NAME OF TRUST]

ARTICLE I. CREATION OF TRUST

Parties

1.01. This trust agreement is made by [PRINCIPAL'S NAME] and [SPOUSE'S NAME] (the “**Settlers**”), husband and wife, both of [COUNTY] County, Texas, as Settlers, and [PRINCIPAL'S NAME] and [SPOUSE'S NAME], of [ADDRESS], [CITY, STATE, ZIP], (hereinafter referred to, whether one or more, as the “**Trustee**”) as trustee. The trust originally created by this instrument shall be known as the [NAME OF TRUST].

Effective Date

1.02. This agreement shall be effective immediately upon execution by all the parties.

ARTICLE II. FAMILY MEMBERS AND TRUSTEES

Children of Settlers

2.01. The Settlers have one child, now living: [CHILD 1], born on [BIRTHDATE]. The Settlers have no other children, living or deceased.

Trustees

2.02. The following persons will act as Trustee in the following order of succession. If a named Trustee is unable or unwilling to act or to continue to act as the Trustee, for any reason, including but not limited to incapacity or death, (i) any remaining co-Trustee(s) or, if there are no co-Trustees, (ii) the next-named Trustee, is appointed as Trustee with the same powers, rights, discretions, obligations, and immunities:

- (a) [PRINCIPAL'S NAME] and [SPOUSE'S NAME], as Co-Trustees;
- (b) the successor of [PRINCIPAL'S NAME] and [SPOUSE'S NAME], as sole Trustee;
- (c) [FIDUCIARY 1];
- (d) [CHILD 1].
- (e) The surviving children of the Settlers, jointly as Co-Trustees; if any child does not survive the Settlers, the surviving child or children may act alone.

Decisions of Trustee

2.03. While both Settlers are Trustees, either of the co-trustees may act independently, and each shall have the power to make any decision, undertake any action, or execute any documents affecting the Trusts created herein. If there is a trustee who is not also one of the Settlers, subject to the limitations on the distributive powers of a surviving spouse as Trustee, whenever more than one Trustee is designated to act concurrently, a majority of Trustees, whether individual or corporate, shall have the power to make any decision, undertake any action, or execute any documents affecting the Trusts created herein. In the event of a difference of opinion among the Trustee, the decision of a majority of them shall prevail, but the dissenting or non-assenting Trustee shall not be responsible for any action taken by the majority pursuant to such decision. After the death of the Deceased Settlor, if only two individual Trustees are in office, [they must act unanimously. If any individual and a corporate Trustee are in office, the determination of the individual Trustee shall be binding.] **OR** [each co-trustee shall have full and complete authority to exercise any of the above powers acting alone. HOWEVER, AND NOTWITHSTANDING ANY OF THE FOREGOING, THE FOLLOWING ACTIONS MUST HAVE THE WRITTEN CONSENT OF BOTH CO-TRUSTEES:

- (a) the sale or liquidation of any asset or assets for \$10,000.00 or more;
- (b) the purchase of any asset for \$10,000.00 or more;
- (c) the distribution of any asset or assets valued at \$10,000.00 or more; or
- (d) the entering into any agreement regarding an investment, securities purchase, partnership interest purchase, or similar transaction of any kind.]

Trust Protectors

2.04. I appoint the following persons, each to act solely and successively, in the order named, as trust protector (the "Trust Protector") of any trusts created by this document. If a named trust protector is unable or unwilling to act or to continue to act as trust protector, for any reason, including but not limited to incapacity or death, the next-named is appointed as trust protector with the same powers, rights, discretions, obligations, and immunities. If two persons are named and one is unable or unwilling to act or to continue to act, the other may act alone.

- (a) my ;
- (b) [RELATION F₁] [FIDUCIARY 1];
- (c) [CHILD 1].

ARTICLE III.
TRUST ESTATE

Contents of Trust Estate

3.01. All property subject to this instrument from time to time is referred to as the “**Trust Estate**” and shall be held, administered, and distributed as provided in this instrument. The Trustee shall hold, administer and distribute the property contributed to this trust, any other property that may be hereafter subject to this trust, and the income and proceeds attributable to all such property, in accordance with the provisions of this instrument.

Transfer

3.02. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties hereto, the Settlers hereby transfer and deliver to the Trustee and the Trustee’s successors the property described in Schedule A, which is attached to and made a part of this Agreement for all purposes, to have and to hold the same, and any cash, securities, or other property which the Trustee may, pursuant to any of the provisions of this Agreement, at any time hereafter hold or acquire. Such property, and all property hereafter subject to this Trust, shall constitute the Trust Estate, and shall be held, managed, administered, and distributed by the Trustee as hereinafter provided.

Additions to Trust

3.03. From time to time, the Trustee may accept additions to this trust from any source. All such additions shall become part of the Trust Estate and shall be held, administered, and distributed in accordance with the terms of this instrument. That additional property shall become part of the Trust Estate upon written acceptance of it by the Trustee. Any additions to the trust shall be made by designating in writing the property to be added. The titling of an account, deed, or similar asset in the name of the Trustee, as trustee of this trust, or any alternate or successor trustee acting under this instrument, shall be deemed to be a transfer to this trust. Any designation by a third party, whether by will, deed, account title designation, or similar transfer, shall also be a transfer to the Trust Estate. Any person or persons may designate this Trust as the beneficiary of death benefits, whether insurance benefits, pension benefits, or other benefits. Until such benefits mature, the Trustee shall have no responsibility with respect to those benefits.

Scope of Trust Estate

3.04. It is specifically the intention of the Settlers that all real and personal properties now owned by the Settlers are to be a part of this Trust; provided further, that all future real and personal properties acquired by the Settlers are to be a part of, or shall automatically become a part of, this Trust at the time acquired by the Settlers.

Character of Trust Assets

3.05. All community property of the Settlers transferred to this trust, and the proceeds of all such property, shall continue to be community property under the laws of Texas, subject to the provisions of this instrument. All separate property shall remain the separate property, respectively, of the contributing Settlor.

ARTICLE IV.

RIGHTS AND POWERS OF SETTLORS

Power of Revocation

4.01. During the joint lifetimes of the Settlers, any trust created by this instrument may be amended, revoked, or terminated, in whole or in part, by either Settlor acting alone as to any separate property of that Settlor and by both Settlers acting jointly as to any community property of the Settlers. After the death of the Deceased Settlor, the Surviving Settlor may at any time amend, revoke, or terminate, in whole or in part, the Survivor's Trust. All other trusts shall become irrevocable and shall not be subject to amendment after the death of the Deceased Settlor.

Method of Revocation or Amendment

4.02. Any amendment, revocation, or termination of any trust created by this instrument shall be made by written instrument signed by both Settlers, or by the Settlor making the revocation, amendment, or termination, and delivered to the Trustee. If the instrument making the revocation, amendment, or termination is signed by only one Settlor and the other Settlor is living at the time, a copy of the instrument making the amendment, revocation or termination shall also be delivered to the other Settlor. An exercise of the power of amendment substantially affecting the duties, rights, and liabilities of the Trustee shall be effective only if agreed to by the Trustee in writing.

Delivery of Property After Revocation

4.03. Notwithstanding the above, after any revocation or termination with respect to community property, the Trustee shall promptly deliver the designated property to the Settlers. Unless otherwise provided in the revocation or this trust instrument, any community property so returned shall continue to be the community property of the Settlers. After any revocation or termination with respect to separate property, the Trustee shall promptly deliver the designated property to the Settlor.

Trustee's Retention of Assets Upon Revocation

4.04. In the event of any revocation of all or part of the trust, the Trustee shall be entitled to retain sufficient assets to reasonably secure the payment of liabilities the Trustee

has lawfully incurred in administering the trust and any fees that have been earned by the Trustee, until such time as those liabilities have been discharged and fees paid, unless the Settlers indemnify the Trustee against loss or expense.

Power of Settlers to Direct Investments While Living

4.05. Notwithstanding any other provision in this instrument, during the joint lifetimes of the Settlers, the Settlers shall have the power to direct trust investments, which is defined as the power to direct the Trustee to do any or all of the following:

- (a) Invest trust funds in specified securities, properties, or other forms of investment;
- (b) Retain as part of the Trust Estate, for specified periods of time, securities, properties, or other forms of investment held in trust under this instrument; and
- (c) Sell, encumber, lease, abandon, or dispose of any trust property.

Any such directions with respect to any portion of the Trust Estate that is the Settlers' community property may be given only by the Settlers acting jointly. Any such directions with respect to any portion of the Trust Estate that is separate property of one Settlor may be given unilaterally by that Settlor. If the trust property is invested in accordance with the terms of the written direction, the Trustee shall not be liable for losses sustained as a direct or indirect result of the Trustee's compliance with that direction. All directions shall be in a writing signed by the Settlor or Settlers having the power to give the direction, specifying, if applicable, the period of time during which the instructions shall remain in effect and describing any other conditions affecting the directions.

Power to Direct Trust Investments After Death of Deceased Settlor

4.06. After the death of the Deceased Settlor, the Surviving Settlor shall have the power to direct trust investments (as defined in the previous section) of the Survivor's Trust. No person shall have the power to direct trust investments of any other trust after the death of the Deceased Settlor.

Power of Settlers to Borrow From Trust Estate While Living

4.07. Notwithstanding any other provision in this instrument, during the joint lifetimes of the Settlers, income or principal of the Trust Estate may be borrowed with or without security, as provided in this section. The loans shall be in such amounts and on such terms as specified in a signed writing filed with the Trustee.

- (a) The Settlers, acting jointly, shall have the power to borrow from the portion of the Trust Estate that is the Settlers' community property. Both Settlers shall

be required to sign the writing filed with the Trustee.

- (b) A Settlor whose separate property comprises any portion of the Trust Estate shall have the power to borrow from that portion of the Trust Estate.

Power to Borrow From Trust Estate After Death of Deceased Settlor

4.08. After the death of the Deceased Settlor, the Surviving Settlor may borrow, with or without security, from the income or principal of the Survivor's Trust, such amounts on such terms as he or she specifies in a signed writing filed with the Trustee.

Exercise of Rights and Powers of Settlers By Others

4.09. Any right or power that either Settlor could exercise personally under the terms of this instrument, including any power to amend, revoke, or terminate any trust created by this instrument, may be exercised for and in behalf of that Settlor by any attorney in fact who, at the time of the exercise, is duly appointed and acting for the Settlor under a valid and enforceable durable power of attorney and may not be exercised by any guardian of the Settlor.

