

SUMMARY  
OF  
THE BRUNSTING FAMILY LIVING TRUST

NAME OF TRUST:

THE BRUNSTING FAMILY LIVING TRUST

DATE ESTABLISHED:

October 10, 1996

INITIAL TRUSTEES:

ELMER H. BRUNSTING  
NELVA E. BRUNSTING

SUCCESSOR TRUSTEES:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

TITLE TO ALL ASSETS IN THE TRUST ARE VESTED IN THE NAME OF:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended

THIS SUMMARY IS NOT PART OF THE TRUST

*Candace  
Kurtz  
Kurtz*



## *CERTIFICATE AND AFFIDAVIT OF TRUST*

When you transfer assets that you currently own to the trust, acquire property in the name of the trust or sell property already titled in the trust name, evidence may be required as to the identity of the trustees having authority to sign legal documents on behalf of the trust. For these purposes, your Certificate of Trust or Affidavit of Trust may be furnished to relevant third parties in order to provide the requested information while avoiding the necessity of providing a complete copy of the Living Trust.

## Certificate of Trust

The undersigned Founders hereby certify the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER H. BRUNSTING and NELVA E. BRUNSTING, Founders and initial Trustees on October 10, 1996.

The Restatement, dated January 12, 2005, hereby replaces and supersedes our original trust agreement and all prior amendments.

Either Founder while acting as Trustee may conduct business on behalf of the trust without the consent of any other Trustee. The full legal name of our trust for purposes of transferring assets into the trust, holding title of assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. Should either original Trustee fail or cease to serve as Trustee by reason of death, disability or for any reason, the remaining original Trustee will continue to serve alone.
3. If both of the original Trustees fail or cease to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as Co-Trustees:

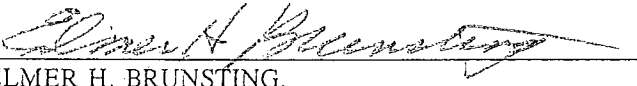
CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART


If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

On January 12, 2005, the said BRUNSTING FAMILY LIVING TRUST was restated and amended naming the above said successor Trustees.

4. The Trustee(s) under the trust agreement are authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in trust name. All powers of the Trustee(s) are fully set forth in Article Twelve of the trust agreement.
5. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee(s) over trust property.
6. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance. A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certify that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on January 12, 2005.

  
ELMER H. BRUNSTING,  
Founder and Trustee

  
NELVA E. BRUNSTING,  
Founder and Trustee

## Certificate of Trust

The undersigned Founders hereby certify the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER H. BRUNSTING and NELVA E. BRUNSTING, Founders and initial Trustees, on October 10, 1996.

**The Restatement, dated January 12, 2005, hereby replaces and supersedes our original trust agreement and all prior amendments.**

Either Founder while acting as Trustee may conduct business on behalf of the trust without the consent of any other Trustee. The full legal name of our trust for purposes of transferring assets into the trust, holding title of assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. Should either original Trustee fail or cease to serve as Trustee by reason of death, disability or for any reason, the remaining original Trustee will continue to serve alone.
3. If both of the original Trustees fail or cease to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and ~~AMY RUTH TSCHERTHART~~

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

**On January 12, 2005, the said BRUNSTING FAMILY LIVING TRUST was restated and amended naming the above said successor Trustees.**

4. The Trustee(s) under the trust agreement are authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in trust name. All powers of the Trustee(s) are fully set forth in Article Twelve of the trust agreement.
5. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee(s) over trust property.
6. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance. A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certify that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
ELMER H. BRUNSTING,  
Founder and Trustee

\_\_\_\_\_  
NELVA E. BRUNSTING,  
Founder and Trustee

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public, State of Texas

## Affidavit of Trust

1. The following trust is the subject of this Affidavit:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended.

**On January 12, 2005, the said BRUNSTING FAMILY LIVING TRUST was restated and amended. The Restatement replaces and supersedes our original trust agreement and all prior amendments.**

2. The names and addresses of the currently acting Trustees of the trust are as follows:

**Names:**

ELMER H. BRUNSTING  
NELVA E. BRUNSTING

**Address:**

13630 Pinerock  
Houston, Texas 77079

3. The trust is currently in full force and effect.
4. Attached to this Affidavit and incorporated in it are selected provisions of the trust evidencing the following:

- |    |             |   |   |
|----|-------------|---|---|
| a. | Article I   | - | Restatement of the trust and initial Trustees |
| b. | Article III | - | Statement of revocability of the trust        |
| c. | Article IV  | - | Successor Trustees                            |
| d. | Article VII | - | Upon the Death of One of Us                   |
| e. | Article XII | - | Powers of the Trustees                        |
| f. | Article XIV | - | Signature pages                               |

5. The trust provisions which are not attached to this Affidavit are of a personal nature and set forth the distribution of trust property. They do not modify the powers of the Trustees.
6. The signatories of this Affidavit are currently the acting Trustees of the trust and declare that the foregoing statements and the attached trust provisions are true and correct, under penalty of perjury.
7. This Affidavit is dated January 12, 2005.

*Elmer H. Brunsting*  
ELMER H. BRUNSTING, Trustee

*Nelva E. Brunsting*  
NELVA E. BRUNSTING, Trustee

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing Affidavit of Trust was acknowledged before me on January 12, 2005, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Trustees.

Witness my hand and official seal.

*Charlotte Allman*  
Notary Public, State of Texas



# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

### Our Family Living Trust

#### Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

#### Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.



## Article III

### Our Right to Amend or Revoke This Trust

#### Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

#### Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

#### Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

## Article IV

### Our Trustees

#### Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

#### Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and ~~AMY RUTH TSCHIRHART~~

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

## Article VII

### Upon the Death of One of Us

#### Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

#### 1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

## **2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

## **3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

## **Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

### **1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

#### **a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

#### **b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

## **2. Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

### **Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

### **Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

### **Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

## **Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

## **Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

### **1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.



## **2. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

## **3. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

## 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.

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

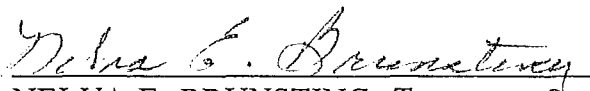
We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

  
ELMER H. BRUNSTING, Founder

  
NELVA E. BRUNSTING, Founder

  
ELMER H. BRUNSTING, Trustee

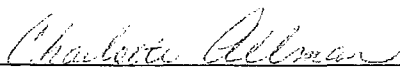
  
NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

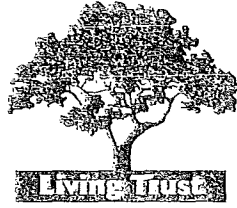
COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

  
\_\_\_\_\_  
Notary Public, State of Texas





## *TITLE TRANSFER DOCUMENTS*

This portion of your portfolio should contain copies of all documents which show that title to various assets has been transferred to your Living Trust. The original documents should be kept in a safe place, such as a safe deposit box. In order to help your trustees in the event of death or disability, you should keep records of all assets that have been transferred to your Living Trust in this section.









RECORDED SIOUX COUNTY IOWA

'96 NOV 18 AM 9 44

5407  
5407

FILE 1996 CARD 5407  
*Arita K. Van Bruggen*  
A. VAN BRUGGEN RECORDER

Prepared by: Dennis D. Duffy, 2550 Middle Road, Suite 101, Bettendorf, IA 52722, (319) 355-7070

**QUIT CLAIM DEED  
STATE OF IOWA,**

**Sioux County**

November 18<sup>th</sup>  
1896  
Reid 11-18-96  
a.b.

**THIS INDENTURE WITNESSETH, THAT THE GRANTORS,**

**ELMER HENRY BRUNSTING and NELVA E.  
BRUNSTING, individually and as husband and wife,**

of the County of Harris and the State of Texas for and in consideration of Ten (\$10) Dollars and other good and valuable consideration in hand paid, QUIT CLAIMS unto

**ELMER H. BRUNSTING and NELVA E. BRUNSTING,  
Trustees, or their successors in trust, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996 and  
any amendments thereto,**

the following described real estate in the County of Sioux, State of Iowa, hereby relinquishing all rights of dower, homestead and distributive share in and to the real estate, to-wit:

The Northwest Fractional Quarter (NW Frt. 1/4) of Section Two (2), Township Ninety-six (96), Range Forty-five (45) West of the 5th P.M. EXCEPT the North 542.5 Feet of the West 660 Feet in Sioux County, Iowa,

subject to all easements and restrictions of record.

The consideration for this transfer is less than \$500.00 so this conveyance is exempt from transfer tax, pursuant to Iowa Code Chapter 428A.2(21).

Grantors warrant that the trust named as grantee herein is a revocable trust as defined in Iowa Code Chapter 9H.1(20).

TO HAVE AND TO HOLD the said premises with the appurtenances, upon the trusts and for uses and purposes herein and in said trust agreement set forth.

Full power and authority is hereby granted to said trustee to improve, manage and protect said premises or any part thereto, to contract to sell, to grant options to purchase, to sell on any terms, to convey, either with or without consideration; to convey said premises or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in said Trustee; to donate to dedicate, to mortgage, pledge or otherwise encumber, said property, or any part thereof, to lease said property, or any part thereof; from time to time, and upon any terms and for any period or periods of time, to grant easements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appurtenant to said premises or any part thereof, and to deal with said property and every part thereof in all other ways and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with said trustee in relation to said premises, or to whom said premises or any part thereof shall be conveyed, contracted to be sold, leased or mortgaged by said trustee, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on said premises, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of said trustee, or be obliged or privileged to inquire into any of the terms of said trust agreement; and every deed, trust deed, mortgage, lease or other instrument executed by said trustee in relation to said real estate shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease or other instrument that

(a) at the time of the delivery of this deed the trust stated in this Indenture as grantee was in full force and effect,

(b) that such conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in said trust agreement or in some amendment thereof and binding upon all beneficiaries thereunder,

(c) that said trustee was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument, and

(d) if the conveyance is made to a successor or successors in trust, that such successor or successors in trust have been properly appointed and are fully vested with all the title, estate, rights, powers, authorities, duties and obligations of its, his or their predecessor in trust.

IN WITNESS WHEREOF, the grantors have signed this on October 29, 1996.

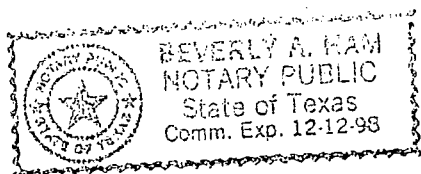
Elmer Henry Brunsting  
Elmer Henry Brunsting

Nelva E. Brunsting  
Nelva E. Brunsting

STATE OF TEXAS )  
 ) ss.  
COUNTY OF Harris )

I, the undersigned, a Notary Public, in and for said County and State, aforesaid, DO HEREBY CERTIFY, that **ELMER HENRY BRUNSTING and NELVA E. BRUNSTING, individually and as husband and wife**, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal on OCTOBER 29, 1996.



Beverly Ham  
Notary Public

THIS INSTRUMENT PREPARED BY AND RETURN TO:

Dennis D. Duffy  
Attorney at Law  
101 Northwest Bank Tower  
2550 Middle Road  
Bettendorf, Iowa 52722  
(319) 355-7070

**TRANSFER TO GRANTOR TRUST SUBJECT TO WITHDRAWAL  
CONTRIBUTION AGREEMENT**  
(Transfer of Personal Property to Trust)

TRUST IDENTITY: BRUNSTING FAMILY LIVING TRUST

PRIMARY INCOME BENEFICIARIES: ELMER H. BRUNSTING  
NELVA E. BRUNSTING

IDENTITY OF CONTRIBUTORS: ELMER H. BRUNSTING  
NELVA E. BRUNSTING

**AGREEMENT:**

ELMER H. BRUNSTING and NELVA E. BRUNSTING agree to contribute, or have contributed, the property identified below to the trust as well as all personal effects which they may acquire in the future. The Trustees accept the contribution, subject to the right of the Contributors to withdraw all or any part of the contribution and its appreciation in value. The Contributors shall give the Trustees written notice of at least seven (7) days in advance of the date the withdrawal is to be made, and at the conclusion of the notice period, the Trustees will deliver funds or trust property equal in value to the amount which the Contributors are authorized to withdraw. If the property contributed is commingled with other trust property, the trust property will share pro rata in the appreciation or depreciation of all trust property administered by the Trustees except other trust property which has maintained a separate identity and which has not been commingled. The Trustees will have the authority to partition commingled trust property in kind and to deliver a divided interest thereof in satisfaction of the trust's payment obligation or to deliver an undivided interest, of equivalent value, in trust property in satisfaction of the trust's payment obligation.

