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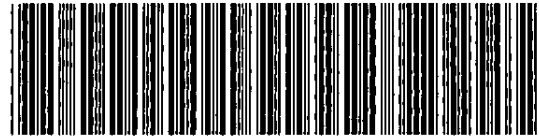
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Ps 7/29/13



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

July 26, 2013

KENNY METAYER  
CT CORPORATION  
515 EAST PARK AVENUE  
TALLAHASSEE, FL 32301

SUBJECT: THE HEIDI C. HESS TRUST  
Ref. Number: W13000041898

**\*RE-SUBMIT\***  
Please retain original filing  
date of submission 7/25

We have received your document for THE HEIDI C. HESS TRUST and your check(s) totaling \$350.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

The registered agent must sign accepting the designation.

Please return the corrected original and one copy of your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6052.

Thomas Chang  
Regulatory Specialist II  
New Filing Section

Letter Number: 313A00018082



**Wolters Kluwer**  
Corporate Legal Services

**CT Corporation**

515 East Park Avenue  
Tallahassee, FL 32301

850 222 1092 tel  
850 222 7615 fax  
www.ctcorporation.com

July 25, 2013

Department of State, Florida  
Clifton Building  
2611 Executive Center Circle  
Tallahassee FL 32301

**\*RE-SUBMIT\***  
Please retain original filing  
date of submission 7/25

Re: Order #: 8838219 SO  
Customer Reference 1: 0C0216-098682  
Customer Reference 2: --

Dear Department of State, Florida:

Please obtain the following:

The Heidi C. Hess Trust (N/A)  
Misc - Foreign Corporate Filing - Affidavit to the Florida Secretary of State to  
File or Qualify - The Heidi C. Hess Trust  
Florida

Enclosed please find a check for the requisite fees. Please return document(s) to the attention of the undersigned.

If for any reason the enclosed cannot be processed upon receipt, please contact the undersigned immediately at (850) 222-1092. Thank you very much for your help.

Sincerely,

Kenny Metayer  
Fulfillment Specialist - Contractor  
kenny.metayer@wolterskluwer.com

ATTN: Thomas  
Chang

13 JUL 26 PM 1:35  
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DEPARTMENT OF STATE

## TRANSMITTAL LETTER

Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**SUBJECT:** The Heidi C. Hess Trust

Enclosed is an original and one (1) copy of the Declaration of Trust and a check for:

**FEES:**

Declaration of Trust	\$350.00
----------------------	----------

**OPTIONAL:**

Certified Copy	\$ 8.75
----------------	---------

**FROM:** Mark Pflaum, Crowne Partners, Inc.

Name (Printed or typed)

505 North 20th Street, Suite 1015

Address

Birmingham, AL 35203

City, State & Zip

205-521-6311

Daytime Telephone number

**AFFIDAVIT TO THE FLORIDA SECRETARY OF STATE  
TO FILE OR QUALIFY**

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
13 JUL 25 AM 8:37

The Heidi C. Hess Trust

A Revocable TRUST

In accordance with Section 609.02 of the Florida Statutes, pertaining to  
Common Law Declarations of Trust, the undersigned, the Chairman of the  
Board of Trustees of The Heidi C. Hess Trust, a

(Name of Trust)

Revocable

Trust hereby affirms in order to file or qualify

(State)

The Heidi C. Hess Trust

, in the State of Florida.

(Name of Trust)

1. Two or more persons are named in the Trust.
2. The principal address is c/o Crowne Partners, Inc., 505 North 20th Street,  
Suite 1015, Birmingham, AL 35203
3. The registered agent and street address in the State of Florida is:  
CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324
4. Acceptance by the registered agent: Having been named as registered  
agent to accept service of process for the above-named Declaration of Trust  
at the place designated in this affidavit, I hereby accept the appointment as  
registered agent and agree to act in this capacity.

Connie Bryan

(Signature of Registered Agent)

**Connie Bryan**

**Assistant Secretary**

5. I certify that the attached is a true and correct copy of the Declaration of  
Trust under which the association proposes to conduct its business in  
Florida.

Donald Hess  
Name: Donald Hess

Chairman of the Board of Trustees

NOTARY

Filing Fee: \$350.00  
Certified Copy: \$ 8.75 (optional)

THIRD RESTATEMENT OF  
REVOCABLE TRUST AGREEMENT  
CREATING  
THE HEIDI C. HESS TRUST

DATED: February 13, 2013

THE HEIDI C. HESS TRUST

HEIDI C. HESS, Trustor

HEIDI C. HESS and DONALD HESS, trustee

TABLE OF CONTENTS

	<u>Page</u>
RECITALS .....	1
ARTICLE ONE - Family Information .....	3
1. The Trustor's Spouse .....	3
2. The Trustor's Children .....	3
3. Definition of Issue .....	4
ARTICLE TWO - Provisions Applicable While the Trustor is Living .....	4
1. Distributions of Income and Principal .....	4
2. Decisions of the Trustee .....	5
ARTICLE THREE - Division of the Trust Property Following the Death of the Trustor .....	5
1. If the Trustor's Spouse Survives the Trustor .....	6
(a) Income in Respect of a Decedent .....	6
(b) Pecuniary Credit Shelter Gift .....	6
(c) Marital Gift Amount .....	7
2. If the Trustor's Spouse Predeceases the Trustor, But Issue of the Trustor Survive(s) Her .....	8
3. Ultimate Contingent Disposition .....	10
4. Allocation of GST Exemption .....	11
5. Vesting of the Shares .....	11
ARTICLE FOUR - The Marital Trust .....	11
1. The Trustor's Intention .....	12
2. Payment of Net Income .....	13
3. Use of Principal .....	13
4. Termination of Trust .....	14

THE HEIDI C. HESS TRUST

	<u>Page</u>
ARTICLE FIVE - The Decedent's Exclusion Trust .....	16
1. Use of Net Income and Principal .....	17
2. Termination of Trust .....	19
ARTICLE SIX - Exempt Trusts for the Trustor's Children and Their Issue .....	21
1. Use of Income and Principal .....	21
2. Termination of Trust .....	24
ARTICLE SEVEN - Non-Exempt Trusts for the Trustor's Children .....	25
1. Use of Income .....	25
2. Use of Principal .....	27
3. Distribution of Principal at Ages 35 and 40 .....	29
4. Termination of Trust .....	29
ARTICLE EIGHT - Trusts for Persons Under Age Forty .....	31
1. Trusts for Persons Under Age 40 .....	31
2. Perpetuities Savings Provision .....	33
ARTICLE NINE - Administrative Provisions .....	34
1. Spendthrift Provision .....	34
2. Trustee's Powers .....	35
3. Trustee-Beneficiary .....	40
4. Tax Adjustments on Distributions .....	41
5. Trustee Accounts .....	41
6. Time Period for Objecting to Account .....	42
7. Separate Trust for S Corporation Stock .....	42
8. Disclaimer of Powers .....	45
9. Durable Power of Attorney for Health Care or Advance Health Care Directive .....	45
10. Authorization to Divide Trust .....	46
11. Partial Trust Terminations .....	48
12. Marital Deduction Savings Provision .....	48
13. Request of Trustor Regarding Distributions to Issue .....	49
14. Transfer to Corresponding Trust Under Family Trust .....	49
ARTICLE TEN - The Trustee .....	50
1. While the Trustor is Living .....	50
2. After the Death of the Trustor .....	50
3. After the Death of the Trustor's Spouse .....	51



THE HEIDI C. HESS TRUST

	<u>Page</u>
4. Successor Trustee .....	51
5. Appointment of Co-Trustee .....	52
6. Procedure Relating to Acceptance by Successor Trustee or Co-Trustee .....	53
7. Authority of Trustees When Multiple Trustees Are Serving .....	53
8. Resignation of Trustee .....	54
9. Compensation of Trustee .....	54
10. Delegation of Trustee's Powers .....	55
11. Extent of Liability .....	56
(a) In General .....	56
(b) Successor Trustee Not Liable for Acts of Predecessors .....	56
(c) Written Notice of Events .....	56
12. Bond Not Required .....	56
13. Definition of Trustee .....	56
 ARTICLE ELEVEN - Subsequent Additions to the Trust .....	 57
 ARTICLE TWELVE - Powers of Revocation and Amendment .....	 57
1. While the Trustor is Living .....	58
2. After the Death of the Trustor .....	58
3. General Provisions Governing Revocation and Amendment .....	58
 ARTICLE THIRTEEN - Payment of Expenses and Death Taxes .....	 58
1. Payment of Expenses .....	58
2. Payment of Death Taxes on Death of the Trustor .....	59
3. Right to Recover Federal Estate Tax .....	60
4. Exemption From Generation-Skipping Transfer Tax .....	61
5. Payment of Generation-Skipping Transfer Taxes .....	62
6. Reserves for Expenses and Death Taxes .....	62
7. Provisions Regarding Retirement Benefits .....	63
8. Further Provisions Regarding Expenses and Death Taxes .....	63
9. Reimbursement .....	63
 ARTICLE FOURTEEN - Miscellaneous Provisions .....	 64
1. Applicable Law .....	64
2. Simultaneous Death .....	65
3. Survivorship Requirement .....	65
4. Definition of Incompetent .....	66
5. HIPAA Release Authority .....	67

THE HEIDI C. HESS TRUST

	<u>Page</u>
6. Definition of Education .....	68
7. After Born Children .....	69
8. Severability Clause .....	69
9. Headings .....	69
10. Gender and Number .....	69
11. No Interest on Gifts .....	69
Signatures .....	70
Schedule A .....	71
Notary Acknowledgements .....	72

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SECRETARY OF STATE  
DIVISION OF CORPORATIONS

THIRD RESTATEMENT OF REVOCABLE TRUST AGREEMENT

13 JUL 25 AM 8:37

This Third Restatement of Revocable Trust Agreement is made and entered into this 13<sup>th</sup> day of February, 2013, by and between

HEIDI C. HESS (who is also known as HEIDI CAROLYN HESS), a married woman dealing herein with her sole and separate property, resident of the State of California, hereinafter called the "Trustor",

and

HEIDI C. HESS and DONALD HESS, hereinafter called the "trustee".