Catastrophic Illness

4.10. If both Settlers are living and a catastrophic illness affects one of the Settlers, then the Trust Estate shall be divided into the separate property of the respective Settlers. Such division shall be made so as to preserve the Estate of the Settlor not so affected by the catastrophic illness. A catastrophic illness is one which is reasonably anticipated to extend for a period of six months or longer, and which renders the affected Settlor incapacitated or in need of full time care. If competent, a Settlor may make the determination to divide the Trust Estate in accordance with these provisions. If the Settlor affected by the catastrophic illness is not competent to manage his or her affairs, then the division shall be made by the person designated as the affected Settlor's attorney-in-fact in his or her Durable Power of Attorney, or by a court appointed conservator of the affected Settlor. The division of the property of the Trust Estate shall apportion to each Settlor his or her separate property and one-half of the community property. From and after the division, the share of the Trust Estate set aside for each Settlor shall be his or her sole and separate property for all purposes, and, if that property remains part of the Trust Estate, subject to the terms and conditions set forth within this Trust Agreement.

ARTICLE V.

DISTRIBUTIONS DURING JOINT LIVES OF SETTLORS

Payment of Community Property Income and Principal

5.01. So long as both Settlers are living, with regard to the Settlers' community property which comprises part of the Trust Estate:

- (a) The Trustee shall pay to or apply for the benefit of the Settlor, or either of them, all of the net income from that property, in monthly or other convenient installments (but not less often than annually) as the Settlor and the Trustee may agree upon from time to time.
- (b) The Trustee shall distribute to or apply for the benefit of the Settlor, or either of them, as much of the principal of that property as the Trustee, in the Trustee's discretion, deems necessary for the comfort, welfare, and happiness of the Settlor, or either of them; and
- (c) The Trustee shall distribute to the Settlor, or either of them, such amounts from the principal of that property, up to the whole thereof, as the Settlor, acting jointly, may request of the Trustee in writing.

Payment of Separate Property Income and Principal

5.02. So long as both Settlor are living, with regard to separate property of a Settlor which comprises part of the Trust Estate:

- (a) The Trustee shall pay to or apply for the benefit of the Settlor all of the net income from that property, in monthly or other convenient installments (but not less often than annually) as the Settlor and the Trustee may agree upon from time to time;
- (b) The Trustee shall distribute to or apply for the benefit of the Settlor as much of the principal of that property as the Trustee, in the Trustee's discretion, deems proper for the comfort, welfare, and happiness of the Settlor; and
- (c) The Trustee shall distribute to the Settlor as much of the principal of that property, up to the whole thereof, as the Settlor may request of the Trustee in writing.

Consideration of Other Resources When Distributing Principal

5.03. In exercising discretion under the above sections, the Trustee shall give the consideration that the Trustee deems proper to all other income and resources then readily available for use by the Settlor or Settlor, as the case may be, for the stated purposes and that are then known to the Trustee. All decisions of the Trustee regarding such payments, if any, are within the Trustee's sole, reasonable discretion.

ARTICLE VI.

DIVISION AND DISTRIBUTIONS AFTER DEATH OF FIRST SETTLOR

Specific Gifts on Death of Deceased Settlor

6.01. On the death of the Deceased Settlor, the Trustee shall distribute specific gifts

as stated in Section 15.01.

Limitation With Respect to Specific Gifts

6.02. The above-referenced specific gifts may be satisfied only out of the Deceased Settlor's one half (½) interest in his or her community property (if any) or the Deceased Settlor's separate property. Any remaining specific gifts required to be distributed on the death of the Surviving Settlor shall be transferred to the Remainder Trust.

Payment of Taxes, Debts, and Expenses

6.03. After the Deceased Settlor's death, upon receipt by the Trustee of a written statement from the personal representative of the Deceased Settlor's estate requesting that the Trustee pay death taxes, debts, and expenses (as defined in Section 15.02), with respect to any property in the Deceased Settlor's estate, the Trustee shall pay, either directly or to the personal representative, any amounts requested by the personal representative for those purposes, in the manner specified below. The Trustee may rely upon the personal representative's statement and shall not be liable for any act or omission by the personal representative in protesting or failing to protest the legality, propriety, or amount of the death taxes, debts, or expenses. If there is no personal representative, the Trustee shall make the payments directly. Payments of debts and expenses shall be made by the Trustee from the Trust Estate. Payments of any debts allocable against the separate property of the Deceased Settlor shall be charged against the contents of the Remainder Trust (as defined below). Debts allocable against community property shall be allocated to the Survivor's Trust and the Remainder Trust in accordance with Texas law in effect at the date of the Deceased Settlor's death, so long as charges against the Survivor's Trust do not exceed the value of community property allocable to that share. All death taxes payable by reason of the Deceased Settlor's death shall be allocated and apportioned among the persons interested in the Deceased Settlor's estate as provided in the Texas Estates Code. Any death taxes attributable to any property passing to the Surviving Settlor that qualifies for the federal estate tax marital deduction shall be paid pro rata out of property that does not qualify for the federal estate tax marital deduction, so that the property qualifying for the federal estate tax marital deduction shall pass to or in trust for the Surviving Settlor free of any death taxes.

Division and Allocation of Trust Estate

6.04. Upon the death of the Deceased Settlor, the Trustee shall divide the Trust Estate, including any additions made to it by reason of the Deceased Settlor's death, such as from the Deceased Settlor's probate estate and life insurance policy or employee benefit plan proceeds, and shall allocate the Trust Estate to three separate trusts:

- (a) The Survivor's Trust. The Survivor's Trust shall include that portion of the Trust Estate consisting of the Surviving Settlor's one half (½) interest in the

community property contributed to the Trust Estate and all of the Surviving Settlor's separate property contributed to the Trust Estate.

- (b) The Marital Trust. The Marital Trust shall consist of: (i) all jewelry, clothing, household furniture and furnishings, chinaware, silver, pictures, works of art, books, automobiles, boats, and other tangible articles of a personal nature, together with all policies of insurance on or in connection with the use of such property, which is a part of the Trust Estate (which have not been allocated as special gifts in this trust agreement); plus (ii) such other assets selected by the Trustee equal in value, when added to the final estate tax value of all other property included in the Deceased Settlor's gross estate that passes to the Surviving Settlor and that qualifies for the federal estate tax marital deduction, to an amount that will entitle the Deceased Settlor's estate to the minimum marital deduction necessary to reduce such taxable estate to an amount on which no federal estate tax is due and that fully utilizes the federal unified credit. The Marital Trust assets shall be satisfied only from assets qualifying for the marital deduction, and shall be valued as of the date allocated or distributed by the Trustee. In determining the amount of this devise, the values for federal estate tax purposes shall control. Further:
- (1) *Intention That Marital Trust Qualify for Marital Deduction*. Except as otherwise provided in this instrument with respect to the QTIP election, no fiduciary shall take any action or exercise any power that may impair the federal estate tax marital deduction, and any such power granted to the Trustee under this instrument shall be void.
 - (2) *Power to Make QTIP Election*. In the event that no personal representative is appointed for the estate of the Deceased Settlor, it is expected, but not required that the Trustee will elect to qualify all of the property allocated to the Marital Trust for the federal estate tax marital deduction, unless there is a compelling reason not to make any election or to make only a partial election. A compelling reason would exist, for example, if making the full election would likely increase the sum of the death taxes imposed on the Deceased Settlor's estate and the Surviving Settlor's estate. If the Trustee elects to qualify any property allocated to the Marital Trust for the federal estate tax marital deduction, the Trustee may elect, under any applicable provision of the Internal Revenue Code then in effect, to have all or any part of the estate tax election disregarded for purposes of the federal generation-skipping transfer tax. Any decision of the Trustee with regard to these matters shall be conclusive and binding on all persons affected.

- (3) *Administration of Trust for Marital Deduction.* If the executor or Trustee, as applicable, has elected that the trust qualify for the federal estate tax marital deduction, the Trustee shall thereafter administer the trust in a manner that will not invalidate the election or disqualify the property in which the Surviving Settlor has a qualifying income interest for life. Any provisions of this trust that could be deemed to invalidate that qualification shall be disregarded.
- (c) The Remainder Trust. The Remainder Trust shall consist of property not allocated to the Marital Trust or the Survivor's Trust. The amount of this gift may be affected by a number of factors, including but not limited to:
 - (1) The net value of all property disposed of by this trust instrument, the will of the Deceased Settlor, or other assets that are included in the gross taxable estate of the Deceased Settlor and that do not qualify for the federal estate tax marital or charitable deduction;
 - (2) The value of all property disposed of by the Deceased Settlor that constitutes "adjusted taxable gifts";
 - (3) All charges to principal that are deductible under Internal Revenue Code Section 2053 but that are not deducted in computing the federal estate tax liability for the gross estate of the Deceased Settlor; and
 - (4) Actions of the Deceased Settlor's executor in exercising certain tax elections.
 - (d) Allocation and Valuation of Assets. In allocating assets between the Marital Trust and the Remainder Trust, the Trustee shall allocate the trust assets that qualify for the marital deduction between the Marital Trust and the Remainder Trust in cash or in kind, or partly in each, on a pro rata or non pro rata basis, and in undivided interests or not; subject, however, to the following:
 - (1) *Qualification for Marital Deduction.* Only assets that qualify for the marital deduction shall be allocated to the Marital Trust.
 - (2) *Valuations of Allocations in Kind.* Assets allocated in kind shall be valued for purposes of allocation on the date or dates of distribution.
 - (3) *Foreign Death Tax Credit.* The Trustee shall not allocate assets that qualify for the foreign death tax credit to the Marital Trust unless all other assets or interests available for allocation have been so allocated.
 - (4) *Income in Respect of a Decedent.* The right to any income in respect of a decedent under Section 691 of the Internal Revenue Code that is either (i) an installment sale under Section 453 of the Internal Revenue

Code, (ii) an employee benefit plan payable in annuity form, or (iii) any other annuity or right to periodic deferred payments shall be allocated first to the marital deduction share to the extent the property so allocated qualifies for the federal estate tax marital deduction and does not exceed the amount of the Marital Trust.

- (e) Disclaimer of Property. Any property or portion of property that is disclaimed by the Surviving Settlor shall be held, administered, and distributed according to the terms of the Remainder Trust. However, if the Surviving Settlor also disclaims an interest in all or any portion of the Remainder Trust, the disclaimed interest shall be administered and distributed as if the Surviving Settlor predeceased the Deceased Settlor.

Postponement of Allocation

6.05. The Trustee may defer, for a period reasonably required for the administration of the Deceased Settlor's estate, any distribution or division of trust assets which it is directed to make at the death of the Deceased Settlor by other provisions of this instrument.

ARTICLE VII.

ADMINISTRATION OF SURVIVOR'S TRUST

Survivor's Trust Income

7.01. The Trustee shall pay to or apply for the benefit of the Surviving Settlor, so long as the Surviving Settlor lives, the entire net income of the trust, in monthly or other convenient installments agreed upon by the Surviving Settlor and the Trustee, but not less often than annually.

Discretionary Payment of Survivor's Trust Principal

7.02. At any time or during the trust term, the Trustee shall pay to or apply for the benefit of the Surviving Settlor so much of the principal of the trust as the Trustee deems proper for the Surviving Settlor's comfort, welfare, and happiness. In exercising discretion, the Trustee shall give the consideration that the Trustee deems proper to all other income and resources then readily available to the Surviving Settlor for use for these purposes and that are then known to the Trustee. All decisions of the Trustee regarding payments under this subsection, if any, are within the Trustee's discretion and shall be final and incontestable by anyone.