It is the intent and purpose of the contracting parties that the contribution made or to be made be structured so that the contribution will not constitute a gift of Contributors' property for federal gift tax purposes, and this agreement shall be construed and shall be subject to modification to obtain this result.

Notwithstanding the foregoing agreement, the right of withdrawal retained herein shall be, in all events, subject to the trust provisions prohibiting withdrawal from portions of the trust which become irrevocable pursuant to the terms and conditions of the trust, and this agreement shall be construed and shall be subject to modification to obtain this result.

**PROPERTY CONTRIBUTED OR TO BE CONTRIBUTED:**

All personal effects, clothes, jewelry, chinaware, silver, photographs, works of art, books, sporting goods, artifacts relating to the hobbies of the Contributors, and all household furniture, fixtures, equipment, goods and miscellaneous household items, as well as all other tangible articles of personal or household use, including, but not limited to, all such personalty set forth and described in Exhibit "A" attached hereto and incorporated herein for all purposes.

Date: January 12, 2005

---

ELMER H. BRUNSTING,  
Contributor and Trustee

---

NELVA E. BRUNSTING,  
Contributor and Trustee



## *THE LIVING TRUST*

This section contains a signed duplicate original of your Living Trust Agreement. Your Living Trust is a legal document which authorizes you, as trustee, to manage and control trust assets during your lifetime. During any period of disability and after your death, your successor trustee will manage and control the trust assets according to the specific instructions in your trust.

**THE RESTATEMENT OF  
THE BRUNSTING FAMILY  
LIVING TRUST**

*Prepared By*

Albert E. Vacek, Jr.

The Vacek Law Firm, PLLC

11511 Katy Freeway            Suite 520  
Houston, Texas 77079

Telephone: (281) 531-5800

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SUMMARY  
OF  
THE BRUNSTING FAMILY LIVING TRUST

NAME OF TRUST:

THE BRUNSTING FAMILY LIVING TRUST

DATE ESTABLISHED:

October 10, 1996

INITIAL TRUSTEES:

ELMER H. BRUNSTING  
NELVA E. BRUNSTING

SUCCESSOR TRUSTEES:

First, CARL HENRY BRUNSTING  
Second, AMY RUTH TSCHIRHART  
Third, CANDACE LOUISE CURTIS

TITLE TO ALL ASSETS IN THE TRUST ARE VESTED IN THE NAME OF:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor  
Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10,  
1996, as amended

THIS SUMMARY IS NOT PART OF THE TRUST

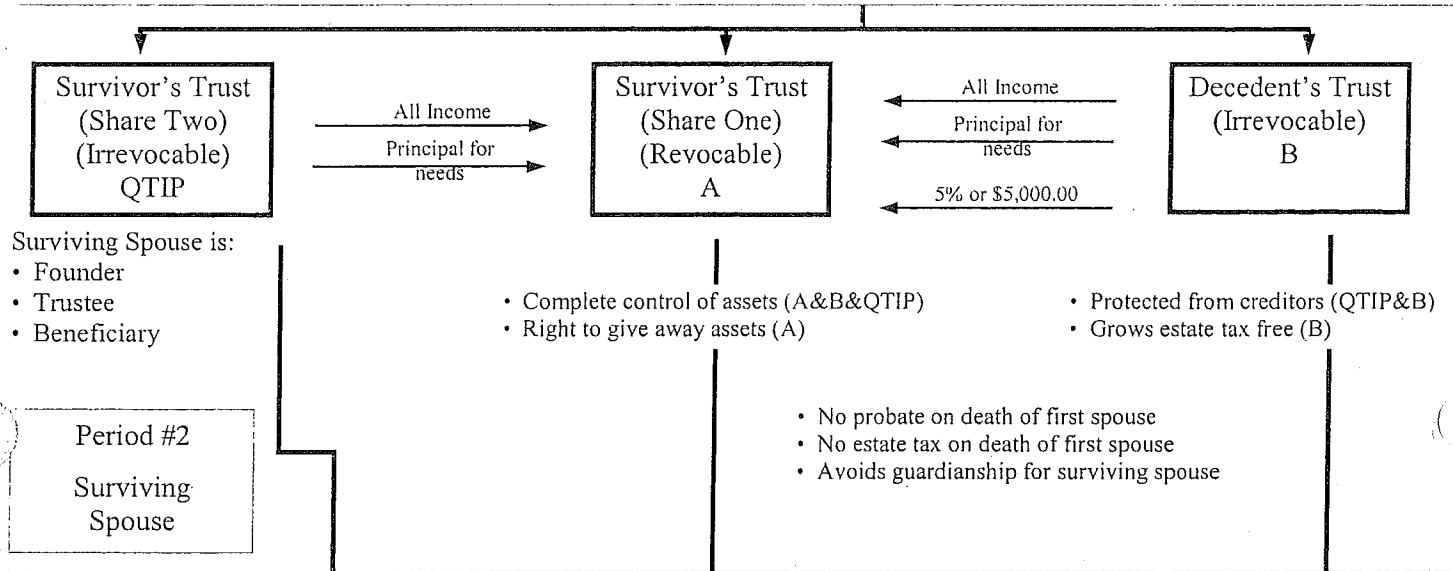


**THE BRUNSTING FAMILY LIVING TRUST**  
**ELMER H. BRUNSTING      NELVA E. BRUNSTING**  
 Co-Trustees

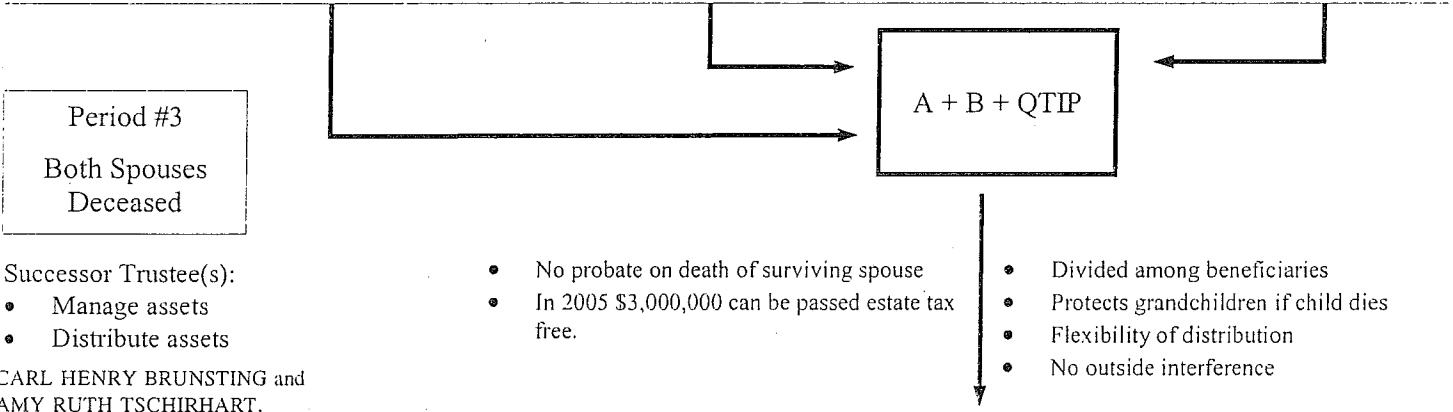
Period #1  
 Both Spouses Living  
 Husband & Wife are:  
 • Founders  
 • Trustees  
 • Beneficiaries

- Complete control of assets
- Avoids guardianship
- Can be amended or revoked
- No change in income taxes

**DEATH OF FIRST SPOUSE**



**DEATH OF SURVIVING SPOUSE**



CARL HENRY BRUNSTING and  
 AMY RUTH TSCHIRHART,  
 as Co-Trustees

CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

## IMPORTANT REMINDER

Your Living Trust will only control property which has been transferred into the name of the Trust. If property is not in the name of your Trust, it may be subject to guardianship and probate court proceedings, and may not pass according to your estate plan. All assets should be identified by listing them on the Schedules in the section entitled, "Title Transfer Documents". Copies of correspondence and documents of ownership for Trust assets should also be placed in that section.

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# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

### Our Family Living Trust

#### Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement and all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

#### Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

Our trust may also be known as:

ELMER H. BRUNSTING and NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

### Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.





## Article II

### Transfers of Assets to Our Trust

#### Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

#### Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

#### Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

## Article III

### Our Right to Amend or Revoke This Trust

#### Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

#### Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

#### Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

## Article IV

### Our Trustees

#### Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

#### Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and ~~AMY RUTH TSCHIRHART~~

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

#### **Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

#### **Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

#### **Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

\_\_\_\_\_  
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public - State of Texas

### **Section F. Documentary Succession of Our Trustees**

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

### **Section G. Our Trustees' Compensation**

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

#### **Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

#### **Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

#### **Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

#### **Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

## **Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

## **Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance**

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

### **1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and



deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

## **2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

## **3. Determination of "Incompetence" or "Incapacity"**

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

## Article V

### Insurance Policies and Retirement Plans

#### Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

##### 1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

##### 2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

## Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

### 1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

### 2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

### 3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

#### **4. Payor's Liability**

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

### **Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets**

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

#### **1. Minimum Distribution**

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

#### **2. Distribution Restrictions**

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

### **3. Exclusion of Older Adopted "Descendants"**

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

### **4. Payment of Estate Taxes of Plan Participant**

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

### **5. Delivery of Trust to Plan Administrator**

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

### **6. Distribution to the Beneficiaries**

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

**7. Distribution of More Than the Minimum Distribution**

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.





## Article VI

### For So Long As We Both Shall Live

#### Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

#### Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

#### **Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

#### **Section D. Residence Homestead**

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;
2. Our residence shall be designed or adapted for human residence;

3. Such property shall at all times be used as our residence;
4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;
5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;
6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument 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; and
7. This trust has acquired the property in an instrument of title that
  - a. describes the property with sufficient certainty to identify it and the interest acquired;
  - b. is recorded in the real property records of the county in which the property is located; and
  - c. is executed by one or both of us as Trustors or by our personal representatives.



## Article VII

### Upon the Death of One of Us

#### Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

#### 1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

## **2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

## **3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

## **Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

### **1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

#### **a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

#### **b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.



## **2. Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

### **Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

### **Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

### **Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

## **Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

## **Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

### **1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

## 2. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

## 3. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

## Article VIII

### Administration of the Survivor's Trust

#### Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

##### 1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

##### 2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

#### Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

##### 1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

**2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

## Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

### 1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

### 2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

### **3. The Surviving Founder's Limited Testamentary Power of Appointment**

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

### **Section D. Administration of Both Survivor's Shares at Surviving Founder's Death**

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

#### **1. The Surviving Founder's Final Expenses**

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

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

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

## **2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

## **3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

### **a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.



**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

c. **Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.



## Article IX

### Administration of the Decedent's Trust

#### Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.
2. **PRINCIPAL**
  - a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed \$5,000.00.
  - b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.
  - c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

#### Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

### **Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

### **Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.



## Article X

### Upon the Death of the Survivor of Us

#### Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

<u>Beneficiary</u>	<u>Share</u>
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

#### Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.



ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH



TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

#### iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

#### **Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

#### **Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

#### **Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

#### **Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

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.

## 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.

**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.

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.