R E C I T A L S:

The Trustor heretofore on May 25, 1997, established a trust called the "Heidi Carolyn Hess Revocable Life Insurance Trust" pursuant to a revocable trust agreement made and entered into by her as Grantor and DONALD HESS as Trustee, which revocable trust agreement is hereinafter referred to as "the agreement"; and

Pursuant to subsection VI.4 of the agreement, the Trustor reserved to herself the power to alter or amend the terms of the agreement; and

The Trustor heretofore on December 29, 2000, restated the agreement in its entirety to, among other things, change the name of the trust to the "Heidi Carolyn Hess Revocable Trust" and substituted the terms and provisions of the First Restatement of Revocable Trust Agreement in the place and stead of the terms and provisions of the agreement, so that the terms and provisions of the agreement were set forth in their entirety in

the First Restatement of Revocable Trust Agreement, which is hereinafter referred to as "the first restated agreement"; and

Pursuant to subsection IX.4 of the first restated agreement, the Trustor reserved to herself the power to amend or modify the terms of the first restated agreement; and

The Trustor heretofore on December 30, 2008, restated the first restated agreement in its entirety and substituted the terms and provisions of the Second Restatement of Revocable Trust Agreement in the place and stead of the terms and provisions of the first restated agreement, so that the terms and provisions of the first restated agreement were set forth in their entirety in the Second Restatement of Revocable Trust Agreement, which is hereinafter referred to as "the second restated agreement"; and

Pursuant to paragraph (a) of Item XVI of the second restated agreement, the Trustor reserved to herself the power to amend or modify the terms of the second restated agreement; and

The Trustor now desires to restate the second restated agreement in its entirety to, among other things, change the name of the trust to "The Heidi C. Hess Trust" and to substitute the terms and provisions of this Third Restatement of Revocable Trust Agreement in the place and stead of the terms and provisions of the second restated agreement, so that the terms and provisions of the second restated agreement shall be set forth in their entirety in this Third Restatement of Revocable Trust Agreement, which is hereinafter referred to as "this agreement"; and

The Trustor desires to confirm the conveyance, assignment and transfer of all that property described on Schedule A, annexed hereto and made a part hereof, to the trustee, to be held upon and subject to the trusts, terms and conditions hereinafter set forth, which property the Trustor acknowledges is, and after execution of this agreement shall continue to be, her separate property and held by the trustee as such under the laws of the State of California; and

The revocable trust, as restated by this agreement, shall be known as "The Heidi C. Hess Trust". Successor trusts established under this agreement shall be referred to by the Article title herein designated therefor or by the name otherwise given thereto by the trustee.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Trustor hereby declares as follows:

#### ARTICLE ONE

##### Family Information

1. The Trustor's Spouse. The Trustor is married to JAMES L. RUCKER, III. All references in this agreement to "the Trustor's spouse" or "her spouse" are to him.

2. The Trustor's Children. The Trustor has one child now living, whose name and date of birth are:

JONAH BALDWIN RUCKER                      November 11, 2007

The Trustor has had no child other than her son above named. The above date of birth is conclusive for all purposes under this agreement.

All references in this agreement to "the Trustor's child", "the Trustor's children" or any similar term refer not only to the Trustor's son above named, but also to any child or children born to or adopted by the Trustor after the date of this agreement.

3. Definition of "Issue". All references in this agreement to "issue" of a person shall refer to the lineal descendants of all generations of such person, as defined in the California Probate Code, but shall only include adopted persons who are adopted during minority and shall not include stepchildren or foster children.

## ARTICLE TWO

### Provisions Applicable While the Trustor is Living

The following provisions of this Article Two shall apply to the administration of the trust fund while the Trustor is living:

1. Distributions of Income and Principal. While she is living, the Trustor may direct the trustee to distribute to her any amount of the net income and/or principal of the trust as she desires.

If the Trustor becomes incompetent, the trustee is authorized to distribute to or for the benefit of the Trustor that amount of net income and/or principal of the trust, up to the whole thereof, as the trustee, in the trustee's discretion, deems appropriate, giving such consideration as the trustee deems appropriate to all income and other resources then readily

available to the Trustor. The trustee shall exercise the discretion set forth in the preceding sentence in a liberal manner without taking into account the rights of any remainder beneficiaries. In addition, the trustee is authorized to distribute to or for the benefit of any person whom the Trustor is then legally obligated to support, or who has been receiving support from the Trustor, that amount of net income and/or principal of the trust as the trustee, in the trustee's discretion, deems appropriate to continue such support.

Any income not expended under the foregoing provisions of this paragraph 1 shall be accumulated and added to the principal of the trust at such time(s) as the trustee determines.

2. Decisions of the Trustee. All decisions of the trustee as to whether the Trustor is incapacitated, incompetent or unavailable for consultation, as to whether she is in need of the funds or assistance hereinabove referred to and as to the amount(s), if any, to be paid to her or disbursed for her benefit for any such purpose, and all acts by the trustee in good faith reliance upon written and acknowledged statements of the Panel (as defined in paragraph 4 of Article Fourteen) regarding the incompetence of the Trustor, procured and supplied to the trustee as hereinafter provided, shall be final and incontestable by anyone.

### ARTICLE THREE

#### Division of the Trust Property Following the Death of the Trustor

Following the death of the Trustor, the trustee shall, at a

time determined by the trustee after taking into account all relevant tax and other considerations, administer the trust fund, including any additions thereto resulting from the death of the Trustor, as follows:

1. If the Trustor's Spouse Survives the Trustor. If the Trustor's spouse survives the Trustor, the trustee shall administer the said trust fund as follows:

(a) Income in Respect of a Decedent. The trustee shall set apart all items of "income in respect of a decedent" (as defined for federal income tax purposes under the Internal Revenue Code of 1986, as amended) which constitute assets of the trust fund and shall distribute them outright to the Trustor's spouse. The Trustor intends that the passing of these items to her spouse pursuant to this subparagraph shall qualify for the federal estate tax marital deduction available to her estate.

(b) Pecuniary Credit Shelter Gift. The trustee shall set apart from the trust assets, other than those that are subject to disposition pursuant to subparagraph 1(a) of this Article, a pecuniary amount equal to the largest amount that can be transferred by the Trustor without incurring any federal estate tax by reason of the credit of the applicable credit amount and the credit for state death taxes (to the extent the use of such credit does not increase the death tax payable to any state) allowable to the Trustor's estate for federal estate tax purposes, but no other credits. In determining the afore-described pecuniary amount, the trustee shall take into account (1) all adjusted taxable gifts made by the Trustor, (2) the extent, if any, to which the credit of the applicable credit amount allowable to the Trustor's estate for federal estate tax purposes is being applied to assets disposed of under The Rucker-Hess Family Trust established under an agreement of trust dated January 4, 2011 ("the Family Trust"), (3) any other property passing outside this trust which is includible in the Trustor's gross estate and which does not qualify for either the marital or charitable deduction from the federal estate tax and (4) any charges to principal that are not allowed as deductions in computing the federal estate tax on the estate of the Trustor. For purposes of this subparagraph, transfers for which the marital deduction would



have been allowed in the Trustor's estate, but for the disclaimer of the Trustor's spouse or the failure of the trustee or the personal representative of the Trustor's estate to elect to qualify the trust under Article Four for the marital deduction, shall be treated as though said deduction were allowed for the purpose of determining the afore-described pecuniary amount. In establishing the said pecuniary amount, the values as finally determined for federal estate tax purposes are to be used. The trustee shall determine which assets or interests shall be distributed in satisfaction of this pecuniary amount and may include therein all or any part of, or an undivided interest in, any particular asset or interest other than those specifically gifted under subparagraph 1(a) of this Article. The assets distributed in satisfaction of this pecuniary amount shall be valued at their respective fair market values at the date(s) of distribution. The Trustor recognizes that there may be no sum disposed of by this subparagraph and that any sum so disposed of may be affected by the action of the personal representative of the Trustor's estate or the trustee in exercising certain tax elections. The trustee shall set apart and continue to hold the said pecuniary amount, IN TRUST, as a separate trust fund known as "The Decedent's Exclusion Trust", in all respects subject to the terms and provisions of Article Five.

(c) Marital Gift Amount. The trustee shall set apart and continue to hold the balance of the trust fund in one or more separate marital trusts for the benefit of the Trustor's spouse in accordance with the terms and provisions of Article Four. The Trustor intends that the balance of the trust fund passing under this subparagraph shall qualify for the marital deduction from the federal estate tax available to her estate. Notwithstanding anything to the contrary in this agreement, the Trustor's spouse shall have the right to disclaim all or a portion of the property passing as part of the balance of the trust fund under this subparagraph, whether by reference to a percentage, fraction or formula amount, or otherwise. If the Trustor's spouse exercises his right to disclaim, the disclaimed portion shall not pass under this subparagraph, but instead shall pass to and be a part of The Decedent's Exclusion Trust, in all respects subject to the terms and provisions of Article Five.

Anything in this agreement to the contrary notwithstanding, the determination as to the extent, if any, to which the credit of the applicable credit amount allowable to the Trustor's estate

for federal estate tax purposes is to be applied to assets held in this trust is within the trustee's discretion and shall be final and incontestable by anyone—it being the Trustor's intention, however, that the trustee and the trustee(s) of the Family Trust work together in order to coordinate the use of said credit as between the two trusts.

Notwithstanding the foregoing provisions of this paragraph 1, if at the date of death of the Trustor, Chapter 11 (the federal estate tax) of the Internal Revenue Code of 1986, as amended (the "Code"), does not apply to the Trustor's estate because said Chapter 11 has been completely repealed, then the provisions of subparagraphs 1(b) and 1(c) of this Article shall be ineffective, and all of the trust property that would otherwise have been subject thereto shall instead pass to The Decedent's Exclusion Trust under Article Five.