Right of Surviving Settlor to Withdraw Principal

7.03. The Trustee shall pay to the Surviving Settlor as much of the trust principal as the Surviving Settlor may from time to time demand in a signed writing delivered to the Trustee.

General Power of Appointment

7.04. Upon the death of the Surviving Settlor, all of the trust property (including the trust principal, all net income then held by the Trustee, and all income then accrued but not collected by the Trustee) shall be paid over to whoever the Surviving Settlor may direct by will, provided only that no exercise of this power of appointment shall be effective unless it refers to this instrument and expressly indicates an intention to exercise this power of appointment. The Trustee may rely upon any instrument admitted to probate as the last will of the Surviving Settlor in carrying out the terms of the power of appointment and shall not be liable for any good-faith act in reliance upon that will, even if for any reason it is later determined to be invalid with respect to its purported exercise of this power of appointment. If the Trustee receives no notice of the existence of a will of the Surviving Settlor within six months after the death of the Surviving Settlor, the Trustee may distribute the trust assets and income as though this power of appointment had not been exercised and shall in that event be conclusively presumed to have acted in good faith, even if a valid will is thereafter discovered.

Payment of Death Taxes, Debts, and Expenses

7.05. On the death of the Surviving Settlor and subject to any power of appointment exercised by him or her, the Trustee, in the Trustee's discretion, may pay out of the income or principal (or partly from each) of the Survivor's Trust a portion of the death taxes, debts, and expenses (as defined in Section 15.02) arising on the death of the Surviving Settlor reasonably allocable to the Survivor's Trust unless the Trustee determines that other adequate provisions have been made for the payment of these taxes, debts, and expenses. All decisions made by the Trustee regarding payments under this subsection, if any, are within the Trustee's discretion and shall be final and incontestable by anyone.

Default Provision for Distribution of Principal and Income

7.06. In default of the power of appointment, or to the extent that an attempt to exercise the power was ineffectual, the entire remaining principal, all net income then held by the Trustee, and all income then accrued but not collected by the Trustee, after any payment of taxes, debts, and expenses pursuant to the applicable provisions of this instrument, shall be distributed in the manner specified in Section 9.05 of this trust instrument applicable to the remainder provisions of the Remainder Trust. However, the property disposed of pursuant to this subsection shall not be considered to be part of the Remainder Trust unless this trust and the Remainder Trust have the same inclusion ratios for federal generation-skipping transfer tax purposes.

ARTICLE VIII.
ADMINISTRATION OF MARITAL TRUST

Payment of Income

8.01. The Trustee shall pay to or apply for the benefit of the Surviving Settlor, so long as the Surviving Settlor lives, the entire net income of the trust, in monthly or other convenient installments agreed upon by the Surviving Settlor and the Trustee, but not less often than annually. In determining the net income of the trust distributable to the Surviving Settlor, the Trustee shall include all income that must be considered as income in order for the trust to qualify for the marital deduction under the federal estate tax law, and shall make no deductions from gross income that would prevent the trust from qualifying for that marital deduction, notwithstanding any contrary provisions of this instrument or any applicable provisions of state law. Assuming the trust has qualified for the marital deduction, then any grant of rights, powers, discretion, and authority to the Trustee in any provision of this instrument or any statute relating thereto shall not be effective if and to the extent that such provision or statute, if effective, would disqualify, for federal estate tax purposes, the marital deduction trust held under this section. It is the intention of the Settlor that the Surviving Settlor as the beneficiary of a marital deduction trust, shall have substantially that degree of beneficial enjoyment of the trust during his or her lifetime that the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust, and the Trustee shall not exercise the Trustee's discretion in a manner that is not in accord with this expressed intention. It is also the intention of the Settlor that the trust produce for the Surviving Settlor during his or her lifetime the income, or that the Surviving Settlor shall have the benefit of the trust property, as is consistent with the value of the trust property and with its preservation.

Discretionary Payment of Principal

8.02. At any time or times during the trust term, the Trustee shall pay to or apply for the benefit of the Surviving Settlor so much of the principal of the trust as the Trustee deems proper to pay the reasonable expenses of the Surviving Settlor for his or her health, education, support, and maintenance. In exercising discretion, the Trustee shall give the consideration that the Trustee deems proper to all other income and resources that are readily available to the Surviving Settlor for use for these purposes and that are then known to the Trustee. All decisions of the Trustee regarding payments under this subsection, if any, are within the Trustee's discretion and shall be final and incontestable by anyone.

Termination of Marital Trust

8.03. The Marital Trust shall terminate upon the death of the Surviving Settlor. Upon termination of the trust, the net income of the trust then accrued but uncollected and all net income remaining in the hands of the Trustee shall be distributed to the estate of the

Surviving Settlor. The trust principal shall be dealt with as set forth below in this section.

Payment of Death Taxes

8.04. The Trustee shall determine from the personal representative of the estate of the Settlor's spouse the amount of death taxes allocable to the property of the trust and shall set aside a portion of the trust principal for the purpose of paying those taxes upon written demand by the personal representative.

Distribution of Balance of Trust Property

8.05. The balance of the trust principal (or all of the trust principal, if the personal representative of the estate of the Surviving Settlor does not in due course make written demand for the federal estate tax allocable to the property of the Marital Trust) shall be distributed in the manner specified in Article IX applicable to the remainder provisions of the Remainder Trust. However, the property disposed of pursuant to this subsection shall not be considered to be part of the Remainder Trust unless this trust and the Remainder Trust have the same inclusion ratios for federal generation-skipping transfer tax purposes.

ARTICLE IX.

ADMINISTRATION OF REMAINDER TRUST

Disposition During Life of Surviving Settlor

9.01. During the lifetime of the Surviving Settlor, the Trustee shall hold, administer, and distribute the assets of the Remainder Trust as follows: at any time or times, the Trustee shall pay to or apply for the benefit of the Surviving Settlor so much of the net income and principal of the trust as the Trustee deems proper to pay the reasonable expenses of the Surviving Settlor for his or her health, education, support, and maintenance. In exercising discretion, the Trustee shall give the consideration that the Trustee deems proper to all other income and resources that are known to the Trustee and that are readily available to the Surviving Settlor for use for these purposes. All decisions of the Trustee regarding payments under this subsection, if any, are within the Trustee's sole, reasonable discretion and shall be final and incontestable by anyone. The Trustee shall accumulate and add to principal any net income not distributed.

Specific Gifts on Death of Surviving Settlor

9.02. On the death of the Surviving Settlor, the Trustee shall distribute specific gifts as stated in Section 15.01.

Disposition of Remainder Upon Death of Surviving Settlor

9.03. All remaining Trust principal, with all accumulated income thereof, directed to

be disposed of under the provisions herein, shall, upon the death of the Surviving Settlor, be held in Trust for the benefit of the following-named beneficiaries of the Settlers and shall be disposed of as provided in the following Sections.

Beneficiaries

9.04. The beneficiaries of the Settlers shall be determined as of the date of the death of the Surviving Settlor, and shall consist of those children of the Settlers who are living as of such date, plus the living issue of such children as may have predeceased the Surviving Settlor.

Allocation of Remainder

9.05. The Trustee shall allocate the Estate per stirpes among the beneficiaries of the Settlor specified in Section 9.04; provided further, that each of said shares, if not immediately distributed, shall constitute and be held, administered, and distributed by the Trustee as a separate Trust, as follows:

- (a) One such share shall be set aside for the benefit of each of the children of the Settlers who may then be living and, if held in Trust, shall constitute the Trust Estate of that child's Trust.
- (b) One such equal share of the Trust Estate shall be set aside for the benefit of the surviving issue of each of the children of the Settlers who may then be deceased but leave surviving issue, per stirpes and not per capita, and, if held in Trust, shall constitute the Trust Estate of such issue's Trust.

Distribution of Remainder for Living Children

9.06. The Trustee shall apply and distribute the net income and principal of each of the shares of the Trust Estate set aside for the benefit of the then living children of the Settlers as follows:

- (a) Until each beneficiary reaches the age of twenty-five (25) years or dies, the Trustee shall pay to or apply for the benefit of each beneficiary in monthly or other convenient installments as much of the net income from his or her share of the trust estate, as the Trustee in his discretion deems advisable for the beneficiary's proper care, support, maintenance, and education. The Trustee shall accumulate and add to the principal of each beneficiary's share of the trust estate the balance, if any, of net income.
- (b) If at any time, in the discretion of the Trustee, any beneficiary should be in need of additional funds for his or her proper care, support, maintenance, or education, the Trustee shall in his discretion, in addition to the other

payments provided for in this Section, pay to or apply for the benefit of any such beneficiary an amount from the principal of his or her share of the trust estate that the Trustee deems advisable.

- (c) As each above-described beneficiary attains age twenty-five (25) or dies, the above-described payments shall cease. However, prior to the distribution of all remaining principal and interest to the beneficiary, the Trustee may in his or her sole discretion pay to or apply for the benefit of such beneficiary such sums from the income or principal of the beneficiary's share of the Trust Estate as may be necessary for the beneficiary to make a down payment on a home or a business, or for the beneficiary's extraordinary medical needs.
- (d) The remaining Trust Estate Share held for each above-described beneficiary shall be distributed to him or her free and clear of trust, upon his or her request therefor, upon his or her attaining age twenty-five (25). When all of the beneficiary's Trust Estate Share has been distributed, the trust held for such beneficiary shall terminate.
- (e) If an above-described beneficiary dies prior to distribution of the complete amount of the Trust Estate allocated to him or her, the remaining amounts in such Trust Estate shall be administered for his or her surviving issue pursuant to the provisions below. If such beneficiary does not leave any surviving issue, the remaining Trust Estate shall be allocated among the remaining beneficiaries pursuant to Section 9.05.

Distribution of Remainder for Other Beneficiaries

9.07. Each share of the Trust Estate set aside for a beneficiary other than a living child of the Settlers shall be held and administered as follows: until each such beneficiary reaches the age of twenty-one (21) years or dies, the Trustee shall pay to or apply for the benefit of each beneficiary in monthly or other convenient installments as much of the net income from his or her share of the trust estate, as the Trustee in his or her discretion deems advisable for the beneficiary's proper care, support, maintenance, and education. The Trustee shall accumulate and add to the principal of each beneficiary's share of the trust estate the balance, if any, of net income. When such beneficiary reaches the age of twenty-one (21) years or dies, the Trustee shall then distribute all income and principal of the share to such beneficiary or his or her estate, if applicable.