### **Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

### **Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

### **Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

### **Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

### **Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

#### **Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

#### **Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

#### **Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

#### **Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

#### **Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

#### **Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

#### **Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

  
ELMER H. BRUNSTING, Founder

  
NELVA E. BRUNSTING, Founder

  
ELMER H. BRUNSTING, Trustee

  
NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

*Charlene Allman*

\_\_\_\_\_  
Notary Public, State of Texas





## *POUR-OVER WILL*

Your original signed Pour-Over Will should be kept in a safe place such as a safe deposit box. This section contains an UNSIGNED COPY of your Pour-Over Will.

Upon your death, the Pour-Over Will leaves to your Living Trust any property which you did not place into your trust before your death. It serves merely as a safety net in order to assure that property which was overlooked will ultimately be transferred into your trust and managed by your trustees pursuant to your instructions.

If all of your assets are transferred to the Living Trust, then it will not be necessary to use the Pour-Over Will and probate will be avoided entirely.



**LAST WILL  
OF  
ELMER H. BRUNSTING**

I, ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

**Article I**

**My Family**

I am married and my spouse's name is NELVA E. BRUNSTING.

All references to "my spouse" in my Will are to NELVA E. BRUNSTING.

The names and birth dates of my children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

**Article II**

**Testamentary Gifts**

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

### Article III

#### Appointment of Personal Representative

I appoint NELVA E. BRUNSTING as my Personal Representative. In the event NELVA E. BRUNSTING ceases to serve for any reason, I appoint the following individuals as my Personal Representative in the following order:

First, C

Second

Third

The term "Personal Representative" shall include the Executor and other securities

dependent on the will construed in relation to the bond or other securities

to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisal and list of claims as required by law.

#### **Article IV**

##### **Payment of Debts, Taxes, Settlement Costs and Exercise of Elections**

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

##### **Section A. Payment of Indebtedness and Settlement Costs**

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

##### **Section B. Special Bequests**

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 date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

##### **Section C. Estate, Generation Skipping, or Other Death Tax**

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

#### **Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for NELVA E. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which NELVA E. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless NELVA E. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of NELVA E. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of NELVA E. BRUNSTING, and this

provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

#### **Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

#### **Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

### **Article V**

#### **Service of the Personal Representative**

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

**Section A. Possession, Assets, Records**

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

**Section B. Retain Property in Form Received, Sale**

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

**Section C. Investment Authority**

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

**Section D. Power of Sale, Other Disposition**

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

#### **Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

#### **Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

#### **Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

#### **Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

#### **Section I. Consultants, Professional Assistance**

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

#### **Section J. Compensation**

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

#### **Section K. Documenting Succession**

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.



## Article VI

### No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will 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 proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by NELVA E. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

---

ELMER H. BRUNSTING

The foregoing Will was, on the day and year written above, published and declared by ELMER H. BRUNSTING in our presence to be his Will. We, in his presence and at his request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, ELMER H. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

SELF-PROVING AFFIDAVIT

STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared ELMER H. BRUNSTING, \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said ELMER H. BRUNSTING, Testator, declared to me and to the said witnesses in my presence that said instrument is his Last Will and Testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testator that the said Testator had declared to them that the said instrument is his Last Will and Testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

\_\_\_\_\_  
ELMER H. BRUNSTING

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

Subscribed and sworn to before me by the said ELMER H. BRUNSTING, the Testator, and by the said \_\_\_\_\_ and \_\_\_\_\_, witnesses, on January 12, 2005.

\_\_\_\_\_  
Notary Public, State of Texas

**LAST WILL  
OF  
NELVA E. BRUNSTING**

I, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

**Article I**

**My Family**

I am married and my spouse's name is ELMER H. BRUNSTING.

All references to "my spouse" in my Will are to ELMER H. BRUNSTING.

The names and birth dates of my children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

**Article II**

**Testamentary Gifts**

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

### Article III

#### Appointment of Personal Representative

I appoint ELMER H. BRUNSTING as my Personal Representative. In the event ELMER H. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisal and list of claims as required by law.

#### **Article IV**

#### **Payment of Debts, Taxes, Settlement Costs and Exercise of Elections**

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

#### **Section A. Payment of Indebtedness and Settlement Costs**

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

#### **Section B. Special Bequests**

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 date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

#### **Section C. Estate, Generation Skipping, or Other Death Tax**

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

#### **Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for ELMER H. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which ELMER H. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless ELMER H. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of ELMER H. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of ELMER H. BRUNSTING, and this

provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

#### **Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

#### **Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

### **Article V**

#### **Service of the Personal Representative**

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.



**Section A. Possession, Assets, Records**

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

**Section B. Retain Property in Form Received, Sale**

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

**Section C. Investment Authority**

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

**Section D. Power of Sale, Other Disposition**

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

#### **Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

#### **Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

#### **Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

#### **Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

#### **Section I. Consultants, Professional Assistance**

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

#### **Section J. Compensation**

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

#### **Section K. Documenting Succession**

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.

## Article VI

### No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will 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 proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by ELMER H. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

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NELVA E. BRUNSTING

The foregoing Will was, on the day and year written above, published and declared by NELVA E. BRUNSTING in our presence to be her Will. We, in her presence and at her request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, NELVA E. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

SELF-PROVING AFFIDAVIT

STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared NELVA E. BRUNSTING, \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Testatrix and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said NELVA E. BRUNSTING, Testatrix, declared to me and to the said witnesses in my presence that said instrument is her Last Will and Testament, and that she had willingly made and executed it as her free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testatrix that the said Testatrix had declared to them that the said instrument is her Last Will and Testament, and that she executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testatrix and at her request; that she was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

\_\_\_\_\_  
NELVA E. BRUNSTING

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

Subscribed and sworn to before me by the said NELVA E. BRUNSTING, the Testatrix, and by the said \_\_\_\_\_ and \_\_\_\_\_, witnesses, on January 12, 2005.

\_\_\_\_\_  
Notary Public, State of Texas



## *POWER OF ATTORNEY*

This section contains an UNSIGNED COPY of your Durable Special Power of Attorney. "Durable" simply means that the persons you have named as your agents can continue to transfer assets to your Living Trust even if you are unable to do so yourself. In addition, this power of attorney is "special"; your agent specifically has one authority and that is the authority to transfer assets into your Living Trust.

This power of attorney was prepared so that the agent you named will be able to transfer your assets into your trust in the event you are unable to do so.

**DURABLE SPECIAL POWER OF ATTORNEY**  
**FOR**  
**ELMER H. BRUNSTING**

THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTHCARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I revoke all previous powers of attorney given by me. This is a durable special power of attorney given in order to coordinate the management, protection and conservation of my property, with property previously transferred to my revocable living trust, especially in the event I am unable for any reason to manage, protect and conserve my own property or transfer such property to my revocable living trust, and to avoid a guardianship as to the management, protection and conservation of property. The authority and legal capacity of my Personal Representative (hereinafter referred to as "Agent") will be that of a personal representative, trustee and attorney-in-fact.

My revocable living trust (hereinafter referred to as my "Living Trust") shall be referred to, for all purposes, as follows:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST, dated October 10, 1996, as  
amended.

**Appointment of the Agent**

I appoint NELVA E. BRUNSTING as my Agent. If NELVA E. BRUNSTING ceases to serve for any reason, I appoint the following individuals as my Agent to serve in the following order:

First, CARL HENRY BRUNSTING  
Second, AMY RUTH TSCHIRHART  
Third, CANDACE LOUISE CURTIS



My Agents, in the order listed, are also my preference as guardian should a court appointed guardian of my person or estate be required.

My Agent will serve without the requirement of bond or other security, and will have the authority to do and perform those things delineated below, as fully, to all intents and purposes, as I might or could do if personally present:

1. I grant my Agent full power and authority to do everything necessary to transfer, assign, convey, and deliver any interest I may have in property owned by me to my Living Trust.
2. In order for my Agent to transfer my property under this Durable Special Power of Attorney, the following powers are set forth to provide guidance as to some of the powers granted by me to my Agent:

My Agent may convey real or personal property, whether tangible or intangible, or any interest therein.

My Agent may receive and endorse checks and drafts, deposit and withdraw funds, and acquire and redeem certificates of deposit in banks, savings and loans, and all other financial institutions.

My Agent may receive and endorse checks and drafts, withdraw funds, make elections and otherwise deal with any and all retirement accounts or qualified plans as deemed necessary by my Agent.

My Agent may execute or release mortgages, deeds of trust, or other security agreements as may be necessary to accomplish the purpose of this Durable Special Power of Attorney.

My Agent may apply for, endorse, and transfer certificates of title for any motor vehicle.

My Agent may endorse, convey, and otherwise transfer all business interests that I may now own or hereafter acquire.

My Agent may have access to any safe deposit box rented by me and remove the contents of such safe deposit box, and any institution in which a safe deposit box is located shall be relieved of any liability to me, my heirs, or assigns as a result of my Agent's exercise of this power.

3. State law, and title companies that issue owners' and mortgagees' policies of title insurance, may impose a limitation upon the authority of an Agent to convey title to real estate without the actual joinder of the person represented. Any such impediment will serve to frustrate the very purpose for which this limited special power of attorney is given. Therefore, I give to my Agent the unlimited authority to transfer, assign, convey and deliver legal and equitable title to any real estate, or interest in real estate which I may own to my Living Trust.

This authority will include any property in which I may have a homestead interest. I waive any requirement which may be imposed by law or by a title agency that I personally join in the conveyance. To protect the title agency and any other person, agency or entity who may rely upon the authority vested in this document, I bind myself, my estate, my successors and assigns and my Agent to indemnify and hold harmless any person, agency, or entity from any claim or loss whatsoever in relying upon the authority provided by this document and the authority of my Agent.

4. I grant my Agent full power and authority to prepare, execute and file joint, separate, or any other tax returns of any nature (e.g., income tax, gift tax, estate tax or generation skipping transfer tax) and declarations of estimated income tax required by the Internal Revenue Code to be made by me and to settle with the Internal Revenue Service, its agents and representatives, any questions concerning my liability for and the collection, refund or payment of said taxes, and to possess all of the authorities and all of the powers set forth in Form 2848 of the Department of the Treasury, Internal Revenue Service, as amended or revised hereafter, including the power to receive refund checks due to me, from the date of this instrument until this instrument is revoked.
5. I grant my Agent full power and authority to make any elections (e.g., tax, payment amount, payment frequency, etc.) in respect of any retirement account (e.g., IRA, pension plan, 401k, etc.) that I have or of which I am the contributor. Furthermore, I grant my Agent full power and authority to transfer, assign, convey and deliver any interest I may have in such retirement accounts to my Living Trust.
6. Any person, entity or institution dealing with my Agent will be entitled to rely upon my Agent's sworn statement that this special power of attorney has not been revoked and the Agent is authorized and empowered to serve. I indemnify and hold harmless any person, firm, institution or agency from any loss or claim whatsoever when reliant upon such statement, and to this end, I bind myself, my estate, my heirs, successors and assigns. I vest in my Agent the authority to record this power of attorney at any reasonable time, and, to the extent I may lawfully provide, my Agent

may do so at any time before the Agent is to act with respect to any third party who may be asked to rely upon this document.

7. I grant my Agent full power and authority to indemnify and hold harmless any third party who accepts and acts under this Durable Special Power of Attorney. No person who acts in reliance on the representations of my Agent or the authority granted under this Durable Special Power of Attorney shall incur any liability to me, my heirs, or assigns as a result of permitting my Agent to exercise any power granted under this Durable Special Power of Attorney.
8. This power of attorney is revocable and revocation will be effective if a written and acknowledged revocation is filed of record in the deed records of each county in which this power of attorney has been placed of record, if any. Further, revocation will be effective as to a third party relying on the power of attorney when the third party has actual notice of the revocation regardless of whether this power of attorney has been placed of record. Finally, written notification of the revocation of this power of attorney to any agent under this power of attorney will also effectively revoke this power.
9. I grant my Agent full power and authority to exercise, do or perform any act, right, power, duty or obligation whatsoever that I now have or may acquire the legal right, power or capacity to exercise, do, or perform in connection with, arising out of, or relating to any person, item, thing, transaction, business property, real or personal, tangible or intangible, or matter whatsoever.
10. I grant my Agent full power and authority to ask, demand, sue for, recover, collect, receive and hold and possess all sums of money, debts, dues, goods, wares, merchandise, chattels, effects, bonds, notes, checks, drafts, accounts, deposits, safe deposit boxes, post office box privileges, legacies, bequests, devises, interests, dividends, stock certificates, certificates of deposit, annuities, pension and retirement benefits, stock bonus plan and profit sharing plan benefits, stock options, insurance benefits and proceeds, documents of title, choices in actions, personal and real property, tangible and intangible property and property rights, and demands whatsoever, liquidated or unliquidated, and things of whatsoever nature or description which now are or hereafter shall be or become due, owing, payable or belonging to me in or by any right, title, ways or means howsoever, and upon receipt thereof or of any part thereof to make, sign, execute, and deliver such receipts, releases or other discharges for the same as my said attorney shall think fit or be advised.