2. If the Trustor's Spouse Predeceases the Trustor, But Issue of the Trustor Survive(s) Her. If the Trustor's spouse does not survive the Trustor, but any issue of the Trustor survives her, the trustee shall distribute the said trust fund as follows:

(a) The trustee shall sever from the trust fund a pecuniary amount equal to the GST exemption of the Trustor which is unused or unallocated at the date of her death or not allocated by the trustee to other gifts, if any, made after her death. The trustee shall divide said pecuniary amount into as many equal shares as are necessary to make the following distributions, which shares shall then be thus distributed:

(i) One share for each child of the Trustor who survives her shall be retained by the trustee, IN TRUST, to hold as an exempt trust for said child under Article Six; and

(ii) One share shall go to the issue who survive the Trustor of each child of the Trustor who does not survive her, said issue to take the same by right of representation, subject to the trust provisions of Article Eight.

The pecuniary gift above set forth in this subparagraph shall be satisfied in cash or in kind, or partly in each. The trustee shall determine which assets or interests in the trust fund shall be distributed in satisfaction of this pecuniary gift and may include therein all or any part of, or an undivided interest in, any particular asset or interest, except that the trustee shall not distribute any shares of stock of an S corporation, as defined in Section 1361 of the Internal Revenue Code of 1986, as amended, in satisfaction of this pecuniary gift. The assets distributed in satisfaction of this pecuniary gift shall be valued at their respective fair market values at the date(s) of distribution. It is the intention of the Trustor that the trustee shall allocate her unused GST exemption to exempt this pecuniary gift from the federal generation-skipping transfer tax. The Trustor recognizes that there may be no sum disposed of by this subparagraph and that any sum so disposed of may be affected by the action of the trustee in exercising certain tax elections.

(b) The trustee shall divide the balance of the trust fund remaining after making (or otherwise providing for) the distribution of the pecuniary gift required by subparagraph 2(a) of this Article into as many equal shares as are necessary to make the following distributions, which shares shall then be thus distributed:

(i) One share shall go outright to each child of the Trustor who survives her and has then attained age 45;

(ii) Two-thirds (2/3) of one share shall go outright to each child of the Trustor who survives her and has then attained age 40, but not age 45, and the remaining one-third (1/3) of said share shall be retained by the trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child;

(iii) One-third (1/3) of one share shall go outright to each child of the Trustor who survives her and has then attained age 35, but not age 40, and the remaining two-thirds

(2/3) of said share shall be retained by the trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child;

(iv) One share for each child of the Trustor who survives her and has not then attained age 35 shall be retained by the trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child; and

(v) One share shall go to the issue who survive the Trustor of each child of the Trustor who does not survive her, said issue to take the same by right of representation, subject to the trust provisions of Article Eight.

3. Ultimate Contingent Disposition. Any provision in this agreement to the contrary notwithstanding, if at the time of distribution of property or termination of any trust under this agreement (which time is referred to in this paragraph as "then"), none of the Trustor's spouse and the Trustor's issue is then living, and all or any part of any trust created under this agreement is not otherwise disposed of, the trustee shall divide the then trust fund into as many equal shares as are necessary to make the following distributions, which shares shall then be thus distributed:

(a) One share shall go outright to each sibling of the Trustor—namely, LISA KATHRYN HESS LOWRIE, EMILY HESS LEVINE, CARL DONALD HESS, STUART MATTHEW NELSON and DAVID RANDALL NELSON—who is then living; and

(b) One share shall go to the then living issue of each sibling of the Trustor above-named who is then deceased, said issue to take the same by the right of representation, subject to the trust provisions of Article Eight.

If, however, all persons above named in this paragraph 3 are then deceased, leaving no issue then living, the trustee shall

instead distribute the then trust fund to THE SAN FRANCISCO FOUNDATION [San Francisco, California], for addition to the Pomegranate Fund established therewith; but if said fund is not then in existence, then to the said foundation for its unrestricted use in furtherance of its charitable purpose(s).

4. Allocation of GST Exemption. It is the Trustor's intention, although not legally binding, that the trustee shall allocate so much of the Trustor's unused GST exemption as is necessary to exempt property passing to The Decedent's Exclusion Trust under Article Five from the federal generation-skipping transfer tax if the spouse of the Trustor survives her, and that the balance, if any, of such exemption shall be allocated to property passing to The Marital Trust under Article Four. However, if the spouse of the Trustor does not survive her, the said unused GST exemption shall be allocated to the exempt trusts under Articles Six and Eight.

5. Vesting of the Shares. Nothing in this Article Three authorizing the trustee to delay the division of the trust for a period following the date of death of the Trustor shall in any way affect the vesting of any interest hereunder, which shall be as of the date of death of the Trustor, subject, however, to any survivorship provision hereinafter set forth in this agreement.

#### ARTICLE FOUR

##### The Marital Trust

The trustee shall hold, deal with and dispose of the portion of the trust property hereinabove directed to be set apart as a separate trust fund in accordance with the terms and

provisions of this Article Four (for convenience, said portion of the trust property is in this Article referred to as "The Marital Trust" or "the trust fund") as follows:

1. The Trustor's Intention. It is the intention of the Trustor that the Marital Trust qualify in all respects for the federal estate tax marital deduction as a qualified terminable interest property trust and the provisions of this Article shall be interpreted in accordance with this stated intention. Notwithstanding the foregoing, the personal representative of the Trustor's estate shall not be required to elect to qualify the trust fund or any portion thereof for the federal estate tax marital deduction if, in the opinion of the personal representative based on circumstances existing at the date of death of the Trustor, such election is not in the best interests of the Trustor's estate or the persons interested therein. If the personal representative in good faith refrains from making the election or elects to qualify less than the full amount of the trust property as qualified terminable interest property, then, in that event, the personal representative shall not be liable to any person for any increase in the federal or state death taxes due by reason of the Trustor's death. Further, if the personal representative elects to qualify less than the full amount of the trust property as qualified terminable interest property, the trustee shall separate into two shares the qualified and non-qualified portions of the trust property according to the fair market value of such assets at the date(s)

of distribution and shall administer each share as a separate share trust under this Article.

2. Payment of Net Income. The trustee shall pay the entire net income of the Marital Trust to or for the benefit of the Trustor's spouse for so long as he lives, in monthly or such other convenient installments (but not less often than annually) as from time to time agreed upon by the Trustor's spouse and the trustee. The Trustor's spouse shall have the power to direct the trustee to dispose of any unproductive or underproductive property within a reasonable time and to invest the proceeds in investments that produce a reasonable income. In determining the annual net income of the trust currently distributable to the Trustor's spouse and notwithstanding any contrary provisions of this agreement and any applicable provisions of state law, the trustee shall include all income which must be considered as income in order for the trust to qualify for the marital deduction under the federal estate tax law applicable to the Trustor's estate and shall make no deductions from gross income which would prevent the trust from qualifying for such marital deduction.

3. Use of Principal. It is the intention of the Trustor, although not legally binding, that in making distributions to or for the benefit of the Trustor's spouse, the trustee shall, to the extent practicable, make payments of principal pursuant to this paragraph prior to making payments of principal from the property of the trust held under Article Five. After considering the foregoing, the trustee may, in the trustee's discretion,

use principal of the trust when the Trustor's spouse is in need of funds to meet the reasonable expenses of the following:

(a) support or maintenance in accordance with his accustomed standard of living; and

(b) medical, dental, hospital and nursing services and other costs relating to his health care.

The trustee may at such time(s) pay to or apply for the benefit of the Trustor's spouse so much of the principal of the trust fund as the trustee deems proper for any of said purposes, giving such consideration as the trustee deems proper to all income and other resources then readily available to the Trustor's spouse for use for such purposes and which are then known to the trustee. No amount(s) so paid or applied need thereafter be repaid to the trustee or restored to the trust. The trustee is authorized to make payments pursuant to this paragraph to the Trustor's spouse or to the conservator of his person or estate. All decisions of the trustee as to the purposes for which such payments are to be made and the amount(s), if any, to be from time to time paid out of the trust fund are within the trustee's discretion and shall be final and incontestable by anyone. If the Trustor's spouse is serving as a/the trustee of the trust, he shall not participate in any decision under this paragraph to expend principal for his own benefit.

4. Termination of Trust. The Marital Trust shall terminate upon the death of the Trustor's spouse, which time of termination is hereinafter in this paragraph referred to as "then". Upon termination, the trustee shall distribute the



principal of the trust, and all accrued and undistributed net income of the trust, as follows:

(a) The trustee shall determine the amount of federal and California estate tax and any other similar tax payable by reason of the death of the Trustor's spouse, which is properly allocable by reason of Section 2207A of the Internal Revenue Code of 1986, as amended, to the property of the Marital Trust; and upon written demand of the personal representative of the estate of the Trustor's spouse, the trustee shall set aside a portion of the trust fund for the purpose of paying said taxes.

(b) The trustee shall pay over and deliver the balance of the trust fund (or all thereof if no written demand is made in due course by the personal representative of the estate of the Trustor's spouse under subparagraph 4(a) of this Article) to any one or more of the group consisting of the then living issue of the Trustor and the then living spouse of any such issue who is then deceased, in such amount(s) and/or proportion(s), whether in trust or outright, as the Trustor's spouse shall have appointed in his will or in a written and acknowledged document delivered to the trustee during the lifetime of the Trustor's spouse, either of which makes express reference to this Article Four limited power of appointment; PROVIDED, HOWEVER, any exercise of the limited power of appointment in favor of the living spouse of any said deceased issue shall be in trust for his/her lifetime, with at least one independent trustee and with distributions of principal limited to support, maintenance, health care and/or education.

(c) In the event any part of the trust fund is not effectively appointed by the Trustor's spouse pursuant to subparagraph 4(b) of this Article and if any issue of the Trustor is then living, the trustee shall divide said part into as many equal shares as are necessary to make the following distributions, which shares shall then be thus distributed:

(i) One share shall go outright to each child of the Trustor who is then living and has then attained age 45;

(ii) Two-thirds ( $2/3$ ) of one share shall go outright to each child of the Trustor who is then living and has then attained age 40, but not age 45, and the remaining one-third ( $1/3$ ) of said share shall be retained by the

trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child;

(iii) One-third (1/3) of one share shall go outright to each child of the Trustor who is then living and has then attained age 35, but not age 40, and the remaining two-thirds (2/3) of said share shall be retained by the trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child;

(iv) One share for each child of the Trustor who is then living and has not then attained age 35 shall be retained by the trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child; and

(v) One share shall go to the then living issue of each child of the Trustor who is then deceased, said issue to take the same by right of representation, subject to the trust provisions of Article Eight.