Alternate Distributions

9.08. If any of the above beneficiaries are unable or unwilling to take any portion of the Trust Estate, then the Trustee shall distribute that portion of the property of that beneficiary to the issue of such beneficiary per stirpes and, if none, then to the other beneficiaries proportionate to each beneficiary's interest in the Trust and, if there are no

remaining beneficiaries, then: ½ to the living heirs at law of the first Settlor to die and ½ to the living heirs at law of the last Settlor to die; provided further, that said heirs at law of each Settlor shall take the Trust property in the same priority and in the same distributive order as listed in the law of intestate succession of the State of Texas as in force on the date of the signing of this Agreement.

ARTICLE X.
GENERATION-SKIPPING TRUSTS

Application to Trusts Created

10.01. The provisions of this Article apply to any trust under this instrument that is created upon the Deceased Settlor's death and in which there is property that is or may become subject to the federal generation-skipping transfer tax.

Discretionary Power to Split Trusts

10.02. If a trust created by this agreement would be partially exempt from generation-skipping tax by reason of an allocation of generation-skipping tax exemption to it, before the allocation the Trustee, in his or her discretion, may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from generation-skipping tax. In addition, if a trust created by this agreement is entirely exempt or entirely nonexempt from generation-skipping tax and adding property to the trust would partially subject it to generation-skipping tax, the Trustee, in his or her discretion, may hold that property as a separate trust in lieu of making the addition. Except as otherwise provided in this agreement, the trusts created shall have the same terms and conditions, but the Trustee shall not make discretionary distributions from the income or principal of the exempt trust to beneficiaries who are non-skip persons so long as any readily marketable assets remain in trusts other than the exempt trust. Upon division or distribution of an exempt trust and a nonexempt or partially exempt trust held under this agreement, the Trustee, in his or her discretion, may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur.

Allocation of Exemption to Part of Trust

10.03. Upon written notification by the Deceased Settlor's executor that the executor intends to allocate any part of the generation-skipping transfer tax exemption that is available to the Deceased Settlor under Internal Revenue Code Section 2631(a) to some but not all of the property in any trust to which this section applies (or, if applicable, upon the decision of the Trustee to make such an allocation of the generation-skipping transfer tax exemption), that trust shall be divided into two separate trusts, to be designated as the Exempt Trust and the Nonexempt Trust. The Exempt Trust shall contain the share of the property of that trust equal in value to the amount of the generation-skipping transfer tax

exemption that the executor intends to allocate to the trust and shall have an inclusion ratio of zero (0) for federal generation-skipping transfer tax purposes. The Nonexempt Trust shall contain the balance of the property of that trust and shall have an inclusion ratio of one (1) for federal generation-skipping transfer tax purposes. It is the intention of the Settlers that the executor or Trustee, as applicable, then actually allocate the generation-skipping transfer tax exemption to the Exempt Trust and not to the Nonexempt Trust. The Trustee shall not be liable for relying on the written instructions of the executor when acting in accordance with the provisions of this subsection.

Allocation or Non-Allocation of Exemption to Entire Trust

10.04. Regardless of whether subsection (a) of this section applies, if the amount of the Deceased Settlor's generation-skipping transfer tax exemption actually allocated by the executor or Trustee, as applicable, to a trust to which this section applies is equal to the value of the property of that trust so that the entire trust has an inclusion ratio of zero (0) for federal generation-skipping transfer tax purposes, the entire trust shall be referred to as the Exempt Trust. On the other hand, if no part of the Deceased Settlor's generation-skipping transfer tax exemption is actually allocated to the trust by the Deceased Settlor's executor or Trustee, as applicable, so that the entire trust has an inclusion ratio of one (1) for federal generation-skipping transfer tax purposes (or if the Deceased Settlor is not the transferor of that trust for generation-skipping transfer tax purposes), the entire trust shall be referred to as the Nonexempt Trust.

Trust Distributions

10.05. The Trustee may, but is not required to, administer the trusts under this instrument to which this section applies in such a manner that distributions made during the trust terms to "skip persons" (as defined in Internal Revenue Code Section 2613(a) or any equivalent successor statute) are made from Exempt Trusts, and distributions made during the trust terms to "non-skip persons" (as defined in Internal Revenue Code Section 2613(b) or any equivalent successor section) are made from Nonexempt Trusts.

Trustee's Power to Petition Court to Amend Nonexempt Trust

10.06. If the Trustee determines that the burdens of generation-skipping transfer taxes, income taxes, and death taxes on a Nonexempt Trust, either Settlor's estate, or the beneficiaries of that trust would be reduced, the Trustee may, in order to avoid impairment of the accomplishment of the purposes of the Settlers, petition the court to amend the trust to grant to one or more trust beneficiaries who are non-skip persons in a generation below the Settlers a general testamentary power of appointment over all or a specified portion of that Nonexempt Trust. Any power to amend the trust is within the discretion of the court.

Purpose of Article

10.07. The purpose of this Article is to allow the Trustee to administer the trusts so as to decrease the amount of generation-skipping transfer taxes owed on generation-skipping transfers from the trusts. The Trustee shall balance that consideration against any other tax and nontax considerations, and may disregard the generation-skipping transfer tax consequences to the extent that the Trustee determines that doing so will allow the Trustee to carry out the Settlers' intentions in creating the trusts. All decisions of the Trustee under this subsection are within the Trustee's discretion and shall be final and incontestable by anyone.

Allocation of Exemption of Surviving Settlor to Nonexempt Trust

10.08. If, upon the death of the Surviving Settlor, (1) the Surviving Settlor is considered to be the transferor of any Nonexempt Trust established by this instrument for generation-skipping transfer tax purposes, and (2) the Surviving Settlor's executor or the Trustee, as applicable, allocates any part of the generation-skipping transfer tax exemption that is available to the Surviving Settlor under Internal Revenue Code Section 2631(a) (or any equivalent successor section) to that Nonexempt Trust so that the entire trust then has an inclusion ratio of zero (0) for federal generation-skipping transfer tax purposes, that trust shall then be considered to be an Exempt Trust for purposes of this section.

No Disqualification of Marital Deduction

10.09. In no event may the Trustee exercise any power under this section in a manner that will impair the marital deduction.

ARTICLE XI.

TRUSTEE PROVISIONS

Definition of Trustee

11.01. Reference in this instrument to "the Trustee" shall be deemed a reference to whoever is then serving as Trustee, and shall include alternate or successor Trustees or Co-Trustees, unless the context requires otherwise. Any successor Trustee appointed under this instrument shall have the same powers, rights and responsibilities as the Trustee originally named.

Removal and Replacement of Trustee by Settlers

11.02. While both Settlers are alive, the Settlers shall have the power, at any time and for any reason, with or without cause, to remove any Trustee acting under this instrument, and notwithstanding any other provision of this instrument, designate another Trustee to replace the removed Trustee. Removal shall be effected by giving a written notice of removal

to the Trustee to be removed and to the designated successor. The removal shall become effective upon the delivery to the Settlers of a written acceptance of the trust by the successor Trustee, and the Settlers shall promptly notify the Trustee being removed of the receipt of that acceptance.

Bond

11.03. No bond shall be required of any individual serving as a Trustee under this instrument.

Compensation of Trustees

11.04. An individual Trustee serving under this instrument shall be entitled to reasonable compensation for services rendered in such capacity. Any corporate Trustee serving under this trust instrument shall be entitled to reasonable compensation for its services in accordance with its standard schedule of trust fees, as existing from time to time.

Reimbursement for Expenses

11.05. Any Trustee shall be entitled to reimbursement from the Trust Estates for all expenses, including, but not limited to, compensation to agents and fees for professional services incurred in the administration thereof.

Procedure for Resignation

11.06. Any Trustee may resign at any time, without giving a reason for the resignation, by giving written notice, at least thirty (30) days before the time the resignation is to take effect, to the Settlers, if living, to any other Trustee then acting, to any persons authorized to designate a successor Trustee, to all then living beneficiaries known to the Trustee and to the successor Trustee. A resignation shall be effective upon written acceptance of the trust by the successor Trustee. Notwithstanding the foregoing, any such resignation by a Trustee shall be effective upon the execution, by each of the persons described above who is entitled to such notice, of an instrument waiving such notice and accepting such Trustee's resignation as effective immediately. Further, if any such person is then under a legal disability, such notice may be given to (and such waiver may be executed by) the guardian of such person's estate, or if there is no such guardian, to the individual having the care or custody of such person.

General Powers of Trustee

11.07. To carry out the purposes of the trusts created under this instrument, and subject to any limitations stated elsewhere in this instrument, the Trustee shall have all of the following powers, in addition to all of the powers now or hereafter conferred on Trustee by the Texas Trust Code, and may continue to exercise each power after termination of each

trust until final distribution of the properties of such trust:

- (a) Without an order of the court, sell (publicly or privately, for cash or on deferred payments, and with or without security), convey, exchange, partition, and divide trust property; grant options for the sale or exchange of trust property for any purpose, whether the contract is to be performed or the option is to be exercised within or beyond the term of the trust; pool or unitize any trust property and lease trust property for any purpose, for terms within or extending beyond the expiration of the trust, regardless of whether the leased property is commercial or residential and regardless of the number of units leased.
- (b) Engage in any transactions with the personal representative of the estate of a Settlor that are in the best interest of any trusts created in this instrument without responsibility or liability for any loss resulting to the trust from any such transaction.
- (c) Manage, control, improve, and maintain all real and personal trust property.
- (d) Subdivide or develop land; make or obtain the vacation of plats and adjust boundaries, or adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate land or easements to public use with or without consideration.
- (e) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing party walls or buildings, and erect new party walls or buildings, as the Trustee deems advisable.
- (f) Employ and discharge agents and employees, including but not limited to attorneys, accountants, investment and other advisors, custodians of assets, property managers, real estate agents and brokers, and appraisers, to advise and assist the Trustee in the management of any trusts created under this trust instrument, and compensate them from the trust property.
- (g) With respect to securities held in trust, exercise all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and pay assessments and other sums deemed by the Trustee necessary for the protection of the trust property; participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and, in connection therewith, deposit securities with and transfer title to any protective or other committee under such terms as the Trustee deems advisable; exercise or sell stock subscription or conversion rights; and accept and retain as investments of the trust any securities or other property

received through the exercise of any of the foregoing powers.

