

Beneficiary

Share%

CENTRAL COLLEGE OF IOWA  
Pella, Iowa

100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.



## **Article XI**

### **Protection of Beneficial Interests**

#### **Section A. Protection of the Interests of Our Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

#### **Section B. Unproductive or Underproductive Assets**

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

#### **Section C. No Contest of Our Trust**

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

#### **Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

##### **1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

## 2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

- (a) Directly to such beneficiary;
- (b) To his or her parent, guardian or legal representative;
- (c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;
- (d) To any person with whom he or she is residing;
- (e) To some near relative or close friend; or
- (f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;
- (g) To persons, corporations or other entities for the use and benefit of the beneficiary;
- (h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or
- (i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

### **3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

### **Section E. Application to Founders**

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

## **Article XII**

### **Our Trustees' Powers and Authority**

#### **Section A. Applicability of Texas Trust Code and Other Statutes**

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

#### **Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries**

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

#### **Section C. General Investment and Management Powers**

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

### **Originally Contributed Properties**

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

### **Additional Properties**

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

### **Securities Powers**

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

### **Investment of Cash Assets**

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In



determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

### **Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

### **Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

### **Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

#### **Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

#### **Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

#### **Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

### **Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

### **Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

### **Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

### **Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

### **Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

### **Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

### **Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

### **Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

### **Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

### **Power to Borrow**

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

### **Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

### **Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

### **Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

### **Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

### **Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

### **Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

### **Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

#### **Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

#### **Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.



The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

#### **Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

### **Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

### **Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

### **Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

#### **Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

#### **Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

#### **Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

### **Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

### **Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

#### **1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

#### **2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

#### **3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.





## Article XIII

### Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

Any course of study or instruction at any institution for specialized, vocational or professional training.

Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlers" or any other name given to the makers of this trust either by law or by popular usage.
5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.
6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.
8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.
9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.
12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.
13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.
14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.



## Article XIV

### Miscellaneous Matters

#### Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

#### Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.