(d) In the event any part of the trust fund is not effectively appointed by the Trustor's spouse pursuant to subparagraph 4(b) of this Article and if no issue of the Trustor is then living, the trustee shall distribute said part in the same manner as set forth in paragraph 3 of Article Three *vis-à-vis* the property subject thereto.

#### ARTICLE FIVE

##### The Decedent's Exclusion Trust

After making appropriate provision for the payment of expenses and death taxes (as set forth and hereinafter directed in this agreement) due and payable by reason of the death of the Trustor, the trustee shall hold, deal with and dispose of the portion of the trust property hereinabove directed to be set apart as a separate trust fund in accordance with the terms and provisions of this Article Five (for convenience, said portion

of the trust property is in this Article referred to as "The Decedent's Exclusion Trust" or "the trust fund") as follows:

1. Use of Net Income and Principal. The trustee may, in the trustee's discretion, use the net income and/or principal of The Decedent's Exclusion Trust when the Trustor's spouse and/or any issue of the Trustor is in need of funds to meet the reasonable expenses of the following:

(a) support or maintenance in accordance with the accustomed standard of living of the Trustor's spouse or any issue of the Trustor, as the case may be;

(b) medical, dental, hospital and nursing services and other costs relating to the health care of the Trustor's spouse or any issue of the Trustor, as the case may be; and

(c) education (as defined in paragraph 6 of Article Fourteen) of any issue of the Trustor.

The trustee may at such time(s) pay to or apply for the benefit of the Trustor's spouse and/or any issue of the Trustor so much of the net income and/or principal of the trust fund as the trustee deems advisable and proper for any of said purposes, giving such consideration as the trustee deems proper to all income and other resources then readily available to the Trustor's spouse or any of the Trustor's issue, as the case may be, for use for such purposes and which are then known to the trustee. No amount(s) so paid or applied need thereafter be repaid to the trustee or restored to the trust fund. The trustee is authorized to, at any time(s) and from time to time, pay to or apply for the benefit of the Trustor's spouse and/or any issue of the Trustor, for any of said purposes, a greater amount

and/or proportion of the net income and/or principal of the trust than the trustee pays to or applies for the benefit of any one or more of the other persons eligible for distributions of net income and principal under this paragraph, including making payments to one or more of the Trustor's spouse and the issue of the Trustor to the exclusion of others if the trustee deems such action appropriate in light of the circumstances, the size of the trust fund and the probable future needs of the Trustor's spouse and the Trustor's issue. It is the Trustor's intention that the trustee give primary consideration to the needs of the Trustor's spouse, and the needs of the Trustor's issue shall be secondary thereto. The trustee is authorized to make payments pursuant to this paragraph to the Trustor's spouse and/or any issue of the Trustor, the conservator of the person or estate of the Trustor's spouse, the guardian or conservator, as the case may be, of the person or estate of any issue of the Trustor or to such other person(s) as the trustee may deem proper, in all cases to be used for the benefit of the Trustor's spouse or any issue of the Trustor, as the case may be. The trustee shall not make any distribution which would be deemed to discharge any person's legal obligation to support any issue of the Trustor without such person's prior consent. All decisions of the trustee as to the person(s) to whom, and the purposes for which, such payments are to be made and the amount(s), if any, to be from time to time paid out of the trust fund are within the trustee's discretion and shall be final and incontestable by anyone. If the Trustor's spouse or any issue of the Trustor is

ever serving as a/the trustee of the trust, he/she shall not participate in any decision under this paragraph to expend net income or principal for his/her own benefit. Any income not expended under the foregoing provisions of this paragraph shall be accumulated and added to the principal of the trust at such time(s) as the trustee determines.

2. Termination of Trust. The Decedent's Exclusion Trust shall terminate upon the death of the Trustor's spouse, which time of termination is hereinafter in this paragraph referred to as "then". Upon termination, the trustee shall distribute the principal of the trust, and all accrued and undistributed net income of the trust, as follows:

(a) The trustee shall pay over and deliver the trust fund as then constituted to any one or more of the group consisting of the then living issue of the Trustor and the then living spouse of any such issue who is then deceased, in such amount(s) and/or proportions, whether in trust or outright, as the Trustor's spouse shall have appointed in his will or in a written and acknowledged document delivered to the trustee during the lifetime of the Trustor's spouse, either of which makes express reference to this Article Five limited power of appointment; PROVIDED, HOWEVER, any exercise of the limited power of appointment in favor of the living spouse of any said deceased issue shall be in trust for his/her lifetime, with at least one independent trustee and with distributions of principal limited to support, maintenance, health care and/or education; PROVIDED FURTHER, the power of appointment herein conferred shall not apply to any property of the trust fund previously disclaimed by the Trustor's spouse.

(b) In the event any part of the trust fund is not effectively appointed by the Trustor's spouse pursuant to subparagraph 2(a) of this Article and if any issue of the Trustor is then living, the trustee shall dispose of said part as follows:

(i) With respect to the portion of said part which has an inclusion ratio of zero for

federal generation-skipping transfer tax purposes, the trustee shall divide said portion of the trust fund into as many equal shares as are necessary to make the following distributions, which shares shall then be thus distributed:

A. One share for each child of the Trustor who is then living shall be retained by the trustee, IN TRUST, to hold as a separate exempt trust under Article Six for the benefit of said child; and

B. One share shall go to the then living issue of each child of the Trustor who is then deceased, said issue to take the same by right of representation, subject to the trust provisions of Article Eight.

(ii) With respect to the portion of said part which has an inclusion ratio greater than zero for federal generation-skipping transfer tax purposes, the trustee shall divide said portion of the trust fund into as many equal shares as are necessary to make the following distributions, which shares shall then be thus distributed:

A. One share shall go outright to each child of the Trustor who is then living and has then attained age 45;

B. Two-thirds ( $2/3$ ) of one share shall go outright to each child of the Trustor who is then living and has then attained age 40, but not age 45, and the remaining one-third ( $1/3$ ) of said share shall be retained by the trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child;

C. One-third ( $1/3$ ) of one share shall go outright to each child of the Trustor who is then living and has then attained age 35, but not age 40, and the remaining two-thirds ( $2/3$ ) of said share shall be retained by the

trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child;

D. One share for each child of the Trustor who is then living and has not then attained age 35 shall be retained by the trustee, IN TRUST, to hold as a separate trust under Article Seven for the benefit of said child; and

E. One share shall go to the then living issue of each child of the Trustor who is then deceased, said issue to take the same by right of representation, subject to the trust provisions of Article Eight.

(c) In the event any part of the trust fund is not effectively appointed by the Trustor's spouse pursuant to subparagraph 2(a) of this Article and if no issue of the Trustor is then living, the trustee shall distribute said part in the same manner as set forth in paragraph 3 of Article Three *vis-à-vis* the property subject thereto.

#### ARTICLE SIX

##### Exempt Trusts for the Trustor's Children and Their Issue

The trustee shall deal with the trust property hereinabove directed to be held and administered under this Article Six as a separate exempt trust for each of the Trustor's children who survives the Trustor and her spouse. The Trustor's child for whom the trust is established is hereinafter referred to as "the beneficiary". The following provisions shall govern each such trust:

1. Use of Income and Principal. It is the intention of the Trustor, although not legally binding, that the trustee shall, in making distributions under this paragraph to or for the benefit of the beneficiary, give consideration to maximizing

the benefits of the Trustor's GST exemption by making distributions to, or preserving principal for the benefit of, skip persons and that the trustee shall therefore consider, to the extent practicable, the income and other resources of the beneficiary prior to making distributions to him/her pursuant to this paragraph. Subject to the foregoing, the trustee may, in the trustee's discretion, use net income and/or principal of the trust when the beneficiary or any issue of the beneficiary living from time to time prior to the termination of the trust is in need of funds to meet the reasonable expenses of the following:

- (a) support and maintenance in accordance with the accustomed standard of living of the beneficiary or any issue of the beneficiary;

- (b) medical, dental, hospital and nursing services and other costs relating to the health care of the beneficiary or any issue of the beneficiary; and

- (c) education (as defined in paragraph 6 of Article Fourteen) of the beneficiary or any issue of the beneficiary.

The trustee may at such time(s) pay to or apply for the benefit of the beneficiary and/or any of his/her issue so much of the net income and/or principal of the trust as the trustee deems advisable and proper for any of said purposes, giving such consideration as the trustee deems proper to all income and other resources then readily available to the beneficiary or any of his/her issue, as the case may be, for use for such purposes and which are then known to the trustee. No amount(s) so paid or applied need thereafter be repaid to the trustee or restored to the trust. The trustee is authorized to, at any time(s) and



from time to time, pay to or apply for the benefit of the beneficiary and/or any of his/her issue, for any of said purposes, a greater amount and/or proportion of the net income and/or principal of the trust than the trustee pays to or applies for the benefit of any one or more of the other persons eligible for distributions of net income and principal under this paragraph, including making payments to one or more of the beneficiary and his/her issue to the exclusion of others if the trustee deems such action appropriate in light of the circumstances, the size of the trust and the probable future needs of the beneficiary and his/her issue. The trustee is authorized to make payments pursuant to this paragraph to the beneficiary and/or any issue of the beneficiary, to the guardian or conservator, as the case may be, of the person or estate of the beneficiary or any of his/her issue or to such other person(s) as the trustee may deem proper, in all cases to be used for the benefit of the beneficiary or any of his/her issue, as the case may be. The trustee shall not make any distribution which would be deemed to discharge any person's legal obligation to support the beneficiary or any of his/her issue without such person's prior consent. All decisions of the trustee as to the person(s) to whom, and the purposes for which, such payments are to be made and the amount(s), if any, to be from time to time paid out of the trust are within the trustee's discretion and shall be final and incontestable by anyone. If the beneficiary or any of his/her issue is ever serving as a/the trustee of the trust, he/she shall not participate in any decision under this

paragraph to expend net income or principal for his/her own benefit. Any income not expended under the foregoing provisions of this paragraph shall be accumulated and added to the principal of the trust at such time(s) as the trustee determines.