- (h) Hold securities or other trust property in the Trustee's own name or in the name of a nominee, with or without disclosure of the trust, or in unregistered form, so that title may pass by delivery, and without thereby increasing or decreasing such Trustee's liability as a fiduciary.
- (i) Deposit securities in a securities depository that is either licensed or exempt from licensing.
- (j) Borrow money for any trust purpose from any person or entity, including one acting as Trustee under this instrument, on such terms and conditions as the Trustee deems advisable, and obligate the trust for repayment; encumber any trust property by mortgage, deed of trust, pledge, or otherwise, whether for terms within or extending beyond the term of the trust, as the Trustee deems advisable, to secure repayment of any such loan; replace, renew, and extend any such loan or indebtedness; and pay loans or other obligations of the trust deemed advisable by the Trustee.
- (k) Procure and carry, at the expense of the trust, insurance in such forms and in such amounts as the Trustee deems advisable to protect the trust property against damage or loss, and to protect the Trustee against liability with respect to third persons.
- (l) Enforce any obligation owing to the trust, including any obligation secured by a deed of trust, mortgage, or pledge held as trust property, and foreclose any security interest or otherwise purchase any property subject to a security instrument held as trust property at any sale under the instrument.
- (m) Extend the time for payment of any note, bond, mortgage or other obligation held as an asset of, and owing to, the trust, including accrued or future interest, and extend the time for repayment beyond the term of the trust; or hold any such obligation past maturity; or consent to alteration of any terms of any such obligation.
- (n) Pay or contest any claim against the trust; release or prosecute any claim in favor of the trust; or, in lieu of payment, contest, release, or prosecution, adjust, compromise, settle or abandon any such claim, in whole or in part, and with or without consideration.
- (o) At trust expense, prosecute or defend actions, claims, or proceedings of whatever kind for the protection of the trust property and of the Trustee in the performance of the Trustee's duties, and employ and compensate attorneys, advisers, and other agents as the Trustee deems advisable.
- (p) Make loans (including loans to the personal representative of the estate of the

Settlors, in his or her capacity as personal representative, or to a beneficiary) and guarantee loans (including loans of a beneficiary) upon such terms and conditions as the Trustee deems advisable.

- (q) As to a corporate fiduciary acting as a Trustee under this instrument, deposit trust funds as a permanent investment with itself or an affiliated institution pursuant to Section 113.057 of the Texas Trust Code.
- (r) The Trustee shall have the power to invest in, continue, or participate in the ownership, operation, formation and reorganization of any business or other investment enterprise in any form including a sole proprietorship, partnership, limited partnership, corporation or association, and the Trustee may effect any change in the organization of the business or enterprise.
- (s) The Trustee shall have the power to retain property received into the trust at its inception or later added to the trust, as long as the Trustee considers that retention in the best interests of the trust or in furtherance of the goals of the Settlers in creating the trust, as determined from this trust instrument, but subject to the standards set forth in Texas Trust Code Section 113.056.
- (t) The Trustee shall have the power to calculate profits, losses, income, expenses, and all items of accounting pursuant to the requirements of the Internal Revenue Code, as amended.

Trustee's Power to Invest Property

11.08. Subject to the standards set forth in Texas Trust Code Section 113.056, the Trustee shall have the power to invest in and acquire every kind of property, real, personal, or mixed, segregated or undivided (including but not limited to mineral fee, leasehold, royalty or any other interest in oil, gas and other minerals, or any of them) and every kind of investment, including but not limited to obligations of the United States government.

Power Over Unproductive Property

11.09. The Trustee shall have the power to retain or acquire unproductive or underproductive property if the Trustee determines such action to be in the best interest of the income beneficiary; provided, however, that as to any assets of the Marital Trust, the Surviving Settlor shall have the right, by delivery of a written instrument to the Trustee, to require the Trustee to make unproductive property productive, within a reasonable time following receipt of the request.

Authority to Allocate Principal and Income

11.10. The Trustee, in such Trustee's sole, reasonable discretion, shall allocate or apportion the revenues, receipts or proceeds of the trust as to principal and income and shall

allocate or apportion the charge of disbursements, expenses, depreciation, depletion, amortization, obsolescence and similar or related charges and accruals or losses of the trust as to principal or income, and the Trustee's determination need not necessarily be according to the provisions of the Texas Trust Code; provided, however, that administration expenses may be charged against income only to the extent that the authority to do so or the charge thereto does not create a material limitation on my spouse's right to the income of any bequest intended to or elected to qualify for the estate tax marital deduction. When such discretion is not exercised by the Trustee, the provisions of the Texas Trust Code shall control, except as otherwise provided herein. If a beneficiary is serving as a Trustee under this instrument, the Trustee shall have no power to make a discretionary allocation of receipts and disbursements with respect to any trust of which such Trustee is a beneficiary.

Digital Assets

11.11. The Trustee shall have and may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (1) any kind of computing device of the Settlers; (2) any kind of data storage device or medium of the Settlers; (3) any electronically stored information of the Settlers; (4) any user account of the Settlers; and (5) any domain name of the Settlers. The Trustee may obtain copies of any electronically stored information of the Settlers from any individual or entity that possesses, custodies, or controls that information. The Settlers hereby authorize any individual or entity that possesses, custodies, or controls any electronically stored information of the Settlers or that provides to the Settlers an electronic communication service or remote computing service, whether public or private, to divulge to the Trustee: (1) any electronically stored information of the Settlers; (2) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (3) any record or other information pertaining to the Settlers with respect to that service. This authorization is to be construed to be the Settlers's lawful consent under the Revised Uniform Fiduciary Access to Digital Assets Act; the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. The Trustee may employ any consultants or agents to advise or assist him or her in decrypting any encrypted electronically stored information of the Settlers or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and the Settlers hereby authorize the Trustee to take any of these actions to access: (1) any kind of computing device of the Settlers; (2) any kind of data storage device or medium of the Settlers; (3) any electronically stored information of the Settlers; and (4) any user account of the Settlers. The terms used in this paragraph are to be construed as broadly as possible, and the term "user account" includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

Transaction With Trustee Authorized

11.12. To the full extent permitted by law, the Trustee shall not be disqualified to enter into any sale, loan or other transaction on behalf of a trust created under this instrument for the reasons only that another party to such transaction is (i) a trust (including another trust created under this instrument) of which a Trustee is a Trustee, (ii) a business controlled directly or indirectly by a Trustee, an executor or a beneficiary of the estate of a Settlor or any trust created under this instrument, (iii) a Trustee or a beneficiary of any trust created under this instrument acting in such party's own behalf, or (iv) an Executor or a beneficiary of the estate of a Settlor acting in that party's own behalf.

Power to Combine Trust Assets

11.13. Each trust created under this instrument shall constitute a separate trust and be administered accordingly; however, the assets of all of the trusts may be combined for bookkeeping purposes and held for the trust beneficiaries without physical division into separate trusts until time of distribution.

Early Termination of Trusts

11.14. The Trustee shall have the power, in the Trustee's discretion, to petition the court to terminate any trust created under this trust instrument, in order to avoid impairment of the accomplishment of the purposes of the Settlers, or whenever the fair market value of the trust becomes so small in relation to the costs of administration as to make continuing administration uneconomical, or contrary to the purposes of the trust. The Trustee shall have the power, in his or her discretion, to terminate any trust without court involvement whenever the fair market value of the trust falls below \$5,000.00. Upon termination, the Trustee shall distribute the principal and any accrued or undistributed net income to the income beneficiaries in proportion to their shares of the income. If no fixed amount of income is payable to specific beneficiaries, the Trustee shall distribute the principal and any accrued or undistributed net income in equal shares to those beneficiaries who would then be entitled to income payments from the trust.

Division or Distribution in Cash or Kind

11.15. In order to satisfy a pecuniary gift or to distribute or divide trust assets into shares or partial shares, the Trustee shall have sole, reasonable discretion to partition, distribute or divide those assets in kind, compose shares including undivided interests, or partition undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind (including composing shares differently). Property distributed to satisfy a pecuniary gift under this instrument shall be valued at its fair market value at the time of distribution. The Trustee shall have sole, reasonable discretion as to the timing of any distribution under this

instrument and as to the proper persons, trust or trusts entitled to receive a distribution under this instrument. The use of the terms “divide” and “division” in this instrument shall not be considered to require any partition. All decisions of the Trustee under this section are within the Trustee’s discretion and shall be final and incontestable by anyone.

Payments to Legally Incapacitated Persons

11.16. If at any time any trust beneficiary is a minor, or it appears to the Trustee that any trust beneficiary is incapacitated, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the Trustee, in lieu of making direct payments to the trust beneficiary, may make payments to the beneficiary’s custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to the beneficiary’s attorney in fact who at the time of the payment in question is duly appointed and acting for the beneficiary under a valid and enforceable durable power of attorney; to one or more suitable persons as the Trustee deems proper and in the best interest of the beneficiary, including a relative of or a person residing with the beneficiary, to be used for the beneficiary’s benefit; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary’s assistance or benefit; or to accounts in the beneficiary’s name with financial institutions. Any payment so made by the Trustee shall be made without the necessity of the appointment of any guardian, and the receipt of payments by any of the foregoing shall constitute an absolute and complete release and acquittance of the Trustee for all purposes.

Trustee’s Liability

11.17. No Trustee shall be liable to any interested party for acts or omissions of that Trustee, except those resulting from that Trustee’s bad faith, willful misconduct or gross negligence. This standard shall also apply regarding a Trustee’s liability for the acts or omissions of any Co-Trustee, predecessor Trustee or agent employed by the Trustee. Any successor Trustee is relieved of any duty to examine the acts of any prior fiduciary and shall be responsible only for those assets actually delivered to such Trustee.

Written Notice to Trustee

11.18. Until the Trustee receives written notice of any death or other event upon which the right to payments from any trust may depend, the Trustee shall incur no liability for disbursements made in good faith to persons whose interests may have been affected by that event.

Duty to Account

11.19. The Trustee shall render accounts at least annually, at the termination of a trust, and upon a change of Trustee, to the then living beneficiaries in the manner provided by law.

Limitations on Trustee's Powers

11.20. Notwithstanding any other provisions in this instrument, the following shall limit the Trustee's powers:

- (a) Legal Obligations of Trustee in Individual Capacity. The Trustee shall not make discretionary distributions of the income or principal of a trust to a beneficiary in such a manner that such distribution would discharge any legal obligation of the Trustee, in his or her individual capacity, including any legal obligation to support such beneficiary. Except as provided in the Marital Trust, if a beneficiary is serving as a Trustee under this instrument, the Trustee shall have no power to make a discretionary distribution of the income or principal of a trust to himself or herself in his or her capacity as a beneficiary of such trust, except such distributions as are necessary for his or her health, education, support, and maintenance; and if a beneficiary is serving as a Co-Trustee under this instrument, such beneficiary in the capacity as Co-Trustee shall have no power to participate in any decision with respect to discretionary distributions to himself or herself (except under a trust created by a general power of appointment) for purposes other than his or her health, education, support, and maintenance, but such power shall be exercised solely by the other Co-Trustee then acting under this instrument.
- (b) Legal Obligations of Support. The Trustee, other than an "independent trustee" as defined in Section 674(c) of the Code, shall make no distributions of income or principal of any trust that would to any extent reduce or discharge a legal or contractual obligation of any person to support any other person.
- (c) Qualified Disclaimers. Neither the Trustee nor the Surviving Settlor shall have any power that would cause a disclaimer made by or on behalf of the Surviving Settlor to fail as a qualified disclaimer under the applicable provisions of the Internal Revenue Code.
- (d) Fiduciary Duty of Trustee. The Trustee shall always be bound by those principles of equity which are the foundation of fiduciary capacity and shall not have the power to enlarge or shift any of the beneficial interests herein, except as an incidental consequence of the discharge of such Trustee's duties.