11. I grant my Agent full power and authority to engage, employ, and dismiss any agents, clerks, servants, attorneys-at-law, accountants, investment advisors, custodians, or other persons in and about the performance of these presents as my attorney shall think fit.

### **Special Power of Attorney**

This document is to be construed as a Special Power of Attorney vesting in my Agent only those powers and authority specifically enumerated, without my joinder or consent, for me and on my behalf as if I were personally present and acting. Any transaction completed on my behalf by my Agent will be binding upon me, my estate, my successors and assigns.

### **My Disability**

My Agent will have the authority to continue acting in such capacity during any period or episode of my disability. This power of attorney is to be construed and considered as being a durable power of attorney and will not terminate upon my disability. As a trust, the authority of the Agent will continue following my death for the time reasonably needed to complete administration of the property which at the time of my death goes into custody or control of my Agent. This would include, for example, all property held in the name of my Agent as Trustee.

### **Authority as Trustee**

I vest in my Agent all of the power and authority given to trustees by the trust laws of the State of Texas. If my Agent determines that it is in my best interest under the facts and circumstances then existing, I authorize my Agent to take possession of any and all of my property and estate, as Trustee, and to hold, conserve and administer such property for me and my general welfare. My Agent will be responsible only for the property of my estate over which the Agent shall assert direct control, and will not have liability for the loss of income from, or the depreciation of the value of, assets which the Agent does not possess or which are retained in the form my Agent received them.

My Agent is authorized, upon my death, to make direct payment for any expense related to my hospitalization, illness, treatment and care prior to my death, and any expense related to my death and the settlement of my estate. The trust created by this document will continue for a reasonable period of time in which to conclude any administration, pay expenses of termination (including the discretionary payment of expenses and estate settlement costs) and to make distributions of the trust property to my Living Trust.

### **Ratification and Indemnity**

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. Further, I ratify and confirm all that my Agent will do or cause to be done by reason of the authority vested by this power of attorney and by law. No person, firm, agency or entity will be obligated to see to the application of any payment delivered to my Agent for or on my behalf. My Agent is authorized to proceed in my name and on my behalf against any person, agency or entity who will fail or refuse to recognize the authority of my Agent or who will refuse to transact business with my Agent to my harm and detriment.

### **Life Insurance on the Life of My Agent**

My Agent shall have no rights or powers with respect to any policy of insurance owned by me on the life of my Agent.

### **Construction of Power**

My agent shall have all rights and powers conferred under Chapter XII, Section 499 of the Texas Probate Code, as amended, as it pertains to my Living Trust.

### **Conclusion**

This power of attorney is dated and effective as of January 12, 2005.

---

ELMER H. BRUNSTING, Principal  
13630 Pinerock  
Houston, Texas 77079

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing Durable Special Power of Attorney was acknowledged before me by ELMER H. BRUNSTING, Principal, on January 12, 2005.

Witness my hand and official seal.

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Notary Public, State of Texas

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT AND IS RESPONSIBLE FOR MAINTAINING APPROPRIATE RECORDS OF EACH TRANSACTION, INCLUDING AN ACCOUNTING OF RECEIPTS AND DISBURSEMENTS. AS A FIDUCIARY, AN ATTORNEY-IN-FACT OR AGENT IS HELD TO THE HIGHEST STANDARDS OF GOOD FAITH, FAIR DEALING, AND LOYALTY WITH RESPECT TO THE PRINCIPAL. FAILURE TO ADHERE TO THESE STANDARDS MAY SUBJECT AN ATTORNEY-IN-FACT OR AGENT TO LEGAL ACTION. DEPENDING ON THE DEGREE OF MISCONDUCT, AN ATTORNEY-IN-FACT OR AGENT MAY BE LIABLE FOR DAMAGES OR MAY BE CHARGED WITH A CRIMINAL OFFENSE.

AFTER RECORDING RETURN TO:  
ELMER H. BRUNSTING or NELVA E. BRUNSTING  
13630 Pinerock  
Houston, Texas 77079

DUTY TO INFORM AND ACCOUNT  
Texas Probate Code Section 489B

The attorney-in-fact or agent is a fiduciary and has a duty to inform and to account for actions taken pursuant to the power of attorney.

The attorney-in-fact or agent shall timely inform the principal of all actions taken pursuant to the power of attorney. Failure of the attorney-in-fact or agent to inform timely, as to third parties, shall not invalidate any action of the attorney-in-fact or agent.

The attorney-in-fact or agent shall maintain records of each action taken or decision made by the attorney-in-fact or agent.

The principal may demand an accounting by the attorney-in-fact or agent. Unless otherwise directed by the principal, the accounting shall include:

1. the property belonging to the principal that has come to the attorney-in-fact's or agent's knowledge or into the attorney-in-fact's or agent's possession;
2. all actions taken or decisions made by the attorney-in-fact or agent;
3. a complete account of receipts, disbursements, and other actions of the attorney-in-fact or agent, including their source and nature, with receipts of principal and income shown separately;
4. a listing of all property over which the attorney-in-fact or agent has exercised control, with an adequate description of each asset and its current value if known to the attorney-in-fact or agent;
5. the cash balance on hand and the name and location of the depository where the balance is kept;
6. all known liabilities; and,
7. such other information and facts known to the attorney-in-fact or agent as may be necessary to a full and definite understanding of the exact condition of the property belonging to the principal.

Unless directed otherwise by the principal, the attorney-in-fact or agent shall also provide to the principal all documentation regarding the principal's property.

The attorney-in-fact or agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

If the attorney-in-fact or agent fails or refuses to inform the principal, provide documentation, or deliver the accounting within 60 days (or such longer or shorter time that the principal demands or a court may order), the principal may file suit to compel the attorney-in-fact or agent to deliver the accounting, to deliver the assets, or to terminate the power of attorney.

This section shall not limit the right of the principal to terminate the power of attorney or make additional requirements of, or to give additional instructions to the attorney-in-fact or agent.

Wherever in this chapter a principal is given an authority to act, that shall include not only the principal but also any person designated by the principal, a guardian of the estate of the principal, or other personal representative of the principal.

The rights set out in this section and chapter are cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and not in derogation of those rights.

# DURABLE SPECIAL POWER OF ATTORNEY

FOR

**NELVA E. BRUNSTING**

THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTHCARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I revoke all previous powers of attorney given by me. This is a durable special power of attorney given in order to coordinate the management, protection and conservation of my property, with property previously transferred to my revocable living trust, especially in the event I am unable for any reason to manage, protect and conserve my own property or transfer such property to my revocable living trust, and to avoid a guardianship as to the management, protection and conservation of property. The authority and legal capacity of my Personal Representative (hereinafter referred to as my "Agent") will be that of a personal representative, trustee and attorney-in-fact.

My revocable living trust (hereinafter referred to as my "Living Trust") shall be referred to, for all purposes, as follows:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST, dated October 10, 1996, as  
amended.

## **Appointment of the Agent**

I appoint CARL HENRY BRUNSTING as my Agent. If CARL HENRY BRUNSTING ceases to serve for any reason, I appoint the following individuals as my Agent to serve in the following order:

First, ANITA BRUNSTING  
Second, CAROL A. BRUNSTING  
Third, CANDACE LOUISE CURTIS



My Agents, in the order listed, are also my preference as guardian should a court appointed guardian of my person or estate be required.

My Agent will serve without the requirement of bond or other security, and will have the authority to do and perform those things delineated below, as fully, to all intents and purposes, as I might or could do if personally present:

1. I grant my Agent full power and authority to do everything necessary to transfer, assign, convey, and deliver any interest I may have in property owned by me to my Living Trust.
2. In order for my Agent to transfer my property under this Durable Special Power of Attorney, the following powers are set forth to provide guidance as to some of the powers granted by me to my Agent:

My Agent may convey real or personal property, whether tangible or intangible, or any interest therein.

My Agent may receive and endorse checks and drafts, deposit and withdraw funds, and acquire and redeem certificates of deposit in banks, savings and loans, and all other financial institutions.

My Agent may receive and endorse checks and drafts, withdraw funds, make elections, and otherwise deal with any and all retirement accounts or qualified plans as deemed necessary by my Agent.

My Agent may execute or release mortgages, deeds of trust, or other security agreements as may be necessary to accomplish the purpose of this Durable Special Power of Attorney.

My Agent may apply for, endorse, and transfer certificates of title for any motor vehicle.

My Agent may endorse, convey, and otherwise transfer all business interests that I may now own or hereafter acquire.

My Agent may have access to any safe deposit box rented by me and remove the contents of such safe deposit box, and any institution in which a safe deposit box is located shall be relieved of any liability to me, my heirs, or assigns as a result of my Agent's exercise of this power.

3. State law, and title companies who issue owners' and mortgagees' policies of title insurance, may impose a limitation upon the authority of an Agent to convey title to real estate without the actual joinder of the person represented. Any such impediment

will serve to frustrate the very purpose for which this limited special power of attorney is given. Therefore, I give to my Agent the unlimited authority to transfer, assign, convey and deliver legal and equitable title to any real estate, or interest in real estate which I may own to my Living Trust.

This authority will include any property in which I may have a homestead interest. I waive any requirement which may be imposed by law or by a title agency that I personally join in the conveyance. To protect the title agency and any other person, agency or entity who may rely upon the authority vested in this document, I bind myself, my estate, my successors and assigns and my Agent to indemnify and hold harmless any person, agency, or entity from any claim or loss whatsoever in relying upon the authority provided by this document and the authority of my Agent.

4. I grant my Agent full power and authority to prepare, execute and file joint, separate, or any other tax returns of any nature (e.g., income tax, gift tax, estate tax or generation skipping transfer tax) and declarations of estimated income tax required by the Internal Revenue Code to be made by me and to settle with the Internal Revenue Service, its agents and representatives, any questions concerning my liability for and the collection, refund or payment of said taxes, and to possess all of the authorities and all of the powers set forth in Form 2848 of the Department of the Treasury, Internal Revenue Service, as amended or revised hereafter, including the power to receive refund checks due to me, from the date of this instrument until this instrument is revoked.
5. I grant my Agent full power and authority to make any elections (e.g., tax, payment amount, payment frequency, etc.) in respect of any retirement account (e.g., IRA, pension plan, 401k, etc.) that I have or of which I am the contributor. Furthermore, I grant my Agent full power and authority to transfer, assign, convey and deliver any interest I may have in such retirement accounts to my Living Trust.
6. Any person, entity or institution dealing with my Agent will be entitled to rely upon my Agent's sworn statement that this special power of attorney has not been revoked and the Agent is authorized and empowered to serve. I indemnify and hold harmless any person, firm, institution or agency from any loss or claim whatsoever when reliant upon such statement, and to this end, I bind myself, my estate, my heirs, successors and assigns. I vest in my Agent the authority to record this power of attorney at any reasonable time, and, to the extent I may lawfully provide, my Agent may do so at any time before the Agent is to act with respect to any third party who may be asked to rely upon this document.
7. I grant my Agent full power and authority to indemnify and hold harmless any third party who accepts and acts under this Durable Special Power of Attorney. No person who acts in reliance on the representations of my Agent or the authority granted under this Durable Special Power of Attorney shall incur any liability to me, my heirs, or

assigns as a result of permitting my Agent to exercise any power granted under this Durable Special Power of Attorney.