2. Termination of Trust. The trust shall terminate upon the death of beneficiary, which time of termination is hereinafter in this paragraph referred to as "then". Upon termination, the trustee shall distribute the principal of the trust, and all accrued and undistributed net income of the trust, as follows:

(a) The trustee shall pay over and deliver all property then subject to the trust to any one or more of the group consisting of the then living issue of the Trustor and the then living spouse of any such issue who is then deceased, in such amount(s) and/or proportion(s), whether in trust or outright, as the beneficiary shall have appointed in his/her will or in a written and acknowledged document delivered to the trustee during the lifetime of the beneficiary, either of which makes express reference to this Article Six limited power of appointment; PROVIDED, HOWEVER, any exercise of the limited power of appointment in favor of the living spouse of any said deceased issue shall be in trust for his/her lifetime, with at least one independent trustee and with distributions of principal limited to support, maintenance, health care and/or education.

(b) In the event any property of the trust is not effectively appointed by the beneficiary pursuant to subparagraph 2(a) of this Article, the trustee shall distribute said property as follows:

(i) If any issue of the beneficiary is then living, the trustee shall pay over and deliver all such property to the then living issue of the beneficiary, said issue to take the same by right of representation, subject to the trust provisions of Article Eight;

(ii) If no issue of the beneficiary is then living, but there is/are issue of the Trustor then living, the trustee shall pay over and deliver all such property to said then living issue, said issue to take the same by right of representation, subject to the trust provisions of Article Eight; PROVIDED, HOWEVER, if there is a trust under this Article Six for any such issue, his/her share shall be added to said trust; PROVIDED FURTHER, if there is no trust under this Article Six for said issue, his/her share shall be added to any trust for his/her benefit under this agreement which has an inclusion ratio of zero for federal generation-skipping transfer tax purposes; or

(iii) If no issue of the Trustor is then living, the trustee shall distribute all such property in the same manner as set forth in paragraph 3 of Article Three vis-à-vis the property subject thereto.

#### ARTICLE SEVEN

##### Non-Exempt Trusts for the Trustor's Children

The trustee shall deal with the trust property hereinabove directed to be held and administered under this Article Seven as a separate non-exempt trust for each of the Trustor's children who survives the Trustor and her spouse and has not attained age 45 at the date of death of the survivor of the Trustor and her spouse. The Trustor's child for whom the trust is established is hereinafter referred to as "the beneficiary". The following provisions shall govern each such trust:

1. Use of Income. If and so long as the beneficiary has not attained the age of 30 years, the trustee shall pay to or apply for the benefit of the beneficiary so much of the net income of the trust as the trustee, in the trustee's discretion, deems advisable for his/her proper support, maintenance, health care and/or education. Any net income not expended under the

foregoing provisions of this paragraph shall be accumulated and added to the principal of the trust at such time(s) as the trustee determines. Upon the beneficiary's attainment of age 30, the trustee shall pay to or apply for the benefit of the beneficiary the entire net income of the trust in monthly or such other convenient installments (but not less often than annually) as from time to time agreed upon by the trustee and the beneficiary.

Notwithstanding the foregoing discretion of the trustee respecting distributions of net income, if the trust is the beneficiary of any deferrable Individual Retirement Account, pension or profit-sharing plan or other retirement plan (hereinafter referred to as the "plan"), the trustee shall, beginning before the last day of the calendar year immediately following the calendar year of the date of death of the participant in such plan, withdraw an annual amount from the account balance of the plan equal to the "minimum distribution amount", based on the beneficiary's life expectancy, which is required to be distributed annually under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended. If the trust is the beneficiary of any such plan, then notwithstanding that such account may be allocated to principal for trust accounting purposes, the trustee shall allocate to income assets equal in value to the value of the minimum distribution amount made to the trust from the plan. The beneficiary shall have the power to compel the trustee to make such a demand from the plan. Any other distributions from the plan shall be allocated to

principal. Notwithstanding such allocations, the trustee shall distribute all amounts withdrawn from the plan, net of expenses properly charged thereto, to the beneficiary at least annually.

2. Use of Principal. It is the intention of the Trustor, although not legally binding, that in making distributions to or for the benefit of the beneficiary, the trustee shall, to the extent practicable, make payments of principal pursuant to this paragraph until the trust held for the benefit of the beneficiary under this Article Seven is exhausted prior to making payments of principal from the trust held for the beneficiary under Article Six. Subject to the foregoing, the trustee may, in the trustee's discretion, may use principal of the trust when the beneficiary is in need of funds to meet the reasonable expenses of the following:

(a) support and maintenance in accordance with the beneficiary's accustomed standard of living, including a loan or a distribution to the guardian of any minor beneficiary upon such terms as the trustee, in the trustee's discretion, deems appropriate to enable the guardian to purchase a new residence or to make an addition to the guardian's existing residence in order to comfortably accommodate such guardian's family and the beneficiary together and not necessarily to earn income for the trust;

(b) a distribution to the guardian of any minor beneficiary of such sums as the trustee, in the trustee's discretion, deems necessary or appropriate to ease the burden, financial or emotional, on said guardian and his/her family resulting from the inclusion of the beneficiary in the guardian's household for such items as increased costs of utilities, employment of additional domestic help, child care and related costs of providing for the beneficiary;

(c) medical, dental, hospital and nursing services and other costs relating to the beneficiary's health care;

(d) assistance to the beneficiary in purchasing real property to be used as his/her principal home, with the trustee to determine, in the trustee's discretion, whether such property will be held in the name of the trust or held individually in the beneficiary's name;

(e) assistance to the beneficiary in starting a business venture which the trustee, in the trustee's discretion, determines to be in the beneficiary's best interests; and

(f) education (as defined in paragraph 6 of Article Fourteen) of the beneficiary.

The trustee may at such time(s) pay to or apply for the benefit of the beneficiary so much of the principal of the trust as the trustee deems advisable and proper for any of said purposes, giving such consideration as the trustee deems proper to all income and other resources then readily available to the beneficiary for use for such purposes and which are then known to the trustee. No amount(s) so paid or applied need thereafter be repaid to the trustee or restored to the trust. The trustee is authorized to make payments pursuant to this paragraph either to the beneficiary or to the guardian or conservator, as the case may be, of his/her person or estate, or to such other person(s) as the trustee may deem proper, in all cases to be used for the benefit of the beneficiary. All decisions of the trustee as to the person(s) to whom, and the purposes for which, such payments are to be made and the amount(s), if any, to be from time to time paid out of the trust are within the trustee's discretion and shall be final and incontestable by anyone. If the beneficiary is ever serving as a/the trustee of the trust, he/she shall not participate in any decision to expend principal under this paragraph for his/her own benefit.

It is the intention of the Trustor that the trustee, if other than the beneficiary, shall have complete discretion in terminating the trust hereunder if the trustee shall, in the trustee's discretion, determine that the continuation of the trust is inadvisable in view of its size or for any other reason which is in the best interests of the beneficiary.

3. Distribution of Principal at Ages 35 and 40. When the beneficiary attains age 35, the trustee shall sever from the principal of the trust and pay over and deliver to the beneficiary, free of trust, property having at such time a market value equal to one-third of the fair market value of all property then subject to the trust, less any encumbrances on trust property and any trust liabilities. When the beneficiary attains age 40, the trustee shall sever from the principal of the trust and pay over and deliver to the beneficiary, free of trust, property having at such time a market value equal to one-half of the fair market value of all property then subject to the trust, less any encumbrances on trust property and any trust liabilities.

4. Termination of Trust. Unless sooner terminated pursuant to the provisions of paragraph 2 of this Article, the trust shall terminate upon the beneficiary's attainment of age 45 or, if earlier, upon the death of the beneficiary, which time of termination is hereinafter in this paragraph referred to as "then". Upon termination, the trustee shall distribute the principal of the trust, and all accrued and undistributed net income of the trust, as follows:

(a) If the beneficiary is then living, the trustee shall pay over and deliver to the beneficiary, free of trust, all property then subject to the trust.

(b) If the beneficiary is not then living, the trustee shall pay over and deliver all property then subject to the trust to such one or more persons and/or entities without limitation, in such amount(s) and/or proportion(s), whether in trust or outright, as the beneficiary shall have appointed in his/her will or in a written and acknowledged document delivered to the trustee during the lifetime of the beneficiary, either of which makes express reference to this Article Seven general power of appointment; PROVIDED, HOWEVER, any exercise of the power in favor of the living spouse of a deceased issue of the Trustor shall be in trust for his/her lifetime, with at least one independent trustee and with distributions of principal limited to support, maintenance, health care and/or education.

(c) In the event any property of the trust is not effectively appointed by the beneficiary pursuant to subparagraph 4(b) of this Article, the trustee shall distribute said property as follows:

(i) If any issue of the beneficiary is then living, the trustee shall pay over and deliver all such property to the then living issue of the beneficiary, said issue to take the same by right of representation, subject to the trust provisions of Article Eight; or

(ii) If no issue of the beneficiary is then living, but there is/are issue of the Trustor then living, the trustee shall pay over and deliver all such property to said then living issue, said issue to take the same by right of representation, subject to the trust provisions of Article Eight; PROVIDED, HOWEVER, if there is a trust under this Article Seven for any such issue, his/her share shall be added to said trust; PROVIDED FURTHER, if there is no trust under this Article Seven for any such issue, his/her share shall be added to any trust for his/her benefit under this agreement which has an inclusion ratio greater than zero for federal generation-skipping transfer tax purposes; PROVIDED ADDITIONALLY, any addition to a trust which has been partially distributed shall augment proportionately the distributed and undistributed parts of said trust; or



(iii) If no issue of the Trustor is then living, the trustee shall distribute all such property in the same manner as set forth in paragraph 3 of Article Three *vis-à-vis* the property subject thereto.