Proceeds of Employee Benefit Plans or Insurance Policies on Life of Settlor

11.21. The proceeds of any employee benefit plan or any insurance policy on the life of the Settlor which are payable to a Trustee or Trustees named in this instrument and which are not made payable to the Trustee of any specific trust created under this instrument ("such proceeds") shall be allocated and distributed in the same manner as any other property delivered to the Trustee under this instrument; provided, however, that any Deferred

Retirement Benefits shall be governed by the provisions of Article XIV.

ARTICLE XII.
TRUST PROTECTOR

Function

12.01. The function of the Trust Protector is to protect the financial resources controlled and governed by the Trust and the interests of the beneficiaries.

Designation of Trust Protector

12.02. In the event no successor Trust Protector is available to serve, a successor Trust Protector may be appointed (1) by a majority in interest of those who are the beneficiaries of the Trust; (2) by the trustee then serving; or (3) by a court of competent jurisdiction. A court of competent jurisdiction may remove a Trust Protector for cause. The Trust Protector may be a person, a bank with trust powers or a trust company (one or more).

Continuation of Service

12.03. Once appointed, the Trust Protector may not be removed except by a court of competent jurisdiction and then only for cause. More than one Trust Protector may be appointed. Reference to “Trust Protector” in the singular will include the plural. In the event two or more Trust Protectors serve the trust, decisions on major issues are to be made by both Trust Protectors, or, if more than two, by a majority of those who are then the Trust Protectors. Multiple Trust Protectors may delegate between or among themselves the administrative and ministerial functions of their office.

Qualifications of a Trust Protector

12.04. A candidate for service as Trust Protector must be independent and may not be related to, or be subordinate to, any member of my family or the family of any direct or indirect beneficiary. The term “related to” is to be construed liberally to exclude any person who remotely has any relationship of any degree to any member of the Settlor’s family or any direct or indirect beneficiary of the Trust, including relationships established by an existing or prior marriage. The term “subordinate to” is to be construed liberally to exclude any employee, business associate, or agent of a participant or the employee, business associate, or agent of a business or investment company, partnership or other organization in which a settlor, beneficiary, or family member has a direct or indirect proprietary interest of any kind. Any person who provides professional services to any one or more of those above identified above is not *per se* a prohibited person if compensation for services rendered from such person(s) constitutes, excluding compensation for service as Trust Protector, two percent or less of his or her or its income during any calendar year. Any person who provides professional services to the Settler is not a prohibited person without any income restriction.

Removal and Appointment of Trustee

12.05. The Trust Protector will have the authority to remove a trustee with or without cause. The Trust Protector will have the right to appoint a trustee who has been removed or who has ceased to serve for any reason. The Trust Protector will have the authority to appoint another (one or more) to serve as a co-trustee.

Trust Protector May Not Serve as Trustee

12.06. Except for the special fiduciary authority given to a Trust Protector in this instrument, a Trust Protector, including any successor as Trust Protector, may not appoint himself, herself or itself as a trustee. This is in keeping with the intent and purpose of this instrument that the Trust Protector's only interest will be to protect the financial resources governed by this instrument and the beneficiaries of the Trust. It is further provided and required that the Trust Protector may never have any personal financial interest in any property of the Trust or in the outcome of any transaction any business by or for the Trust other than the payment of a fair and reasonable compensation for his, her, or its services as the Trust Protector.

Special Fiduciary Authority of a Trust Protector

12.07. The Trust Protector will have the authority to perform any one or more of the following functions to the extent that the discretionary authority of the trustee to perform a function might constitute an act of self-dealing or might jeopardize the tax status of the trust.

- (a) Valuation. The value of certain property of the Trust may not be readily ascertainable, for example, real estate and securities held in a closely held corporation, partnership, limited liability company or other investment or business organization. Marketable securities shall be included in this category if and to the extent that market quotations are not readily available for trades of the security in an established securities market. Whenever the trustee's right to determine the value of this kind of property may be self-serving or may produce a possible conflict of interest or adverse taxation issues, the Trust Protector is to value the property of the Trust.
- (b) Voting Rights. Whenever the trustee's right to vote an equity interest in a corporation, partnership, limited liability company, investment trust or business trust or other entity may be interpreted as self-serving or may produce a possible conflict of interest or adverse taxation issues, the Trust Protector will have the right to vote the equity interest. Voting rights will include decision making authority with regard to the sale, exchange, or liquidation of any equity interest in a closely held corporation, partnership,

limited liability company, investment or business trust or other entity.

- (c) Life Insurance Policies. Whenever the trustee's rights as to the control and maintenance of a life insurance policy or any interest in a life insurance policy could result in the inclusion of the proceeds of the policy in the estate of the insured for tax purposes. Decision making with regard to a life insurance policy or interest in a policy is to be made by the Trust Protector.
- (d) Discretionary Distributions of Trust Income, Principal. To the extent the trustee has the discretionary authority to make distributions of trust income and principal to or among trust beneficiaries and/or to retain all or any part of the trust income, and to the extent this discretionary authority may result in, or appear to be, a potential conflict of interest or opportunity for self-dealing or may produce adverse tax issues, the Trust Protector is to make all decisions with regard to the discretionary distributions of trust income and principal and/or the retention of income.
- (e) Property Located In Another Jurisdiction. The Trust Protector may appoint an auxiliary trustee to control and administer property located in another jurisdiction.

Consultation

12.08. The trustee is authorized to consult with the Trust Protector as to any matter relating to the investment of assets, discretionary distributions and use of principal, tax matters, dealings with the beneficiaries, and any other matter relating to the administration of the Trust in keeping with the objectives and purpose of this instrument. The trustee will not be liable for any act or omission to act if acting according to the written instructions of, or with the written consent of, the Trust Protector.

Accounting and Transaction Reports

12.09. The Trust Protector will have the authority to receive and review any and all accounting reports, records, tax returns, transaction reports, accounting reports, and ownership records concerning the trust. All records of the trust must be open for inspection at all reasonable times by the Trust Protector.

Resolution of Disputes

12.10. The Trust Protector may unilaterally resolve any matter of dispute or conflict between beneficiaries or co-trustees, including those who have or claim to have a present or future interest in property. The Trust Protector may unilaterally resolve any dispute, claim or conflict between a beneficiary and a trustee. No one may file or instigate a claim in a court of law without first submitting the claim to the Trust Protector for resolution together with detailed supporting information and a detailed supporting memorandum of law. The Trust

Protector may employ, and may act upon the advice of, legal counsel in making a resolution of any issue of fact and law. The Trust Protector may submit the claim or dispute for mediation and/or binding arbitration. The Trust Protector may give any claimant the authority, without penalty, to file and maintain an action in a court of law. Whenever a dispute, conflict, or claim involves an interpretation or construction of this instrument, the Trust Protector may file an action in a court of competent jurisdiction for the interpretation and construction of this instrument.

Best Judgment

12.11. The Trust Protector is permitted and authorized to exercise “best judgment” in the course of service in the capacity of Trust Protector. The Trust Protector will not be liable for any act or omission to act unless it is conclusively established that the act or omission to act was motivated by an actual intent to harm the trust estate or is an act of self-dealing for personal pecuniary benefit. The trust will pay or reimburse the costs of defending and/or settlement of any claim made against the Trust Protector unless it is conclusively established that the Trust Protector’s conduct was motivated by an actual intent to harm a beneficiary of the Trust. All provisions of this instrument that limits the liability of a trustee will likewise apply in limiting the liability of the Trust Protector.

Investment Advisor, Custodian

12.12. Notwithstanding any other provision of this instrument to the contrary, a Trust Protector will have the right to:

- (a) appoint (and to remove) any person, agency, or organization to serve as investment advisor with or without the right to select the investments. If the investment advisor is given the unilateral right to select investments, the investment advisor will have the right to sell all or any part of the property of my estate; to invest the cash resources of my estate; and to exchange the assets of my estate for other investment assets;
- (b) to establish (or terminate) an investment account with an investment house or brokerage firm;
- (c) to entrust (and to terminate) the custody and safekeeping of assets, under an agency agreement or otherwise, to a bank, trust company, investment house or brokerage firm.

A trustee will not have personal responsibility to the extent the Trust Protector actually delegates the investment, custodial, and safekeeping functions with regard to trust property.

Authority of a Successor as Trust Protector

12.13. A successor as Trust Protector will have all of the authority and duties of the Trust Protector by original appointment, but will not be responsible for the acts, or omissions to act, of his, her, or its predecessor.

Compensation

12.14. A Trust Protector shall receive a reasonable compensation as an expense of administration, reasonable compensation to be measured by the time required serving the Trust and its beneficiaries and the responsibility assumed in the discharge of the duties of office. The Trust Protector is entitled to reasonable reimbursement for expenses and costs incurred on behalf of the trust. Payment of compensation shall be from the funds of the Trust.

Bond

12.15. Unless otherwise required in written articles of appointment, a Trust Protector will serve without the requirement of bond or other security.

The Term “For Cause” Defined

12.16. The term “for cause” will mean and include: any material act of self-dealing by a trustee or other fiduciary or any material act or omission to act constituting gross negligence, self-dealing, or intentional fraud. The term “material” identifies a significant monetary damage to the trust or to any beneficiary of the trust as the result of the act or omission to act by a trustee or other fiduciary constituting self-dealing, gross negligence, or fraud. The term “material” does not include incidental or insignificant monetary damage to the trust or a trust beneficiary; monetary damages realized by someone who is not a beneficiary of the trust; nor an intangible loss or damage which cannot be valued under the fair market valuation standards of the tax laws of the United States.

ARTICLE XIII.

CARDINAL CONTESTS

Purpose

13.01. It is the Settlers’ intent and purpose to avoid, deter, and discourage cardinal contests against the Trust and/or against the trustee to the greatest extent possible. It must be remembered that a person may impose limitations and conditions upon the beneficial use and enjoyment of his or her property transferred to another. Any person, trust or other entity who or which accepts any direct or indirect economic benefit from the Trust, or who seeks a direct or indirect economic benefit from the Trust, will be bound by the rules and conditions of this instrument.

Cardinal Contests Defined

13.02. The term "cardinal contest" means and includes the following kinds of claims filed:

- (a) A petition or claim filed in a court of any jurisdiction by a person who is not identified a beneficiary of the Trust who seeks to establish an economic benefit in or to the property controlled by this instrument for himself or herself, including:
 - (1) a claim that seeks to impress a constructive or resulting trust upon property;
 - (2) a claim to establish outright ownership or beneficial ownership under a theory of reimbursement; and
 - (3) a contest that questions the capacity of Settler to transfer property under the terms and conditions of this instrument or the validity of the instrument or transfer.
- (b) A petition or claim filed in a court of any jurisdiction by any person who is identified as a direct or indirect beneficiary that seeks to enlarge his or her beneficial interest in the property of the Trust or to force the trustee to make discretionary distributions of income and/or principal to that person.
- (c) Harassing claims against the Trustee and/or the Trust if a court of competent jurisdiction concludes as a finding of fact that the claim was intended to force a settlement of the claim to avoid the cost, hardship, and embarrassment of litigation. Harassing claims include:
 - (1) A petition for an accounting by a person who is not identified as or specifically included as a beneficiary or the Trust Protector of the Trust.
 - (2) A petition for the removal of a trustee and/or for damages against a trustee without following the procedures for removal required in this instrument.
 - (3) A petition for the judicial construction of this instrument, including this no-contest provision.