8. This power of attorney is revocable and revocation will be effective if a written and acknowledged revocation is filed of record in the deed records of each county in which this power of attorney has been placed of record, if any. Further, revocation will be effective as to a third party relying on the power of attorney when the third party has actual notice of the revocation regardless of whether this power of attorney has been placed of record. Finally, written notification of the revocation of this power of attorney to any agent under this power of attorney will also effectively revoke this power.
9. I grant my Agent full power and authority to exercise, do or perform any act, right, power, duty or obligation whatsoever that I now have or may acquire the legal right, power or capacity to exercise, do, or perform in connection with, arising out of, or relating to any person, item, thing, transaction, business property, real or personal, tangible or intangible, or matter whatsoever.
10. I grant my Agent full power and authority to ask, demand, sue for, recover, collect, receive and hold and possess all sums of money, debts, dues, goods, wares, merchandise, chattels, effects, bonds, notes, checks, drafts, accounts, deposits, safe deposit boxes, post office box privileges, legacies, bequests, devises, interests, dividends, stock certificates, certificates of deposit, annuities, pension and retirement benefits, stock bonus plan and profit sharing plan benefits, stock options, insurance benefits and proceeds, documents of title, choices in actions, personal and real property, tangible and intangible property and property rights, and demands whatsoever, liquidated or unliquidated, and things of whatsoever nature or description which now are or hereafter shall be or become due, owing, payable or belonging to me in or by any right, title, ways or means howsoever, and upon receipt thereof or of any part thereof to make, sign, execute, and deliver such receipts, releases or other discharges for the same as my said attorney shall think fit or be advised.
11. I grant my Agent full power and authority to engage, employ, and dismiss any agents, clerks, servants, attorneys-at-law, accountants, investment advisors, custodians, or other persons in and about the performance of these presents as my attorney shall think fit.

### **Special Power of Attorney**

This document is to be construed as a Special Power of Attorney vesting in my Agent only those powers and authority specifically enumerated, without my joinder or consent, for me and on my behalf as if I were personally present and acting. Any transaction completed on my behalf by my Agent will be binding upon me, my estate, my successors and assigns.

DUTY TO INFORM AND ACCOUNT  
Texas Probate Code Section 489B

The attorney-in-fact or agent is a fiduciary and has a duty to inform and to account for actions taken pursuant to the power of attorney.

The attorney-in-fact or agent shall timely inform the principal of all actions taken pursuant to the power of attorney. Failure of the attorney-in-fact or agent to inform timely, as to third parties, shall not invalidate any action of the attorney-in-fact or agent.

The attorney-in-fact or agent shall maintain records of each action taken or decision made by the attorney-in-fact or agent.

The principal may demand an accounting by the attorney-in-fact or agent. Unless otherwise directed by the principal, the accounting shall include:

1. the property belonging to the principal that has come to the attorney-in-fact's or agent's knowledge or into the attorney-in-fact's or agent's possession;
2. all actions taken or decisions made by the attorney-in-fact or agent;
3. a complete account of receipts, disbursements, and other actions of the attorney-in-fact or agent, including their source and nature, with receipts of principal and income shown separately;
4. a listing of all property over which the attorney-in-fact or agent has exercised control, with an adequate description of each asset and its current value if known to the attorney-in-fact or agent;
5. the cash balance on hand and the name and location of the depository where the balance is kept;
6. all known liabilities; and,
7. such other information and facts known to the attorney-in-fact or agent as may be necessary to a full and definite understanding of the exact condition of the property belonging to the principal.

Unless directed otherwise by the principal, the attorney-in-fact or agent shall also provide to the principal all documentation regarding the principal's property.

The attorney-in-fact or agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

If the attorney-in-fact or agent fails or refuses to inform the principal, provide documentation, or deliver the accounting within 60 days (or such longer or shorter time that the principal demands or a court may order), the principal may file suit to compel the attorney-in-fact or agent to deliver the accounting, to deliver the assets, or to terminate the power of attorney.

This section shall not limit the right of the principal to terminate the power of attorney or make additional requirements of, or to give additional instructions to the attorney-in-fact or agent.

Wherever in this chapter a principal is given an authority to act, that shall include not only the principal but also any person designated by the principal, a guardian of the estate of the principal, or other personal representative of the principal.

The rights set out in this section and chapter are cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and not in derogation of those rights.

### **My Disability**

My Agent will have the authority to continue acting in such capacity during any period or episode of my disability. This power of attorney is to be construed and considered as being a durable power of attorney and will not terminate upon my disability. As a trust, the authority of the Agent will continue following my death for the time reasonably needed to complete administration of the property which at the time of my death goes into custody or control of my Agent. This would include, for example, all property held in the name of my Agent as Trustee.

### **Authority as Trustee**

I vest in my Agent all of the power and authority given to trustees by the trust laws of the State of Texas. If my Agent determines that it is in my best interest under the facts and circumstances then existing, I authorize my Agent to take possession of any and all of my property and estate, as Trustee, and to hold, conserve and administer such property for me and my general welfare. My Agent will be responsible only for the property of my estate over which the Agent shall assert direct control, and will not have liability for the loss of income from, or the depreciation of the value of, assets which the Agent does not possess or which are retained in the form my Agent received them.

My Agent is authorized, upon my death, to make direct payment for any expense related to my hospitalization, illness, treatment and care prior to my death, and any expense related to my death and the settlement of my estate. The trust created by this document will continue for a reasonable period of time in which to conclude any administration, pay expenses of termination (including the discretionary payment of expenses and estate settlement costs) and to make distributions of the trust property to my Living Trust.

### **Ratification and Indemnity**

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. Further, I ratify and confirm all that my Agent will do or cause to be done by reason of the authority vested by this power of attorney and by law. No person, firm, agency or entity will be obligated to see to the application of any payment delivered to my Agent for or on my behalf. My Agent is authorized to proceed in my name and on my behalf against any person, agency or entity who will fail or refuse to recognize the authority of my Agent or who will refuse to transact business with my Agent to my harm and detriment.

**Life Insurance on the Life of My Agent**

My Agent shall have no rights or powers with respect to any policy of insurance owned by me on the life of my Agent.

**Construction of Power**

My agent shall have all rights and powers conferred under Chapter XII, Section 499 of the Texas Probate Code, as amended, as it pertains to my Living Trust.

**Conclusion**

This power of attorney is dated and effective as of November 8, 2007.

---

NELVA E. BRUNSTING, Principal  
13630 Pinerock  
Houston, Texas 77079

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing Durable Special Power of Attorney was acknowledged before me by NELVA E. BRUNSTING, Principal, on November 8, 2007

Witness my hand and official seal.

---

Notary Public, State of Texas



## *MEDICAL POWER OF ATTORNEY*

This section contains a signed copy of your Medical Power of Attorney. This document allows the persons you have named as your agents to make medical and health care decisions for you if you are disabled and unable to do so yourself. Your agent cannot use this power of attorney for any other purpose.

This Medical Power was prepared so that in the event of a medical emergency, the document can be presented to a health care professional and/or hospital and serve as a written document authorizing the agent to make medical and health care decisions for you in the event you are unable to do so.

**INFORMATION CONCERNING  
THE MEDICAL POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.



You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

POWER OF ATTORNEY

HEALTH CARE AGENT

BP  
P

also known as NELVA E.  
also known as ELMER H.  
77079, and whose phone  
decisions for me,  
attorney takes  
is certified in

(You are not required to name an alternate agent if the designated agent is unable or unwilling to act. If no alternate agent is named and the designated agent is unable or unwilling to act, the designation is automatically revoked.)

may do so. An alternate agent if the designated agent is your spouse, the dissolution is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

CAROL A. BRUNSTING  
5822 Jason  
Houston, Texas 77074  
(713) 981-5260 or (281) 514-7491

B. Second Alternate Agent

CARL H. BRUNSTING  
5629 Flack Drive  
Houston, Texas 77081  
(713) 778-0137 or (713) 522-2778

The original of this document is kept with my other estate planning documents. A signed copy of this document is on file with my lawyer, ALBERT E. VACEK, JR., 11511 Katy Freeway, Suite 520, Houston, Texas 77079, telephone (281) 531-5800 or 1-800-229-3002.

## **DURATION**

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

## **PRIOR DESIGNATIONS REVOKED**

I revoke any prior medical power of attorney.

## **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

In addition to the other powers granted by this document, I grant to my agent the power and authority to serve as my personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996 and its regulations ("HIPAA") immediately upon my signing this document.

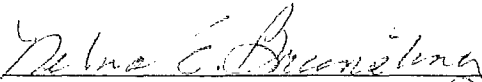
Pursuant to HIPAA, I specifically authorize my agent as my HIPAA personal representative to request, receive and review any information regarding my physical or mental health, including, without limitation all HIPAA protected health information, medical and hospital records; to execute on my behalf any authorizations, releases or other documents that may be required in order to obtain this information; and to consent to the disclosure of this information. I further authorize my agent to execute on my behalf any documents necessary or desirable to implement the health care decisions that my agent is authorized to make under this document.

By signing this Medical Power of Attorney, I specifically empower and authorize my physician, hospital or health care provider to release any and all medical records to my agent or my agent's designee. Further, I waive any liability to any physician, hospital or any health care provider who releases any and all of my medical records to my agent and acknowledge that the health information that would otherwise be protected under HIPAA will no longer be protected or private.

**ACKNOWLEDGMENT OF DISCLOSURE STATEMENT**

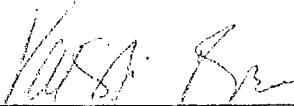
I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

I sign my name to this Medical Power of Attorney at Houston, Texas on January 12, 2005.

  
\_\_\_\_\_  
NELVA E. BRUNSTING

**STATEMENT OF FIRST WITNESS**

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

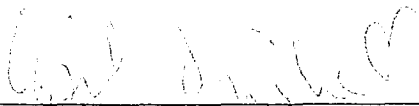


Date: January 12, 2005

\_\_\_\_\_  
Signature of First Witness

Krysti Brull  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

\_\_\_\_\_  
Address of First Witness



Date: January 12, 2005

\_\_\_\_\_  
Signature of Second Witness

April Driskell  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

\_\_\_\_\_  
Address of Second Witness

**DURABLE SPECIAL POWER OF ATTORNEY**  
**FOR**  
**NELVA E. BRUNSTING**

THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTHCARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I revoke all previous powers of attorney given by me. This is a durable special power of attorney given in order to coordinate the management, protection and conservation of my property, with property previously transferred to my revocable living trust, especially in the event I am unable for any reason to manage, protect and conserve my own property or transfer such property to my revocable living trust, and to avoid a guardianship as to the management, protection and conservation of property. The authority and legal capacity of my Personal Representative (hereinafter referred to as my "Agent") will be that of a personal representative, trustee and attorney-in-fact.

My revocable living trust (hereinafter referred to as my "Living Trust") shall be referred to, for all purposes, as follows:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST, dated October 10, 1996, as  
amended.

**Appointment of the Agent**

I appoint ELMER H. BRUNSTING as my Agent. If ELMER H. BRUNSTING ceases to serve for any reason, I appoint the following individuals as my Agent to serve in the following order:

First, CARL HENRY BRUNSTING  
Second, AMY RUTH TSCHIRHART  
Third, CANDACE LOUISE CURTIS

My Agents, in the order listed, are also my preference as guardian should a court appointed guardian of my person or estate be required.