#### ARTICLE EIGHT

##### Trusts for Persons Under Age Forty

1. Trusts for Persons Under Age 40. If under any provision of this agreement any property would go upon distribution or termination of a trust to a person, other than a child of the Trustor, who is under age 40 at the time of such distribution or termination (such person being hereafter in this paragraph called "the beneficiary"), then instead of going to the beneficiary outright but subject to paragraph 2 of this Article, all such property for the beneficiary shall be retained by the trustee, IN TRUST, in one or more separate trusts until the beneficiary attains age 40 or dies, whichever event first occurs, whereupon the trust(s) as to such property shall terminate. The trustee shall establish one separate trust to hold any property which has an inclusion ratio of zero for federal generation-skipping transfer tax purposes and a second separate trust to hold the balance of the property subject to this paragraph.

Prior to the beneficiary's attainment of age 30, the trustee may, in the trustee's discretion, pay to the beneficiary, or apply directly for his/her benefit, all or any part of the net income of the beneficiary's trust(s) for his/her proper support, maintenance, health care and/or education. Any net income not so paid or applied shall be accumulated and from time

to time added to the principal of the trust(s). Upon the beneficiary's attainment of age 30, the trustee shall pay to or for the benefit of the beneficiary the entire net income of the trust(s) at least annually. Prior to termination of the trust(s), the trustee may, in the trustee's discretion, pay to or apply for the benefit of the beneficiary all or any part of the principal of the beneficiary's trust(s) for his/her proper support, maintenance, health care and/or education.

Upon termination, the trustee shall pay over and deliver all property then subject to the beneficiary's trust(s) to the beneficiary if he/she is then living. If the beneficiary is not then living, the trustee shall deal with and distribute the trust property as follows:

(a) With respect to the property held in the beneficiary's trust which has an inclusion ratio greater than zero for federal generation-skipping transfer tax purposes, the trustee shall pay over and deliver all such property to such one or more persons and/or entities without limitation, in such amount(s) and/or proportion(s), whether in trust or outright, as the beneficiary shall have appointed in his/her will or in a written and acknowledged document delivered to the trustee during the lifetime of the beneficiary, either of which makes express reference to this Article Eight general power of appointment.

(b) With respect to the property held in the beneficiary's trust which has an inclusion ratio of zero for federal generation-skipping transfer tax purposes, the trustee shall pay over and deliver all such property to any one or more of the group consisting of the then living issue of the Trustor, in such amount(s) and/or proportion(s), whether in trust or outright, as the beneficiary shall have appointed in his/her will or in a written and acknowledged document delivered to the trustee during the lifetime of the beneficiary, either of which makes express reference to this Article Eight limited power of appointment.

(c) In the event any property of the trust(s) is not effectively appointed by the beneficiary pursuant to subparagraphs 1(a) and 1(b) of this Article, the trustee shall pay over and deliver all such property to the then living issue of the beneficiary, said issue to take the same by right of representation, subject to the trust provisions of this Article Eight; PROVIDED, HOWEVER, if no issue of the beneficiary is then living, the trustee shall pay over and deliver all such property to the then living issue of the parent of the beneficiary more closely related to the Trustor, said issue to take the same by right of representation, subject to the trust provisions of this Article Eight; PROVIDED FURTHER, if no issue of the parent of the beneficiary more closely related to the Trustor is then living, the trustee shall pay over and deliver all such property to the then living issue of the Trustor, said issue to take the same by right of representation, subject to the trust provisions of this Article Eight; PROVIDED ADDITIONALLY, if no issue of the Trustor is then living, the trustee shall distribute all such property in the same manner as set forth in paragraph 3 of Article Three *vis-à-vis* the property subject thereto.

2. Perpetuities Savings Provision. Notwithstanding any provision to the contrary herein contained, in no event shall any trust under this agreement continue by reason of any provision of this agreement longer than 21 years after the death of the last survivor of the following persons who shall be living at the date of death of the Trustor: the Trustor's spouse and the issue of the Trustor's parents; and unless sooner terminated pursuant to the provisions of this agreement, each such trust shall altogether terminate 21 years after the death of the last to die of said persons, in which case the property of the trust shall go, free of trust, to the person(s) who is(are) then authorized to receive distributions of income from the trust or are otherwise then entitled thereto.

## ARTICLE NINE

### Administrative Provisions

Except as otherwise expressly provided in this agreement, the following terms and provisions shall apply to and govern each separate trust herein created and provided for:

1. Spendthrift Provision. Following the death of the Trustor and to the fullest extent permitted by law, the interest of each beneficiary in the income and principal of any trust hereunder (for convenience, each such beneficiary is referred to in this paragraph as the "beneficiary") shall be free of all debts, contracts and obligations of the beneficiary and, except with respect to any power or authority vested in a trustee, cannot be anticipated or assigned or transferred in whole or in part, voluntarily or involuntarily, or by operation of law (including being taken by execution of any legal process whatsoever), and any and all such anticipations, assignments and transfers shall be void. Except with respect to The Marital Trust held pursuant to Article Four or any Qualified Subchapter S Trust (as defined in paragraph 7 of Article Nine) created under this agreement, as to which this sentence shall have no applicability, if any anticipation, assignment or transfer, whether voluntary or involuntary, or by operation of law, shall be made or attempted by or against the beneficiary, all further payments to the beneficiary of income and/or principal of the trust shall be suspended for such period of time as the trustee, other than a beneficiary of the trust, shall determine, or even indefinitely (but in no case for longer than the term of the

trust), and in lieu of such payments, the trustee may apply so much of the income and/or principal of the trust to which the beneficiary would otherwise be entitled as the trustee may deem appropriate. All income of the trust not so applied shall be accumulated and added to the principal of the trust fund at such time(s) as the trustee may deem proper. Notwithstanding the foregoing and the provisions of Section 15403(b) of the California Probate Code, upon petition by the trustee other than a beneficiary, the court may, in its discretion, order modification or termination of any trust created under this agreement.

2. Trustee's Powers. Subject to the provisions of paragraph 3 of this Article, the trustee shall have, in addition to all powers, authority and discretion conferred upon the trustee by the provisions of this agreement or by law, full power in the trustee's discretion:

(a) To review the trust assets within a reasonable time after accepting the trusteeship or receiving the trust assets and to make and implement decisions concerning the retention and disposition of the assets in order to bring the trust portfolio into compliance with the purposes, terms and distribution requirements and other circumstances of the trust; PROVIDED, HOWEVER, in making and implementing trust decisions, the trustee must diversify unless under the circumstances it is not prudent so to do, and the trustee shall invest and manage assets as a prudent investor would in accordance with the provisions of Section 16047 of the California Probate Code; except that the trustee is authorized to retain, in the trustee's discretion, any property which is transferred to the trust by the Trustor or which is part of the initial funding of any trust hereunder;

(b) To accept additions to the trust from any and every source; PROVIDED, HOWEVER, no additions may be made to a trust held under this agreement which has an inclusion ratio of zero for federal generation-

skipping transfer tax purposes if such addition would increase its inclusion ratio to more than zero;

(c) To manage, invest and reinvest the trust and each and every part thereof, with power, in the discretion of the trustee, to purchase or otherwise acquire every kind of investment, real, personal or mixed;

(d) To hold real or personal property of the trust in the name of a nominee, in bearer form or otherwise, without disclosure of any fiduciary relationship, and to establish and maintain brokerage accounts, including margin accounts;

(e) To sell at public or private sale, convey, exchange, grant options on, lease without limit as to term, improve, borrow, hypothecate, and to sign, seal, execute, deliver and acknowledge such deeds, agreements, mortgages, pledge agreements, notes, receipts, checks and such other instruments in writing, of every kind and nature, as may be necessary or proper in the premises, to purchase or otherwise acquire real property, and to do and perform any and all other acts and things deemed by the trustee necessary or advisable in the management, investment and reinvestment of the real or personal property held as part of the trust fund that may be done by an absolute owner of property;

(f) To open, deposit into, withdraw and close any commercial, checking, money market, savings or savings and loan account in the name of the trust or opened for the benefit of the Trustor, and to negotiate, endorse or transfer any instrument with respect to any such account; to have access to, and remove the contents from or add to the contents of, any and all safe deposit boxes standing in the name of the Trustor, or in the name of the trustee in the trustee's fiduciary capacity;

(g) To take any action the trustee deems advisable in connection with subscription, voting, conversion or other rights and, without limiting the generality of the foregoing, to enter into and extend voting trusts, pooling agreements or other agreements with respect to voting rights, of any and every character, without limitation as to the duration of any such agreement;

(h) To exercise all stock options and to borrow funds necessary to exercise options and, if necessary, to pledge stock as collateral;

(i) To manage, improve or develop real property as if the trustee were the absolute owner thereof; to employ management of any such real property as the trustee deems appropriate; to construct, alter, repair, purchase, dispose of or raze buildings, structures on or other improvements to real property; to settle boundary lines and easements and other rights with respect to real property options; to partition, to enter into any partnership or otherwise join with co-owners and others dealing with real property in any way; to sell, lease or grant the right to mine or drill and to remove from any real property, gas, oil, and other minerals and any timber, whether or not any such grant or lease is to continue longer than the duration of any trust hereunder; to pool or unitize any or all the lands, leaseholds or other types of mineral interests; to engage in secondary or tertiary recovery methods; to make and execute mineral royalty conveyances; to abandon any property which the trustee shall deem worthless or not of sufficient value to warrant keeping or protecting, to abstain from the payment of taxes, liens, water rents, assessments, repairs and maintenance of any such property and to permit any such property to be lost by tax sale or other proceeding; and to execute and enter into contracts or other instruments necessary or desirable and which are common or proper to accomplish the foregoing;

(j) To purchase, maintain, replace or cancel (1) liability insurance protecting the trust and the trustee against third-party claims, (2) hospital, medical and disability income insurance on any beneficiary and (3) casualty insurance insuring trust property against loss or damage due to fire, theft or other commonly insured risk, and to use reasonable efforts to collect all sums payable to the trust under any such policy, and to compromise, arbitrate or adjust any claim arising under any such policy;

(k) To deposit any investments with any protective or reorganization committee and delegate discretionary powers thereto, and to make payments the trustee deems advisable in connection with any reorganization or corporate adjustment, including but not limited to foreclosures, consolidations, mergers and liquidations;