Procedure

13.03. If Trust Protector has not been appointed to serve at the time an actual or probable claim has or probably will be made, the trustee, or in the alternative, a court of competent jurisdiction upon application by the trustee or a beneficiary of this trust, is to appoint a Trust Protector. The Trust Protector is to conduct an initial investigation of the claim and may, upon completion of his, her, or its investigation (1) submit the claim for

mediation; (2) submit the claim for binding arbitration; or (3) permit the claimant to proceed with a judicial determination of the outcome of the claim.

Consequences For Non-Compliance

13.04. Any individual beneficiary or other person who directly or indirectly instigates an unauthorized cardinal contest shall be considered for the purpose of this instrument to have predeceased me. If the person instigating an unauthorized cardinal claim is a beneficiary to whom distributions of income and principal have been made, that person is to be considered for the purpose of this instrument to have died at the time the petition or other claim is instigated. In any case, a person, trust, or other organization that directly or indirectly instigates an unauthorized cardinal contest will be responsible for the payment of all costs and expenses incident to the contest.

ARTICLE XIV.

QUALIFIED RETIREMENT BENEFITS

Conduit Subtrust for Qualified Retirement Benefits

14.01. Notwithstanding any provision in this document to the contrary, if the Trustee is named as the beneficiary of any of my Deferred Retirement Benefits, then the Trustee shall hold manage, and control such accounts and plan benefits as a separate retirement benefits subtrust separately for each named beneficiary for the following uses and purposes:

- (a) Each year, beginning with the year of my death, the Trustee shall withdraw from any Deferred Retirement Benefit the Minimum Required Distribution for such Deferred Retirement Benefit for such year, plus such additional amount or amounts as the Trustee deems advisable in his or her discretion. The Trustee shall distribute each amount so withdrawn (net of expenses properly charged thereto) to or for the benefit of the child for whom the subtrust is established, if such child is then living. If such child is not then living, the Trustee shall distribute the amount in the manner described in the sections of this Article entitled “Special Testamentary Power of Appointment” and “Termination of Trust”.
- (b) The following definitions shall apply in administering the conduit subtrust for retirement benefits:
 - (1) “Retirement Benefit” means the trust’s interest in one of the following types of assets payable to this trust as a beneficiary or owned by this trust: a qualified or nonqualified annuity; a benefit under a qualified or nonqualified plan of deferred compensation; any account in or benefit payable under any pension, profit-sharing, stock bonus, or other qualified retirement plan; any individual retirement account or trust;

and any and all benefits under any plan or arrangement that is established under Sections 401, 403, 408, 408A, 457, or similar provisions of the Code. “Retirement Benefits” means all of such interests collectively.

- (2) “Deferred Retirement Benefit” means any Retirement Benefit that (i) is subject to the Minimum Distribution Rules, and (ii) a Designated Beneficiary of such benefit has the option (either under the terms of the plan or arrangement that governs such benefit, or by causing the benefit to be transferred to an inherited IRA) to take distributions of such benefit in annual installments over the Life Expectancy of the (or of the oldest) Designated Beneficiary. “Deferred Retirement Benefits” means all of such interests collectively. Benefits payable under a plan or arrangement that is not subject to the Minimum Distribution Rules (such as under current law, a “nonqualified deferred compensation plan”) are not Deferred Retirement Benefits.
- (3) “Minimum Distribution Rules” means the rules of Section 401(a)(9) of the Code, including regulations thereunder.
- (4) The “Minimum Required Distribution” with respect to any Retirement Benefit for any year means (i) the value of the Retirement Benefit determined as of the preceding year-end, divided by (ii) the applicable Distribution Period; or such greater or lesser amount as the Trustee shall be required to withdraw under the laws then applicable to this trust to avoid penalty. Notwithstanding the foregoing, the Minimum Required Distribution for the year of my death shall mean (x) the amount (if any) that was required to be distributed to me with respect to such benefit during such year under the Minimum Distribution Rules, minus (y) amounts actually distributed to me with respect to such benefit during such year.
- (5) The terms “Life Expectancy”, “Designated Beneficiary”, and “Applicable Distribution Period” each have the same meaning as under the Minimum Distribution Rules.

Special Testamentary Power of Appointment

14.02. Upon the death of the child for whom the trust is named, the then-remaining principal and undistributed income of the trust named for such child shall be distributed in such proportions and in such manner to or for the benefit of any one or more persons or entities as the child for whom the trust is named may appoint by specific reference in his or her Last Will and Testament (admitted to probate). The power herein granted shall in no event be exercised by the child for whom the trust is named in favor of himself/herself, his

or her creditors, his or her estate or the creditors of his or her estate. The power shall not be exercisable for the purpose of discharging a legal obligation of the child for whom the trust is named and shall not be exercisable for his or her pecuniary benefit. In exercising the power herein granted, the child for whom the trust is named may appoint outright or in trust, partly outright and partly in trust, and create life or remainder interests including one or more of such interests to the same or different appointees, create new and further powers of appointment, and may impose any condition or restriction upon such appointment, including spendthrift provisions, as may be lawful; provided that the beneficiaries of such appointment must be within the objects of the power granted herein; and further provided that no such exercise of the power herein granted or any new and further power of appointment created pursuant hereto shall cause the term of any trust hereunder or created hereunder to extend beyond the time for termination set out in the Section herein entitled "Rule Against Perpetuities." The Trustee may rely upon an instrument admitted to probate as the Last Will and Testament of the child for whom the trust is named, but if my Trustee has no written notice of the existence of such a Will within a period of twelve (12) months after his death, it may be presumed that such child died intestate and the Trustee shall be protected in acting in accordance with such presumption, but this protection to my Trustee shall not limit or qualify said power of appointment or the right of any person to pursue the funds affected by the exercise thereof, irrespective of the place of probate or the time of discovery of the Will. To the extent that the child for whom the trust is named shall not exercise the foregoing power of appointment, then upon his death the trust shall continue to be administered as provided herein.

Termination of Trust

14.03. At the date of death of the child for whom the trust is named, the trust shall terminate and the assets and property comprising such trust shall be delivered and distributed to per stirpes to the then-living descendants of the child for whom the trust is named; provided, however, that if the trust is terminated by reason of the death of such child and the child dies leaving living children, the trust shall continue until the youngest of such children reaches the age of twenty-five (25) years, and at that date shall terminate and the trust assets shall be distributed per stirpes to the then-living descendants of the child for whom the trust is named. If at any time prior to the termination of a trust created hereunder all of the beneficiaries of such trust shall die leaving no descendants then surviving, the trust estate of such trust shall be distributed in equal shares to the Trustee of the trust named for my other child. If any such other trust has terminated, the amount which would have been distributed to such trust which has terminated will be distributed to the then-living descendants per stirpes of the child for whom such trust was named.

ARTICLE XV.
MISCELLANEOUS PROVISIONS

Specific Gifts

15.01. Upon the death of a Settlor, the Trustee shall distribute specific gifts as listed below:

(a) If the Settlor who has died is Husband:

(1)

(2) , and

(3) .

(b) If the Settlor who has died is Wife:

(1) |

(2) , and

(3) |

(c) In addition to the above gifts, the Trustee shall distribute such jewelry, clothing, household furniture, furnishings and fixtures, chinaware, silver, photographs, works of art, books, boats, automobiles, sporting goods, artifacts relating to hobbies, and all other tangible articles of household or personal use in accordance with any written, signed and dated memorandum left by the Settlor who has died directing the distribution of such property. Any memorandum written, dated and signed by such Settlor disposing of tangible personal property shall be incorporated by reference into this agreement. Should such Settlor leave multiple written memoranda which conflict as to the disposition of any item of tangible personal property, that memorandum which is last dated shall control as to those items which are in conflict.

Definitions

15.02. As used in this trust agreement:

(a) Beneficiary. The term “**beneficiary**” shall mean any person who properly receives current payments or distributions from a trust under this instrument and, as to remaindermen, any living person who would be entitled to property or benefits from the then remaining Trust Estate, if any, of a trust under this instrument if such person survived the termination of such trust.

(b) Child and Children. The terms “**child**” and “**children**” refer, as to the Settlers, to those persons named in Section 2.01, and to those persons born in wedlock

or legally adopted by the Settlers after the execution of this instrument. As to any person other than the Settlers, the terms “child” and “children” refer to children born in wedlock to or legally adopted by the parent, whether before or after this date.

- (c) Death Taxes. The term “**death taxes**” shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person’s interest in the estate of a Settlor or by reason of a Settlor’s death, including penalties and interest, but excluding the following: (i) any addition to the federal estate tax for any “excess retirement accumulation” under Internal Revenue Code Section 4980A; (ii) any additional tax that may be assessed under Internal Revenue Code Section 2032A; and (iii) any federal or state tax imposed on any generation-skipping transfer, as that term is defined in the federal tax laws, unless that generation-skipping transfer tax is payable directly out of the assets of a trust created by this instrument.
- (d) Debts and Expenses. The term “**debts and expenses**” shall include the following: (i) all costs, expenses of litigation, counsel fees, or other charges that the Trustee incurs in connection with the determination of the amount of the death taxes, interest, or penalties referred to in subsection (a) of this section; and (ii) legally enforceable debts, funeral expenses, expenses of last illness, and administration and property expenses.
- (e) Deceased Settlor and Surviving Settlor. The first Settlor to die is referred to as the “**Deceased Settlor**” and the other Settlor is referred to as the “**Surviving Settlor.**”
- (f) Digital Assets. The term “**digital assets**” includes the following:
 - (1) Files stored on digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops; and
 - (2) Emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, banking accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts, and similar digital items which currently exist or may exist as technology develops, regardless of the ownership of the physical device upon which the digital item is stored.
- (g) Education. The term “**education**” includes education at public or private preschool, elementary, junior high, middle, or high schools, including

boarding schools; undergraduate, graduate, and postgraduate study in any field, whether or not of a professional character, in colleges, universities, or other institutions of higher learning; specialized formal or informal training in music, the stage, the handicrafts, or the arts, whether by private instruction or otherwise; and formal or informal vocational or technical training, whether through programs or institutions devoted solely to vocational or technical training, or otherwise.