My Agent will serve without the requirement of bond or other security, and will have the authority to do and perform those things delineated below, as fully, to all intents and purposes, as I might or could do if personally present:

1. I grant my Agent full power and authority to do everything necessary to transfer, assign, convey, and deliver any interest I may have in property owned by me to my Living Trust.
2. In order for my Agent to transfer my property under this Durable Special Power of Attorney, the following powers are set forth to provide guidance as to some of the powers granted by me to my Agent:

My Agent may convey real or personal property, whether tangible or intangible, or any interest therein.

My Agent may receive and endorse checks and drafts, deposit and withdraw funds, and acquire and redeem certificates of deposit in banks, savings and loans, and all other financial institutions.

My Agent may receive and endorse checks and drafts, withdraw funds, make elections, and otherwise deal with any and all retirement accounts or qualified plans as deemed necessary by my Agent.

My Agent may execute or release mortgages, deeds of trust, or other security agreements as may be necessary to accomplish the purpose of this Durable Special Power of Attorney.

My Agent may apply for, endorse, and transfer certificates of title for any motor vehicle.

My Agent may endorse, convey, and otherwise transfer all business interests that I may now own or hereafter acquire.

My Agent may have access to any safe deposit box rented by me and remove the contents of such safe deposit box, and any institution in which a safe deposit box is located shall be relieved of any liability to me, my heirs, or assigns as a result of my Agent's exercise of this power.

3. State law, and title companies who issue owners' and mortgagees' policies of title insurance, may impose a limitation upon the authority of an Agent to convey title to real estate without the actual joinder of the person represented. Any such impediment will serve to frustrate the very purpose for which this limited special power of attorney is given. Therefore, I give to my Agent the unlimited authority to transfer, assign, convey and deliver legal and equitable title to any real estate, or interest in real estate which I may own to my Living Trust.

This authority will include any property in which I may have a homestead interest. I waive any requirement which may be imposed by law or by a title agency that I personally join in the conveyance. To protect the title agency and any other person, agency or entity who may rely upon the authority vested in this document, I bind myself, my estate, my successors and assigns and my Agent to indemnify and hold harmless any person, agency, or entity from any claim or loss whatsoever in relying upon the authority provided by this document and the authority of my Agent.

4. I grant my Agent full power and authority to prepare, execute and file joint, separate, or any other tax returns of any nature (e.g., income tax, gift tax, estate tax or generation skipping transfer tax) and declarations of estimated income tax required by the Internal Revenue Code to be made by me and to settle with the Internal Revenue Service, its agents and representatives, any questions concerning my liability for and the collection, refund or payment of said taxes, and to possess all of the authorities and all of the powers set forth in Form 2848 of the Department of the Treasury, Internal Revenue Service, as amended or revised hereafter, including the power to receive refund checks due to me, from the date of this instrument until this instrument is revoked.
5. I grant my Agent full power and authority to make any elections (e.g., tax, payment amount, payment frequency, etc.) in respect of any retirement account (e.g., IRA, pension plan, 401k, etc.) that I have or of which I am the contributor. Furthermore, I grant my Agent full power and authority to transfer, assign, convey and deliver any interest I may have in such retirement accounts to my Living Trust.
6. Any person, entity or institution dealing with my Agent will be entitled to rely upon my Agent's sworn statement that this special power of attorney has not been revoked and the Agent is authorized and empowered to serve. I indemnify and hold harmless any person, firm, institution or agency from any loss or claim whatsoever when reliant upon such statement, and to this end, I bind myself, my estate, my heirs, successors and assigns. I vest in my Agent the authority to record this power of attorney at any reasonable time, and, to the extent I may lawfully provide, my Agent

may do so at any time before the Agent is to act with respect to any third party who may be asked to rely upon this document.

7. I grant my Agent full power and authority to indemnify and hold harmless any third party who accepts and acts under this Durable Special Power of Attorney. No person who acts in reliance on the representations of my Agent or the authority granted under this Durable Special Power of Attorney shall incur any liability to me, my heirs, or assigns as a result of permitting my Agent to exercise any power granted under this Durable Special Power of Attorney.
8. This power of attorney is revocable and revocation will be effective if a written and acknowledged revocation is filed of record in the deed records of each county in which this power of attorney has been placed of record, if any. Further, revocation will be effective as to a third party relying on the power of attorney when the third party has actual notice of the revocation regardless of whether this power of attorney has been placed of record. Finally, written notification of the revocation of this power of attorney to any agent under this power of attorney will also effectively revoke this power.
9. I grant my Agent full power and authority to exercise, do or perform any act, right, power, duty or obligation whatsoever that I now have or may acquire the legal right, power or capacity to exercise, do, or perform in connection with, arising out of, or relating to any person, item, thing, transaction, business property, real or personal, tangible or intangible, or matter whatsoever.
10. I grant my Agent full power and authority to ask, demand, sue for, recover, collect, receive and hold and possess all sums of money, debts, dues, goods, wares, merchandise, chattels, effects, bonds, notes, checks, drafts, accounts, deposits, safe deposit boxes, post office box privileges, legacies, bequests, devises, interests, dividends, stock certificates, certificates of deposit, annuities, pension and retirement benefits, stock bonus plan and profit sharing plan benefits, stock options, insurance benefits and proceeds, documents of title, choices in actions, personal and real property, tangible and intangible property and property rights, and demands whatsoever, liquidated or unliquidated, and things of whatsoever nature or description which now are or hereafter shall be or become due, owing, payable or belonging to me in or by any right, title, ways or means howsoever, and upon receipt thereof or of any part thereof to make, sign, execute, and deliver such receipts, releases or other discharges for the same as my said attorney shall think fit or be advised.



11. I grant my Agent full power and authority to engage, employ, and dismiss any agents, clerks, servants, attorneys-at-law, accountants, investment advisors, custodians, or other persons in and about the performance of these presents as my attorney shall think fit.

### **Special Power of Attorney**

This document is to be construed as a Special Power of Attorney vesting in my Agent only those powers and authority specifically enumerated, without my joinder or consent, for me and on my behalf as if I were personally present and acting. Any transaction completed on my behalf by my Agent will be binding upon me, my estate, my successors and assigns.

### **My Disability**

My Agent will have the authority to continue acting in such capacity during any period or episode of my disability. This power of attorney is to be construed and considered as being a durable power of attorney and will not terminate upon my disability. As a trust, the authority of the Agent will continue following my death for the time reasonably needed to complete administration of the property which at the time of my death goes into custody or control of my Agent. This would include, for example, all property held in the name of my Agent as Trustee.

### **Authority as Trustee**

I vest in my Agent all of the power and authority given to trustees by the trust laws of the State of Texas. If my Agent determines that it is in my best interest under the facts and circumstances then existing, I authorize my Agent to take possession of any and all of my property and estate, as Trustee, and to hold, conserve and administer such property for me and my general welfare. My Agent will be responsible only for the property of my estate over which the Agent shall assert direct control, and will not have liability for the loss of income from, or the depreciation of the value of, assets which the Agent does not possess or which are retained in the form my Agent received them.

My Agent is authorized, upon my death, to make direct payment for any expense related to my hospitalization, illness, treatment and care prior to my death, and any expense related to my death and the settlement of my estate. The trust created by this document will continue for a reasonable period of time in which to conclude any administration, pay expenses of termination (including the discretionary payment of expenses and estate settlement costs) and to make distributions of the trust property to my Living Trust.

### **Ratification and Indemnity**

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. Further, I ratify and confirm all that my Agent will do or cause to be done by reason of the authority vested by this power of attorney and by law. No person, firm, agency or entity will be obligated to see to the application of any payment delivered to my Agent for or on my behalf. My Agent is authorized to proceed in my name and on my behalf against any person, agency or entity who will fail or refuse to recognize the authority of my Agent or who will refuse to transact business with my Agent to my harm and detriment.

### **Life Insurance on the Life of My Agent**

My Agent shall have no rights or powers with respect to any policy of insurance owned by me on the life of my Agent.

### **Construction of Power**

My agent shall have all rights and powers conferred under Chapter XII, Section 499 of the Texas Probate Code, as amended, as it pertains to my Living Trust.

### **Conclusion**

This power of attorney is dated and effective as of January 12, 2005.

---

NELVA E. BRUNSTING, Principal  
13630 Pinerock  
Houston, Texas 77079

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing Durable Special Power of Attorney was acknowledged before me by NELVA E. BRUNSTING, Principal, on January 12, 2005.

Witness my hand and official seal.

---

Notary Public, State of Texas

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT AND IS RESPONSIBLE FOR MAINTAINING APPROPRIATE RECORDS OF EACH TRANSACTION, INCLUDING AN ACCOUNTING OF RECEIPTS AND DISBURSEMENTS. AS A FIDUCIARY, AN ATTORNEY-IN-FACT OR AGENT IS HELD TO THE HIGHEST STANDARDS OF GOOD FAITH, FAIR DEALING, AND LOYALTY WITH RESPECT TO THE PRINCIPAL. FAILURE TO ADHERE TO THESE STANDARDS MAY SUBJECT AN ATTORNEY-IN-FACT OR AGENT TO LEGAL ACTION. DEPENDING ON THE DEGREE OF MISCONDUCT, AN ATTORNEY-IN-FACT OR AGENT MAY BE LIABLE FOR DAMAGES OR MAY BE CHARGED WITH A CRIMINAL OFFENSE.

AFTER RECORDING RETURN TO:  
ELMER H. BRUNSTING or NELVA E. BRUNSTING  
13630 Pinerock  
Houston, Texas 77079

DUTY TO INFORM AND ACCOUNT  
Texas Probate Code Section 489B

The attorney-in-fact or agent is a fiduciary and has a duty to inform and to account for actions taken pursuant to the power of attorney.

The attorney-in-fact or agent shall timely inform the principal of all actions taken pursuant to the power of attorney. Failure of the attorney-in-fact or agent to inform timely, as to third parties, shall not invalidate any action of the attorney-in-fact or agent.

The attorney-in-fact or agent shall maintain records of each action taken or decision made by the attorney-in-fact or agent.

The principal may demand an accounting by the attorney-in-fact or agent. Unless otherwise directed by the principal, the accounting shall include:

1. the property belonging to the principal that has come to the attorney-in-fact's or agent's knowledge or into the attorney-in-fact's or agent's possession;
2. all actions taken or decisions made by the attorney-in-fact or agent;
3. a complete account of receipts, disbursements, and other actions of the attorney-in-fact or agent, including their source and nature, with receipts of principal and income shown separately;
4. a listing of all property over which the attorney-in-fact or agent has exercised control, with an adequate description of each asset and its current value if known to the attorney-in-fact or agent;
5. the cash balance on hand and the name and location of the depository where the balance is kept;
6. all known liabilities; and,
7. such other information and facts known to the attorney-in-fact or agent as may be necessary to a full and definite understanding of the exact condition of the property belonging to the principal.

Unless directed otherwise by the principal, the attorney-in-fact or agent shall also provide to the principal all documentation regarding the principal's property.

The attorney-in-fact or agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

If the attorney-in-fact or agent fails or refuses to inform the principal, provide documentation, or deliver the accounting within 60 days (or such longer or shorter time that the principal demands or a court may order), the principal may file suit to compel the attorney-in-fact or agent to deliver the accounting, to deliver the assets, or to terminate the power of attorney.

This section shall not limit the right of the principal to terminate the power of attorney or make additional requirements of, or to give additional instructions to the attorney-in-fact or agent.

Wherever in this chapter a principal is given an authority to act, that shall include not only the principal but also any person designated by the principal, a guardian of the estate of the principal, or other personal representative of the principal.

The rights set out in this section and chapter are cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and not in derogation of those rights.