(l) To serve as a director and/or officer in a company or companies in which the trust holds stock or securities and to be entitled to reasonable compensation from the company(ies) for his/her services;

(m) To continue to hold, operate, sell or liquidate any business enterprise organized as a sole proprietorship, partnership, limited liability company or corporation received by the trustee; to reorganize any business enterprise in any manner and to enter into any agreements relating thereto which the trustee deems advisable; to increase the investment of the trust therein either or both by way of secured or unsecured loans, by the purchase of stock or by pledging assets of the trust for the debt of any enterprise to such extent as the trustee deems advisable to protect the investment therein; the trustee may exercise the powers herein granted and by law, regardless of any interest which the trustee, either individually or as a fiduciary of any other estate or trust, may have in said business enterprise or in its underlying assets;

(n) To vote any stock held by the trustee, or by any trust hereunder, in such manner as the trustee deems appropriate, so that the trustee may vote for a trustee as a director of any corporation involved; to receive a salary in accordance with the rates then in effect while performing the duties of a director, this amount to be in addition to any compensation paid to the trustee for serving as such trustee;

(o) To make or renew loans to any person, including the personal representative of the Trustor's estate, with adequate interest if the trustee deems such loans to be in the best interests of the trust and the persons interested therein; PROVIDED, HOWEVER, the power to make or renew loans to a beneficiary of a trust under this agreement shall be exercised only by the trustee who is not a beneficiary unless such loan to a beneficiary is made during the lifetime of the Trustor;

(p) To borrow and pledge or mortgage trust property to secure the sum borrowed or to sell trust property in order to satisfy any liability against the trust or the assets thereof by reason of the death of the Trustor;

(q) To loan or advance the trustee's own funds to the trust for any trust purpose with interest at then current rates; and to receive security for such loans in the form of a mortgage, pledge, deed of trust or other encumbrance upon any assets of the trust;

(r) To make gifts and to continue the Trustor's plan of charitable giving at any time the Trustor is living but incapacitated, incompetent or unavailable for consultation with the trustee, including the power



and authority to fulfill all charitable pledges made by the Trustor, and while the Trustor is living, to make gifts from the trust of cash or property, or the income therefrom, in trust or outright to family members and friends of the Trustor; the trustee may exercise such power and authority by making such payments directly to the recipients or, in the alternative, by providing funds for such purpose to the conservator of the Trustor's estate or to a person acting for the Trustor under a durable power of attorney for asset management;

(s) To join with the Trustor's spouse, or the estate of the Trustor's spouse, in filing income or gift tax returns for any years for which the Trustor or her estate has not filed such returns and, in the year of death of the Trustor or upon the incompetency of the Trustor, to consent to any gifts made by the Trustor's spouse as being made one-half by the Trustor for gift tax purposes, even though such action subjects the Trustor's estate to additional liabilities;

(t) To satisfy any pecuniary gift hereunder in whole or in part by a distribution of property other than money;

(u) To exercise any right to elect benefits or payment options, to assign rights and to borrow or receive cash value in return for the surrender of any or all rights under any of the following, such decision of the trustee to be final and incontestable by anyone:

(i) life insurance policies or benefits;

(ii) annuity policies, plans or benefits;

(iii) mutual fund and other dividend investment plans; and

(iv) retirement, profit-sharing and employee welfare plans and benefits;

(v) To partition, allot and divide the trust property (pro rata or otherwise), except as specifically otherwise provided for, with or without regard to the adjusted cost basis of such property, in undivided interests in kind or partly in cash and partly in kind, upon any division or partial or full distribution of the trust, and to make adjustments, in the trustee's discretion, to compensate for the tax consequences of such division that the trustee

believes may have the effect of directly or indirectly preferring one distributee or group of distributees over others and to make any sales the trustee deems necessary to effect such division or distribution, the decision of the trustee with respect thereto and as to the values to be final and incontestable by anyone;

(w) To commingle the trust property of the separate trusts hereunder, allocating to each separate trust an undivided interest in the commingled funds, which undivided interest shall always be equal to the trust's portion of contribution (as adjusted from time to time by payments, income, accumulations of income, payments of principal and additions to principal) to the commingled funds;

(x) To determine all matters with respect to what is principal and income of the trust and to apportion and allocate receipts, expenses and other charges between these accounts in accordance with the provisions of the California Uniform Principal and Income Act, as the same shall exist from time to time; PROVIDED, HOWEVER, any such matter not provided for either in this agreement or in the said California statute shall be determined by the trustee in the trustee's discretion; and

(y) To employ attorneys, investment counsel, accountants or other persons to render services for the trustee or on the trustee's behalf with respect to all matters pertaining to the trust; to delegate to them any power of the trustee, including discretionary powers; and to pay the reasonable fees and compensation of such persons for their services, which shall be in addition to and not in lieu of the compensation of the trustee.

3. Trustee-Beneficiary. If at the time an income beneficiary (other than the Trustor) of any trust hereunder is also a trustee of the trust for his/her benefit, he/she shall not participate in any decisions of the trustee as to the making of gifts from the trust to himself/herself, the use of principal of the trust for his/her own benefit, or any decision pursuant to subparagraph 2(v) or 2(x) of this Article, and all such decisions shall be made by the remaining trustee, or the successor trustee, as if he/she/it were the sole trustee of the trust.

4. Tax Adjustments on Distributions. At any time following the death of the Trustor, when determining whether to distribute income or principal during the term of any trust hereunder and upon any partial or complete termination of any such trust, the trustee may consider the tax consequences to the trust and to the beneficiary(ies) to whom distribution may be made. The trustee may also take any action or make any election considered by the trustee to be useful in minimizing the tax liabilities of any trust hereunder or of any beneficiary. The trustee shall have the power, but shall not be required, to (a) allocate the benefits from any such action or election among one or more beneficiaries or remaindermen and (b) make adjustments in the rights of any income beneficiaries or remaindermen, or between the income and principal accounts, to compensate for the consequences of any such action, election or other administrative decision that the trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

5. Trustee Accounts. Notwithstanding the requirement under Section 16062(a) of the California Probate Code, or any successor provision, that accountings be provided to trust beneficiaries at specified times, the trustee shall render an account of the administration of the trust to, and only upon the written request of, any beneficiary to whom income and/or principal is required or authorized in the trustee's discretion to be currently distributed or the guardian or conservator, as the case may be, of any such beneficiary. Any such person receiving

the account may object thereto by delivering to the trustee written objections to such account within the time period provided by paragraph 6 of this Article. Settlement of the account, whether by the written approval of said account by those persons entitled thereto or by agreement with objecting parties or by the expiration of the applicable time period without the trustee's having received written objections thereto, shall, as to all matters and transactions stated therein or shown thereby, be final and binding upon all persons who are then or may thereafter become interested in, or entitled to share in, the income and/or principal of the trust, including any unborn and unascertained beneficiaries.

6. Time Period for Objecting to Account. Except as otherwise provided by applicable law, a beneficiary of the trust to whom an account and the notice provided by California Probate Code Section 16461 or other applicable provision of law has been furnished, and who has not delivered written objections to the account to the trustee within 180 days of receipt of such account and notice, shall be barred from asserting a claim against any trustee for any item that is adequately disclosed in the account.

7. Separate Trust for S Corporation Stock. Notwithstanding any other provisions of this agreement, if any stock of an S Corporation, as defined in Section 1361 of the Internal Revenue Code of 1986, as amended, is acquired for or distributable after the death of the Trustor to any trust under this agreement for a beneficiary, said stock shall be held by the

trustee in a separate trust for the beneficiary, which trust shall be a Qualified Subchapter S Trust ("QSST"), as defined in Section 1361(d) of the Internal Revenue Code of 1986, as amended. The provisions of the beneficiary's separate QSST shall be the same as the provisions hereinabove set forth for the beneficiary's trust, except to the extent they are inconsistent with the following provisions of this paragraph 7, in which case the provisions of this paragraph 7 shall control.

If and so long as the beneficiary has not attained age 25, the trustee shall pay all of the income of the separate QSST to a person selected by the trustee to act as custodian for the beneficiary until age 25 under the California Uniform Transfers to Minors Act, and such income shall be held by the custodian for the beneficiary in compliance with and subject to the provisions of Sections 3900 *et seq.* of the California Probate Code, or any successor provisions. Upon the beneficiary's attainment of age 25, the trustee shall pay all of the income of the separate QSST to the beneficiary, in monthly or other convenient installments (but not less often than annually) as determined by the trustee. No income paid or distributed pursuant to this paragraph shall be deemed to discharge any person's legal obligation to support the beneficiary. During the beneficiary's lifetime, the beneficiary shall be the sole beneficiary of the separate QSST, and the trustee shall make no distributions of income or principal of the separate QSST to a person other than the beneficiary during the beneficiary's life. The trustee shall allocate the income and expenses of any

separate QSST in accordance with the California Uniform Principal and Income Act; except that all receipts of the trust which must be considered as income in order to qualify the trust as a QSST shall be credited to income and all expenses of the trust which must not be charged against income in order to so qualify the trust shall be charged against principal.

Notwithstanding the foregoing, if any stock of an S Corporation is acquired for or distributable to a trust under this agreement that has two or more beneficiaries (other than the Trustor) to whom income and/or principal may be distributed at the same time, then said stock shall be held by the trustee in a separate trust for the beneficiaries, which trust shall be an Electing Small Business Trust ("ESBT"), as defined in Section 1361(e) of the Internal Revenue Code of 1986, as amended; PROVIDED, HOWEVER, the provisions of the separate trust for such beneficiaries shall be the same as the provisions hereinabove set forth for the beneficiaries' trust.

The trustee shall not exercise any power or right with respect to any separate QSST or ESBT which would cause a termination of the Subchapter S election for any corporation whose stock is held by the trustee under the provisions of this paragraph 7. In addition, any separate QSST or ESBT shall contain such additional or alternative provisions as may from time to time be required for QSSTs or ESBTs, as the case may be, under Section 1361(d)(3) or Section 1361(e), as the case may be, of the Internal Revenue Code of 1986, as amended, or any successor provisions.