- (h) Employee Benefit Plan. The term “**employee benefit plan**” shall refer to any plan, account, fund or program which provides retirement income or results in a deferral of income for periods extending to the termination of employment or beyond or which provides death benefits to beneficiaries.
- (i) Heirs. The term “**heirs**” shall refer to those persons who would inherit the property in question from the person in question, determined as if the person in question had died at the time in question and assuming that the person in question had died intestate owning such property under the Texas laws of descent and distribution in effect at the time in question; and when such term is used, the shares and proportions of taking shall be determined by such laws.
- (j) Incapacity. The term “**incapacity**” or “**incapacitated**” shall mean incapacitated as determined by the written certification of two medical doctors, including the relevant beneficiary’s personal physician, if available. The Trustee shall be fully protected as to any action taken based on such a determination of capacity or incapacity of any beneficiary under this agreement.
- (k) Issue. The term “**issue**” refers to all lineal descendants of the person in question who are born in wedlock to or legally adopted by the parent who is the person in question or the descendant of the person in question, whichever may be applicable.
- (l) Per Stirpes. The term “**per stirpes**” means per stirpes calculated as of the first level of descendants with a surviving member.
- (m) Survival. The terms “**survives**” or “**surviving**”, unless otherwise indicated in this agreement, shall be construed to mean surviving the decedent for at least ninety (90) days. If the person referred to dies within ninety (90) days of the death of the decedent, the reference to him or her will be construed as if he or she had failed to survive the decedent provided, however, that any such person will have during such period the right to the use and the enjoyment as a life tenant of all property in which his or her interest will fail by reason of death during such period.

Spendthrift Clause

15.03. The interests of the beneficiaries under this instrument are not transferable by voluntary or involuntary assignment or by operation of law, and shall be free from the claims of creditors and from attachment, execution, bankruptcy, and other legal process, to the maximum extent permitted by law.

Administration As Single Trust

15.04. The Trustee shall keep a separate account for each of the separate trusts created by this instrument, but all of such trusts may be administered as a single fund. Joint investments or interests in investments may be assigned to such trusts, with each trust being credited with any undivided interest in all joint investments in the proportion which is assigned to it or in the proportion which its contribution to such investments bears to the whole.

Homestead in Trust Estate

15.05. The Trust is a “qualifying trust” under Section 41.0021 of the Texas Property Code and Section 11.13 of the Texas Tax Code. In the event Settlers transfer their homestead property to the Trust, Settlers expressly retain all tax and judgment execution exemptions provided under Texas law. Notwithstanding any provision in this Trust to the contrary, each Settlers has the right to use and occupy as his or her principal residence such homestead property, rent free, without charge, and at no cost, except for taxes and maintenance until the date this Trust is revoked or terminated by an instrument or court order that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located.

S Corporation Stock in Trust Estate

15.06. During the lifetimes of the Settlers, the Trust is a grantor trust, under which trust income will be taxed directly to the Settlers, and is a qualifying trust to own S Corporation stock under §1361(c)(2)(A) of the Code. After the death of the Deceased Settlor, such qualification may be maintained by allocating any such stock to the assets retained in trust for the sole benefit of the Surviving Settlor, or distributing such shares to beneficiaries of the Trust pursuant to its terms. The Trustee shall have full discretion to allocate and/or distribute S Corporation stock held in the Trust to maintain such eligibility.

Maximum Duration of Trusts

15.07. Despite any other provision of this instrument, to the extent that any trust created under this instrument has not previously vested in a beneficiary, the trust shall terminate upon the expiration of the period of the applicable Rule Against Perpetuities, and the Trustee shall distribute any property then held in the trust (i) to the beneficiary for whom

the trust is named, if any; otherwise, (ii) per stirpes to the then living descendants of the named beneficiary, if any; otherwise (iii) as provided in Section 9.08. If the determination of the Rule Against Perpetuities is dependent upon measuring lives, then those lives shall be the Settlers, all of the descendants of the parents of the Settlers, and all persons who are mentioned by name or as a class as beneficiaries of any trust created by or pursuant to this instrument who are living on the date of this instrument.

Assignment of Fees to Beneficiary

15.08. If in the opinion of the Trustee any beneficiary under this trust has caused fees or expenses to be incurred, the Trustee may allocate all or any part of such fees or expenses to the interest of said beneficiary.

Number and Gender

15.09. As used in this instrument, references in the masculine gender shall be deemed to include the feminine and neuter gender, and vice versa, and references to the singular shall be deemed to include the plural, and vice versa, wherever the context so permits.

Captions

15.10. The captions appearing in this instrument are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this instrument.

Severability Clause

15.11. To the full extent permitted by law, if any provision of this instrument is invalid, that provision shall be disregarded, and the remainder of this instrument shall be construed as if the invalid provision had not been included.

Texas Law to Apply

15.12. All questions concerning the validity, interpretation, and administration of this instrument, including any trusts created under this instrument, shall be governed by the laws of the State of Texas, to the extent possible, regardless of the domicile of any Trustee or beneficiary.

References to Statutory Sections

15.13. Any reference herein to a statutory section shall include any successor section or statute.

Certified Copies of Trust

15.14. To the same effect as if it were the original, any person or institution may rely upon a copy certified by a Notary Public to be a true copy of this instrument and any schedules or exhibits attached hereto. Any person or institution may rely upon any statement of fact certified by anyone who appears from the original Trust Agreement, or a certified copy thereof, to be a Trustee hereunder.

Instructions

15.15. Either Settlers may leave a letter of instruction and/or audio or video recording containing instructions regarding his or her desired disposition and management of property. The Settlers may also leave a memorandum, which may be altered by the Settlor from time to time, with instructions concerning digital assets and their access, handling, distribution, and disposition. It is the desire of the Settlers that the Trustee and beneficiaries follow the wishes in such instructions; however, the instructions shall not be binding on them.

Location of Documents

15.16. This Trust has been prepared in a single original, which is in the possession of the Settlers. Electronic scanned copies of the executed original are in the possession of the Settlers and Michael A. Koenecke, Attorney and Counselor, P.O. Box 830190, Richardson, Texas 75083-0190, mike@koeneckelaw.com. The scanned electronic copy of the original may be used as an original if the physical document cannot be found, in which case the physical document will be presumed inadvertently lost. Any clarifications or instructions concerning this Trust Agreement may be obtained by contacting the above attorney, who is requested to do everything necessary to implement the provisions of this Agreement.

[remainder of page blank]

◆ **IN WITNESS WHEREOF**, the Settlers have executed this Trust Agreement on this the ____ day of _____, 20____, as Settlers and Trustee.

SETTLOR

SETTLOR

[PRINCIPAL'S NAME]

[SPOUSE'S NAME]

TRUSTEE

TRUSTEE

[PRINCIPAL'S NAME]

[SPOUSE'S NAME]

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day appeared [PRINCIPAL'S NAME], who acknowledged that he signed the above document as Settlor and as Trustee for the purposes and considerations expressed therein. **SIGNED** on this the ____ day of _____, 20____.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day appeared [SPOUSE'S NAME], who acknowledged that she signed the above document as Settlor and as Trustee for the purposes and considerations expressed therein. **SIGNED** on this the ____ day of _____, 20____.

Notary Public, State of Texas

SCHEDULE A

[PRINCIPAL'S NAME] and [SPOUSE'S NAME] (the “**Settlors**”), do hereby transfer, convey, quitclaim, and assign to the Settlers as Trustee of [NAME OF TRUST] dated the ♦♦ day of ♦, ♦, all rights, title, and interest in the property set forth below.

I. SEPARATE PROPERTY OF [PRINCIPAL'S NAME].

1. All present and future interest of the Settlers in the following real estate, together with all present and future improvements thereon, and all present and future water, water rights, and oil and mineral rights belonging thereto:
 - a. [ADDRESS], [CITY, STATE, ZIP].
 - b.
 - c.
2. All present and all future personal property situated at the following locations:
 - a. [ADDRESS], [CITY, STATE, ZIP].
3. The following accounts in and with the following institutions, together with any and all future additions, interest, or accumulations therein and also including all new accounts and the accumulations and the future additions, interest, or accumulation in any and all other financial institutions in which new accounts are opened in the future:
 - a.
 - b.
 - c.
4. The following securities in the following companies or entities together with all future accumulations and purchases in said companies or entities, together with all future securities and accumulations purchased in any and all other companies or entities:
 - a.
 - b.
5. Vehicles:
 - a. All automobiles and vehicles owned by the Settlers.
6. The following notes receivable:
 - a.
 - b.

7. The following policies of life insurance:
 - a.

II. SEPARATE PROPERTY OF [SPOUSE'S NAME].

1. All present and future interest of the Settlers in the following real estate, together with all present and future improvements thereon, and all present and future water, water rights, and oil and mineral rights belonging thereto:
 - a. [ADDRESS], [CITY, STATE, ZIP].
 - b.
 - c.
2. All present and all future personal property situated at the following locations:
 - a. [ADDRESS], [CITY, STATE, ZIP].
3. The following accounts in and with the following institutions, together with any and all future additions, interest, or accumulations therein and also including all new accounts and the accumulations and the future additions, interest, or accumulation in any and all other financial institutions in which new accounts are opened in the future:
 - a.
 - b.
 - c.
4. The following securities in the following companies or entities together with all future accumulations and purchases in said companies or entities, together with all future securities and accumulations purchased in any and all other companies or entities:
 - a.
 - b.
5. Vehicles:
 - a. All automobiles and vehicles owned by the Settlers.
6. The following notes receivable:
 - a.
 - b.
7. The following policies of life insurance:

a.

III. COMMUNITY PROPERTY OF THE SETTLORS.

1. All present and future interest of the Settlers in the following real estate, together with all present and future improvements thereon, and all present and future water, water rights, and oil and mineral rights belonging thereto:

a. [ADDRESS], [CITY, STATE, ZIP].

b.

c.

2. All present and all future personal property situated at the following locations:

a. [ADDRESS], [CITY, STATE, ZIP].

3. The following accounts in and with the following institutions, together with any and all future additions, interest, or accumulations therein and also including all new accounts and the accumulations and the future additions, interest, or accumulation in any and all other financial institutions in which new accounts are opened in the future:

a.

b.

c.

4. The following securities in the following companies or entities together with all future accumulations and purchases in said companies or entities, together with all future securities and accumulations purchased in any and all other companies or entities:

a.

b.

5. Vehicles:

a. All automobiles and vehicles owned by the Settlers.

6. The following notes receivable:

a.

b.

7. The following policies of life insurance:

a.

SETTLOR

SETTLOR

[PRINCIPAL'S NAME]

[SPOUSE'S NAME]

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day appeared [PRINCIPAL'S NAME], who acknowledged that he signed the above document for the purposes and considerations expressed therein. **SIGNED** on this the ____ day of _____, 20__.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day appeared [SPOUSE'S NAME], who acknowledged that she signed the above document for the purposes and considerations expressed therein. **SIGNED** on this the ____ day of _____, 20__.

Notary Public, State of Texas