**INFORMATION CONCERNING  
THE MEDICAL POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions

who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

**MEDICAL POWER OF ATTORNEY**

**DESIGNATION OF HEALTH CARE AGENT**

I, **NELVA ERLEEN BRUNSTING**, also known as **NELVA E. BRUNSTING**, appoint **CAROL ANN BRUNSTING**, who resides at 5822 Jason, Houston, Texas 77074, and whose cell phone number is (713) 560-6381, as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

**DESIGNATION OF ALTERNATE AGENT**

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

**A. First Alternate Agent**

**CARL H. BRUNSTING**  
5629 Flack Drive  
Houston, Texas 77081  
(713) 778-0137 or (713) 522-2778

**B. Second Alternate Agent**

**CANDACE LOUISE CURTIS**  
1215 Ulfian Way  
Martinez, CA 94553  
(925)229-3849

The original of this document is kept with my other estate planning documents. A signed copy of this document is on file with my lawyer, **ALBERT E. VACEK, JR.**, 11511 Katy Freeway, Suite 520, Houston, Texas 77079, telephone (281) 531-5800 or 1-800-229-3002.

## DURATION

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

## PRIOR DESIGNATIONS REVOKED

I revoke any prior medical power of attorney.

## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

In addition to the other powers granted by this document, I grant to my agent the power and authority to serve as my personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996 and its regulations ("HIPAA") immediately upon my signing this document.

Pursuant to HIPAA, I specifically authorize my agent as my HIPAA personal representative to request, receive and review any information regarding my physical or mental health, including, without limitation all HIPAA protected health information, medical and hospital records; to execute on my behalf any authorizations, releases or other documents that may be required in order to obtain this information; and to consent to the disclosure of this information. I further authorize my agent to execute on my behalf any documents necessary or desirable to implement the health care decisions that my agent is authorized to make under this document.

By signing this Medical Power of Attorney, I specifically empower and authorize my physician, hospital or health care provider to release any and all medical records to my agent or my agent's designee. Further, I waive any liability to any physician, hospital or any health care provider who releases any and all of my medical records to my agent and acknowledge that the health information that would otherwise be protected under HIPAA will no longer be protected or private.



**ACKNOWLEDGMENT OF DISCLOSURE STATEMENT**

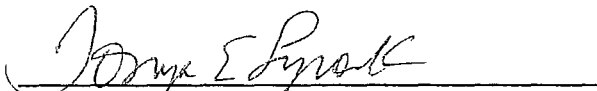
I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

I sign my name to this Medical Power of Attorney at Houston, Texas on November 8, 2007.

  
NELVA E. BRUNSTING

**STATEMENT OF FIRST WITNESS**

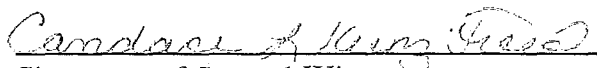
I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

  
Signature of First Witness

Date: November 8, 2007

Tonya E. Lyrock  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

Address of First Witness

  
Signature of Second Witness

Date: November 8, 2007

Candace L. Kunz-Freed  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

Address of Second Witness

**INFORMATION CONCERNING  
THE MEDICAL POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

## MEDICAL POWER OF ATTORNEY

### DESIGNATION OF HEALTH CARE AGENT

I, **ELMER HENRY BRUNSTING**, also known as **ELMER H. BRUNSTING**, appoint **NELVA ERLEEN BRUNSTING**, also known as **NELVA E. BRUNSTING**, who resides at 13630 Pinerock, Houston, Texas 77079, and whose phone number is (713) 464-4391, as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

### DESIGNATION OF ALTERNATE AGENT

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

#### A. First Alternate Agent

**CAROL A. BRUNSTING**  
5822 Jason  
Houston, Texas 77074  
(713) 981-5260 or (281) 514-7491

#### B. Second Alternate Agent

**CARL H. BRUNSTING**  
5629 Flack Drive  
Houston, Texas 77081  
(713) 778-0137 or (713) 522-2778

The original of this document is kept with my other estate planning documents. A signed copy of this document is on file with my lawyer, **ALBERT E. VACEK, JR.**, 11511 Katy Freeway, Suite 520, Houston, Texas 77079, telephone (281) 531-5800 or 1-800-229-3002.

## DURATION

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

## PRIOR DESIGNATIONS REVOKED

I revoke any prior medical power of attorney.

## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

In addition to the other powers granted by this document, I grant to my agent the power and authority to serve as my personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996 and its regulations ("HIPAA") immediately upon my signing this document.

Pursuant to HIPAA, I specifically authorize my agent as my HIPAA personal representative to request, receive and review any information regarding my physical or mental health, including, without limitation all HIPAA protected health information, medical and hospital records; to execute on my behalf any authorizations, releases or other documents that may be required in order to obtain this information; and to consent to the disclosure of this information. I further authorize my agent to execute on my behalf any documents necessary or desirable to implement the health care decisions that my agent is authorized to make under this document.

By signing this Medical Power of Attorney, I specifically empower and authorize my physician, hospital or health care provider to release any and all medical records to my agent or my agent's designee. Further, I waive any liability to any physician, hospital or any health care provider who releases any and all of my medical records to my agent and acknowledge that the health information that would otherwise be protected under HIPAA will no longer be protected or private.

**ACKNOWLEDGMENT OF DISCLOSURE STATEMENT**

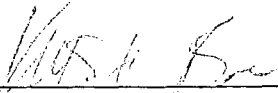
I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

I sign my name to this Medical Power of Attorney at Houston, Texas on January 12, 2005.

  
ELMER H. BRUNSTING

**STATEMENT OF FIRST WITNESS**

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.



Signature of First Witness

Date: January 12, 2005

Krysti Brull  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

Address of First Witness



Signature of Second Witness

Date: January 12, 2005

April Driskell  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

Address of Second Witness

**AUTHORIZATION FOR RELEASE OF  
PROTECTED HEALTH INFORMATION**

(Valid Authorization Under 45 CFR Chapter 164  
and the Laws of the State of Texas)

**Statement of Intent**

It is my understanding that Congress passed a law entitled the Health Insurance Portability and Accountability Act ("HIPAA") that limits use, disclosure or release of my individually identifiable health information (or, sometimes herein, "protected medical information"). This Authorization is being signed because it is crucial that my health care providers readily use, release or disclose my protected medical information to, or as directed by, that person or those persons designated in this Authorization in order to allow me the advantage of being able to discuss with, and obtain advice from, others or to facilitate decisions regarding my health care when I otherwise may not be able to discuss these matters with health care providers without regard to whether any health care provider has certified in writing that I am "incompetent" for purposes of the laws of the State of Texas.

**Appointment of Authorized Persons**

I, **NELVA ERLEEN BRUNSTING**, also known as **NELVA E. BRUNSTING**, an individual, hereby appoint the following persons, or any of them, as Authorized Persons for health care disclosure under the Standards for Privacy of Individually Identifiable Health Care Information (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and [State Health Care Information Act]:

ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING  
CANDACE LOUISE CURTIS  
CAROL ANN BRUNSTING  
CARL HENRY BRUNSTING  
AMY RUTH TSCHIRHART  
ANITA KAY RILEY

**Grant of Authority**

Therefore, as authorized by 45 CFR Sec(s). 164.502(a)(1)(i) and (iv), 164.502(a)(2)(i), 164.524 and 164.528, a covered entity (being a health care provider as defined by HIPAA) is permitted to use, release and disclose my individually identifiable health information pursuant to and in compliance with this valid Authorization.

I hereby authorize:

- a. All covered persons and entities as defined in HIPAA, including but not limited to a doctor (including but not limited to a physician, podiatrist, chiropractor, or osteopath), psychiatrist, psychologist, dentist, therapist, nurse, hospitals, clinics, pharmacy, laboratory, ambulance service, assisted living facility, residential care facility, bed and board facility, nursing home, medical insurance company or any other health care provider or affiliate,
- b. to use, release and disclose the following information at the request of an Authorized Person:

Any and all individually identifiable health care information, reports and/or records concerning my medical history, condition, diagnosis, testing prognosis, treatment, billing information and identity of health care providers, whether past, present or future and any other information which is in any way related to my health care. Additionally, this disclosure shall include the ability to ask questions and discuss this protected medical information with the person or entity who has possession of the protected medical information even if I am fully competent to ask questions and discuss this matter at the time. It is my intention to give a full authorization for access to, disclosure and release of ANY protected medical information by or to the persons named in this Authorization as if each person were me;

- c. to, or as requested by, an Authorized Person.

#### **Termination**

This Authorization is not affected by, and shall not terminate by reason of, my subsequent disability or incapacity. This Authorization shall terminate on the first to occur of: (1) 1 year following my death or (2) upon my written revocation expressly referring to this Authorization and the date it is actually received by the covered entity. Proof of receipt of my written revocation may be by certified mail, registered mail, facsimile, or any other receipt evidencing actual receipt by the covered entity. Such revocation shall be effective upon the actual receipt of the notice by the covered entity except to the extent that the covered entity has taken action in reliance on it.

#### **Re-disclosure**

By signing this Authorization, I acknowledge that the information used, disclosed or released pursuant to this Authorization may be subject to re-disclosure by an Authorized Person



whose names are written in paragraph 1 of this Authorization and the information once disclosed will no longer be protected by the rules created in HIPAA. No covered entity shall require an Authorized Person to indemnify the covered entity or agree to perform any act in order for the covered entity to comply with this Authorization.

### **Instructions to the Authorized Persons**

An Authorized Person shall have the right to bring a legal action in any applicable forum against any covered entity that refuses to recognize and accept this Authorization for the purposes that I have expressed. Additionally, an Authorized Person is authorized to sign any documents that the Authorized Person deems appropriate to obtain use, disclosure or release of the protected medical information.

### **Effect of Duplicate Originals or Copies**

If this Authorization has been executed in multiple counterparts, each counterpart original will have equal force and effect. An Authorized Person may make photocopies of this Authorization and each photocopy will have the same force and effect as the original.

### **My Waiver and Release**

With regard to information disclosed pursuant to this Authorization, I waive any right of privacy that I may have under the authority of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), any amendment or successor to that Act, or any similar state or federal act, rule or regulation. In addition, I hereby release any covered entity that acts in reliance on this Authorization from any liability that may accrue from the use or disclosure of my protected medical information in reliance upon this Authorization and for any actions taken by an Authorized Person.

### **Severability**

I intend that this authorization conform to United States and Texas law. In the event that any provision of this document is invalid, the remaining provisions shall nonetheless remain in full force and effect.

I understand that I have the right to receive a copy of this authorization. I also understand that I have the right to revoke this authorization and that any revocation of this authorization must be in writing.

Dated: January 12, 2005.

*Nelva E. Brunsting*

NELVA E. BRUNSTING

SSN: 481-30-4685

DOB: October 8, 1926

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on January 12, 2005, by NELVA E. BRUNSTING.

*Charlotte Allman*  
Notary Public, State of Texas



**AUTHORIZATION FOR RELEASE OF  
PROTECTED HEALTH INFORMATION**

(Valid Authorization Under 45 CFR Chapter 164  
and the Laws of the State of Texas)

**Statement of Intent**

It is my understanding that Congress passed a law entitled the Health Insurance Portability and Accountability Act ("HIPAA") that limits use, disclosure or release of my individually identifiable health information (or, sometimes herein, "protected medical information"). This Authorization is being signed because it is crucial that my health care providers readily use, release or disclose my protected medical information to, or as directed by, that person or those persons designated in this Authorization in order to allow me the advantage of being able to discuss with, and obtain advice from, others or to facilitate decisions regarding my health care when I otherwise may not be able to discuss these matters with health care providers without regard to whether any health care provider has certified in writing that I am "incompetent" for purposes of the laws of the State of Texas.

**Appointment of Authorized Persons**

I, **ELMER HENRY BRUNSTING**, also known as **ELMER H. BRUNSTING**, an individual, hereby appoint the following persons, or any of them, as Authorized Persons for health care disclosure under the Standards for Privacy of Individually Identifiable Health Care Information (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and [State Health Care Information Act]:

NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING  
CANDACE LOUISE CURTIS  
CAROL ANN BRUNSTING  
CARL HENRY BRUNSTING  
AMY RUTH TSCHIRHART  
ANITA KAY RILEY

**Grant of Authority**

Therefore, as authorized by 45 CFR Sec(s). 164.502(a)(1)(i) and (iv), 164.502(a)(2)(i), 164.524 and 164.528, a covered entity (being a health care provider as defined by HIPAA) is permitted to use, release and disclose my individually identifiable health information pursuant to and in compliance with this valid Authorization.

I hereby authorize:

- a. All covered persons and entities as defined in HIPAA, including but not limited to a doctor (including but not limited to a physician, podiatrist, chiropractor, or osteopath), psychiatrist, psychologist, dentist, therapist, nurse, hospitals, clinics, pharmacy, laboratory, ambulance service, assisted living facility, residential care facility, bed and board facility, nursing home, medical insurance company or any other health care provider or affiliate,
- b. to use, release and disclose the following information at the request of an Authorized Person:

Any and all individually identifiable health care information, reports and/or records concerning my medical history, condition, diagnosis, testing prognosis, treatment, billing information and identity of health care providers, whether past, present or future and any other information which is in any way related to my health care. Additionally, this disclosure shall include the ability to ask questions and discuss this protected medical information with the person or entity who has possession of the protected medical information even if I am fully competent to ask questions and discuss this matter at the time. It is my intention to give a full authorization for access to, disclosure and release of ANY protected medical information by or to the persons named in this Authorization as if each person were me;

- c. to, or as requested by, an Authorized Person.

#### Termination

This Authorization is not affected by, and shall not terminate by reason of, my subsequent disability or incapacity. This Authorization shall terminate on the first to occur of: (1) 1 year following my death or (2) upon my written revocation expressly referring to this Authorization and the date it is actually received by the covered entity. Proof of receipt of my written revocation may be by certified mail, registered mail, facsimile, or any other receipt evidencing actual receipt by the covered entity. Such revocation shall be effective upon the actual receipt of the notice by the covered entity except to the extent that the covered entity has taken action in reliance on it.

#### Re-disclosure

By signing this Authorization, I acknowledge that the information used, disclosed or released pursuant to this Authorization may be subject to re-disclosure by an Authorized Person

whose names are written in paragraph 1 of this Authorization and the information once disclosed will no longer be protected by the rules created in HIPAA. No covered entity shall require an Authorized Person to indemnify the covered entity or agree to perform any act in order for the covered entity to comply with this Authorization.

### **Instructions to the Authorized Persons**

An Authorized Person shall have the right to bring a legal action in any applicable forum against any covered entity that refuses to recognize and accept this Authorization for the purposes that I have expressed. Additionally, an Authorized Person is authorized to sign any documents that the Authorized Person deems appropriate to obtain use, disclosure or release of the protected medical information.

### **Effect of Duplicate Originals or Copies**

If this Authorization has been executed in multiple counterparts, each counterpart original will have equal force and effect. An Authorized Person may make photocopies of this Authorization and each photocopy will have the same force and effect as the original.

### **My Waiver and Release**

With regard to information disclosed pursuant to this Authorization, I waive any right of privacy that I may have under the authority of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), any amendment or successor to that Act, or any similar state or federal act, rule or regulation. In addition, I hereby release any covered entity that acts in reliance on this Authorization from any liability that may accrue from the use or disclosure of my protected medical information in reliance upon this Authorization and for any actions taken by an Authorized Person.

### **Severability**

I intend that this authorization conform to United States and Texas law. In the event that any provision of this document is invalid, the remaining provisions shall nonetheless remain in full force and effect.

I understand that I have the right to receive a copy of this authorization. I also understand that I have the right to revoke this authorization and that any revocation of this authorization must be in writing.

Dated: January 12, 2005.



ELMER H. BRUNSTING

SSN: 282-32-8905

DOB: September 29, 1921

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on January 12, 2005, by ELMER H. BRUNSTING.



Notary Public, State of Texas





## *LIVING WILL*

This section contains a signed copy of your Living Will, which is also known as the "Physician's Directive." If you are suffering from a terminal condition or an irreversible condition, this document allows you to express your wishes as to whether or not you direct your physician to terminate life sustaining procedures which serve only to prolong the moment of your death. In essence, it clarifies and makes known your intent regarding life sustaining procedures.

## DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

### Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

### DIRECTIVE

I, **NELVA ERLEEN BRUNSTING**, also known as **NELVA E. BRUNSTING**, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:



NEB I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

\_\_\_\_\_ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

NEB I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

\_\_\_\_\_ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

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After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If the persons named in my Medical Power of Attorney are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that

under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

WITNESS MY HAND on January 12, 2005.

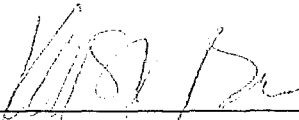


NELVA E. BRUNSTING

Houston, Texas 77079

Harris County, Texas

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.



Signature of First Witness

Krysti Bruhl  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

Address



Signature of Second Witness

April Driskell  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

Address

## DEFINITIONS:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

# DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

## Instructions for completing this document:

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## DIRECTIVE

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If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

*EDB*

I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

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may be withheld or removed except those needed to maintain my comfort. This directive will remain in effect until I revoke it. No other person may do so.

WITNESS MY HAND on January 12, 2005.


  
ELMER H. BRUNSTING  
Houston, Texas 77079  
Harris County, Texas

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Signature of First Witness

Krysti Bruhl  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

Address

  
Signature of Second Witness

April Driskell  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

Address

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"**Terminal condition**" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

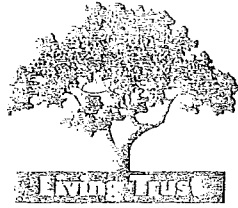
Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.



## *MEMORIAL LETTER*

This section contains a Memorial Letter which lets your family and close friends know of your intentions and desires regarding memorial and burial arrangements. In this letter, your general guidelines and suggestions should be set forth.





## *MEMORIAL LETTER*

To My Loved Ones:

The following instructions and guidelines are provided to my loved ones and my trustees so that my feelings and intentions regarding memorial arrangements will be known.

The instructions set forth in this letter serve to guide my survivors and loved ones. Although these instructions should not operate to exclude the desires of my loved ones, I hope that my survivors will consider my desires in making those decisions that they deem best.

**My desires for My Funeral and Burial Arrangements:**

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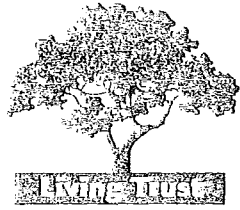
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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Dated



## *ANATOMICAL GIFT FORM*

This section contains the form which enables you to make gifts of all or parts of your body for medical and humanitarian purposes.



# ANATOMICAL GIFT FORM

In the hope that I may help others, I, \_\_\_\_\_, hereby make this anatomical gift, to take effect upon my death.

### Personal Information

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

Social Security number \_\_\_\_\_ Telephone \_\_\_\_\_

Next of Kin \_\_\_\_\_ Relationship \_\_\_\_\_

Address \_\_\_\_\_ Telephone \_\_\_\_\_

City \_\_\_\_\_ State/Zip \_\_\_\_\_

### I donate the following

- All parts
- Only the following organs or parts:

\_\_\_\_\_

If previously signed with a Medical School, please list: \_\_\_\_\_

I have the following special wishes concerning my gift: \_\_\_\_\_

I authorize the physician named below to furnish my attending physician with any pertinent medical information in the event of my death:

Physician's Name \_\_\_\_\_

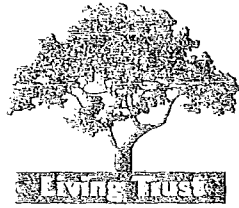
Address \_\_\_\_\_ Telephone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

I have signed my anatomical gift form below on \_\_\_\_\_, 20\_\_\_\_\_, as witnessed below.

Donor \_\_\_\_\_

Witness \_\_\_\_\_ Witness \_\_\_\_\_



## *ORGANIZATIONAL LISTS*

These forms provide information which assist your trustees and loved ones in locating important documents, assets, and persons in the event of your disability or death.



# DOCUMENT FINDER

## Documents

Living Trust Portfolio Location \_\_\_\_\_

Home Address \_\_\_\_\_

Location 1 \_\_\_\_\_ Location 2 \_\_\_\_\_

### Safe Deposit Box

Bank \_\_\_\_\_ Box Number \_\_\_\_\_

Key Location \_\_\_\_\_

Advisor 1 \_\_\_\_\_ Phone \_\_\_\_\_

Advisor 2 \_\_\_\_\_ Phone \_\_\_\_\_

### Wills

Original Wills \_\_\_\_\_

Copies of Wills \_\_\_\_\_

Burial Instructions \_\_\_\_\_

Cemetery Plot Deed \_\_\_\_\_

### Business papers

Employment Contracts \_\_\_\_\_

Partnership Agreements \_\_\_\_\_

Corporation Documents \_\_\_\_\_

Other \_\_\_\_\_

Other \_\_\_\_\_

### Securities

Investment Securities \_\_\_\_\_

Brokerage Account Records \_\_\_\_\_

Stock Certificates \_\_\_\_\_

Bonds \_\_\_\_\_

Annuity Contracts \_\_\_\_\_

Stock-Option Plan \_\_\_\_\_

Other \_\_\_\_\_

Other \_\_\_\_\_

Other \_\_\_\_\_



# DOCUMENT FINDER

## Documents

### Banking

- Checkbooks \_\_\_\_\_
- Credit Cards \_\_\_\_\_
- CD's \_\_\_\_\_
- Bank Statements and cancelled checks \_\_\_\_\_
- Other \_\_\_\_\_

### Tax Records

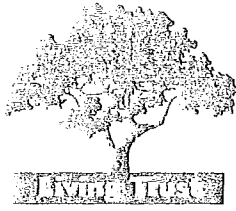
- Income Tax returns \_\_\_\_\_
- Gift Tax returns \_\_\_\_\_
- Other \_\_\_\_\_

### Home

- Deeds to real estate \_\_\_\_\_
- Car titles \_\_\_\_\_
- Boat/plane titles \_\_\_\_\_
- Title Insurance \_\_\_\_\_
- Rental property records \_\_\_\_\_
- Notes and loan agreements \_\_\_\_\_
- Mortgages \_\_\_\_\_
- Other \_\_\_\_\_

### Personal

- Distribution memorandum \_\_\_\_\_
- Marriage certificate \_\_\_\_\_
- Divorce papers \_\_\_\_\_
- Birth certificate \_\_\_\_\_
- Adoption papers \_\_\_\_\_
- Durable special powers of attorney \_\_\_\_\_
- Citizenship papers \_\_\_\_\_
- List of friends, relatives, advisors \_\_\_\_\_
- Passports \_\_\_\_\_
- Other \_\_\_\_\_



# DOCUMENT FINDER

*Life Insurance Policies*

Policy number and company

\_\_\_\_\_

Type \_\_\_\_\_ Insured \_\_\_\_\_

Owner \_\_\_\_\_

Primary beneficiary \_\_\_\_\_ Contingent beneficiary \_\_\_\_\_

Who pays premium \_\_\_\_\_ Cash Value \_\_\_\_\_

Amount of loans on policy \_\_\_\_\_ Face amount or death value \_\_\_\_\_

Policy number and company

\_\_\_\_\_

Type \_\_\_\_\_ Insured \_\_\_\_\_

Owner \_\_\_\_\_

Primary beneficiary \_\_\_\_\_ Contingent beneficiary \_\_\_\_\_

Who pays premium \_\_\_\_\_ Cash Value \_\_\_\_\_

Amount of loans on policy \_\_\_\_\_ Face amount or death value \_\_\_\_\_

Policy number and company

\_\_\_\_\_

Type \_\_\_\_\_ Insured \_\_\_\_\_

Owner \_\_\_\_\_

Primary beneficiary \_\_\_\_\_ Contingent beneficiary \_\_\_\_\_

Who pays premium \_\_\_\_\_ Cash Value \_\_\_\_\_

Amount of loans on policy \_\_\_\_\_ Face amount or death value \_\_\_\_\_



*FRIENDS AND LOVED  
ONES TO BE CONTACTED*

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Firm \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Firm \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
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