8. Disclaimer of Powers. Any trustee may disclaim any power, authority or discretion conferred upon the trustee by the provisions of this agreement or by law by filing a written disclaimer with the remaining trustee, if any, or if none, with all adult income beneficiaries and the guardian of any minor income beneficiary of the trust. Any disclaimed power, authority or discretion shall pass to and be exercised by the remaining trustee or successor trustee, as the case may be; PROVIDED, HOWEVER, if a beneficiary is serving as the remaining trustee, this sentence shall have no applicability to any power, authority or discretion specifically withheld from a beneficiary.

9. Durable Power of Attorney for Health Care or Advance Health Care Directive. Notwithstanding anything in this agreement to the contrary, if the Trustor has a valid durable health care power of attorney or an advance health care directive pursuant to California Probate Code Sections 4600 *et seq.*, or any successor provisions, in effect at any time or from time to time, the trustee is directed and instructed to follow the decision of the attorney-in-fact designated under the durable health care power of attorney or the agent designated under the advance health care directive (both of which are referred to in this paragraph as the "agent") with respect to the residence of the Trustor. If the agent requires funds in order to provide for the medical or personal care, or both, of the Trustor, the trustee shall provide such funds as requested by the agent. It is the Trustor's intention that any decision

of the agent under a valid durable health care power of attorney or advance health care directive shall be controlling, and upon receipt of any instructions from the agent, the trustee shall have no right, power, duty or obligation under this agreement to review or to take any action whatsoever other than as instructed by the agent with respect to any of the matters referred to in said power of attorney or directive. The trustee shall be under no duty whatsoever to inquire into the reasons for, or wisdom or propriety of, any act which may be performed by, or which he/she/it may be directed or authorized to perform by, the agent, nor shall the trustee be responsible or liable for any loss or damage of any nature which the trust may suffer or which anyone may have claimed to have suffered by any act performed by the trustee at the direction of the agent or by reason of any omission to act approved by the agent.

10. Authorization to Divide Trust. Upon distribution of any property under this agreement to any trust established hereunder, the trustee is authorized to divide such property into two or more separate share trusts representing undivided interests in the property subject to the trust provisions. It is the intention of the Trustor, although not legally binding, that if any unused GST exemption of the Trustor is allocated to any trust under this agreement, the trust may be divided so that one of the separate share trusts shall have an inclusion ratio of zero. If such division is made after the trust is established, such division shall be on a fractional basis. Except as otherwise provided in this paragraph, the provisions governing



each separate share of the trust shall be the same as those provisions governing the original trust.

Notwithstanding the foregoing, if any trust under this agreement is divided into separate share trusts, the trustee, in his/her discretion, may (a) make different tax elections with respect to each separate share trust, including allocating any of the unused GST exemption of the Trustor at the time of her death to one or more trusts to the exclusion of others; (b) distribute principal of any trust in accordance with the terms of the trust and exercise any other discretionary powers with respect to each separate share trust in a different manner; (c) invest each separate share trust in a different manner; and (d) take all other actions consistent with such trusts being separate share trusts. Further, with respect to any general power of appointment given to a trust beneficiary with respect to any trust divided pursuant to the provisions of this paragraph 10, the power of appointment shall apply only to those separate share trusts which have an inclusion ratio of more than zero for federal generation-skipping transfer tax purposes. Notwithstanding anything to the contrary in this agreement, no general power of appointment shall be exercisable with respect to any separate share trust which has an inclusion ratio of zero. The trustee shall not be liable to any person interested in any trust hereunder for any exercise or any failure to exercise the powers in this paragraph so long as such action or lack of action by the trustee is taken in good faith.

11. Partial Trust Terminations. With respect to the trusts created under this agreement, in each case in which the trustee is directed (by reason of the beneficiary's attainment of a specified age or the death of a person, or for any other reason) to distribute principal from each of two or more trusts with identical terms, but with different inclusion ratios for federal generation-skipping transfer tax purposes, to a single beneficiary (other than the Trustor) who is a non-skip person with respect to such trust, the Trustor directs that the entire required distribution be paid out of and charged against such trusts sequentially (to the exhaustion of each such trust) in descending order of their inclusion ratios for federal generation-skipping transfer tax purposes.

12. Marital Deduction Savings Provision. Anything in this agreement to the contrary notwithstanding, it is the Trustor's intent that disposition of property to which any "marital deduction gift" provision is made specifically applicable (unless disposition is deemed not to qualify due to the trustee's not electing such property for the federal or state marital deduction) shall qualify for the marital deduction, notwithstanding any other provision in this agreement that might be considered inconsistent with this objective, and any questions regarding the disposition shall be resolved accordingly. To the extent the trustee intends to qualify the trust property of any trust under Article Four for the federal estate tax marital deduction in the estate of the Trustor, the trustee shall exercise the trustee's powers and discretions only in a manner

consistent with the allowance of the full federal estate tax marital deduction to which the estate of the Trustor shall otherwise be entitled.

13. Request of the Trustor Regarding Distributions to Issue. Notwithstanding anything in this agreement to the contrary, the Trustor requests, but does not legally require, that her issue maintain any property distributed to them under this agreement as their separate property. The Trustor recognizes that this request is not legally binding on any future action taken by her issue, but it is her hope that this request will convince each of her issue of the importance of maintaining the separate property character of his/her inheritance.

14. Transfer to Corresponding Trust Under Family Trust. If at any time during the administration of the trust under this agreement there is a substantially similar trust under The Rucker-Hess Family Trust established under an agreement of trust dated January 4, 2011 ("the Family Trust"), the trustee may, but is not required to, deliver the property subject to the trust held under this agreement to the trustee(s) of the corresponding trust under the Family Trust. The property so delivered shall thereafter be subject in all respects to the terms and provisions of the trust under the Family Trust. Upon such delivery the trustee shall be entitled to a full discharge and neither the trustee nor any other person shall thereafter be required or entitled to account therefor to the income beneficiaries and remaindermen of the trust.

## ARTICLE TEN

### The Trustee

1. While the Trustor is Living. HEIDI C. HESS and DONALD HESS shall be the original trustee of the trust created under this agreement. If either HEIDI C. HESS or DONALD HESS becomes incompetent or otherwise ceases to act as trustee, the other shall act as sole trustee. If both HEIDI C. HESS and DONALD HESS become incompetent or otherwise cease to act as trustee, JAMES L. RUCKER, III and ALAN Z. ENGEL shall act as successor trustee.

2. After the Death of the Trustor. Upon the death of the Trustor and during the lifetime of the Trustor's spouse, DONALD HESS shall act as sole trustee of the trust until the trust property is distributed into the separate trust(s) established under Article(s) Four and/or Five, as the case may be. If DONALD HESS is incompetent or otherwise fails or ceases to act as such trustee, JAMES L. RUCKER, III and ALAN Z. ENGEL shall act as successor trustee of the trust until distribution of the trust property to such separate trust(s).

Upon the funding of each separate trust under Article Four or Five, as the case may be, JAMES L. RUCKER, III shall act as co-trustee with DONALD HESS of each such separate trust. If JAMES L. RUCKER, III is incompetent or otherwise fails or ceases to act as co-trustee of such trusts, DONALD HESS shall act as sole trustee. If DONALD HESS is incompetent or otherwise fails or ceases to act as such co-trustee or sole trustee, as the case

may be, ALAN Z. ENGEL shall act in his stead as successor co-trustee or sole trustee, as the case may be.

So long as JAMES L. RUCKER, III is serving as trustee of The Marital Trust and/or The Decedent's Exclusion Trust, there shall at all such times be at least two trustees of each such trust.

3. After the Death of the Trustor's Spouse. Upon the death of the Trustor's spouse or upon the death of the Trustor if her spouse predeceases her, DONALD HESS shall act as trustee of all trusts under this agreement. If DONALD HESS is incompetent or otherwise fails or ceases to act as such trustee, ALAN Z. ENGEL shall act in his stead as successor trustee.

Upon the attainment of age 32 by a child of the Trustor, the trustee of the trusts for the benefit of the said child under Articles Six and Seven may, but is not required, in the trustee's discretion and with the agreement of the said child, appoint said child to act as co-trustee with the trustee then in office for the trusts under Articles Six and Seven which are for the benefit of the said child.

4. Successor Trustee. DONALD HESS shall have the right to nominate a successor trustee or series of successor trustees, exercisable by written instrument at any time and to be held by the trustee until a vacancy exists in the office of the trustee. DONALD HESS shall also have the right to designate a person who will, in turn, have the right to nominate a successor trustee, exercisable by written instrument at any time and to be held by the trustee until a vacancy exists in the office of the trustee.

Any written designation made as above provided may be revoked at any time prior to the designated person or corporation becoming a successor trustee.

If DONALD HESS fails to designate a successor trustee and also fails to designate someone to make such a designation, then ALAN Z. ENGEL shall have the right to nominate a successor trustee, exercisable at such time or from time to time as any vacancy shall exist in the office of the trustee.

If at any time there is a vacancy in the trusteeship of a trust which is not filled pursuant to the foregoing provisions of this Article, the remaining trustee or, if there is no remaining trustee, the adult income beneficiary or the guardian of the minor income beneficiary of the trust in question shall have the power to designate a successor trustee to fill each such vacancy; PROVIDED, HOWEVER, if the beneficiary of the trust is the remaining trustee, said beneficiary shall not select and designate as successor trustee a person who is a related or subordinate party to the beneficiary; PROVIDED FURTHER, no successor co-trustee need be appointed to replace a child of the Trustor in the event such child ceases to act as co-trustee of the trust(s) for his/her own benefit under this agreement.

All designations shall be exercised in writing and shall be effective upon the designated successor's written acceptance and consent to serve given in accordance with the provisions of this Article.

5. Appointment of Co-Trustee. Any individual trustee while duly qualified and acting hereunder is authorized and

empowered to designate and associate another individual, bank or trust company as co-trustee. Each such individual trustee may designate the same or different persons to act as such co-trustee. Any such designation may be effected by a written instrument acknowledged and filed with the original of this agreement; and each co-trustee so designated shall thereupon be vested with the same powers, discretionary or otherwise, that are conferred on the individual trustee.

6. Procedure Relating to Acceptance by Successor Trustee or Co-Trustee. Any person or bank or trust company entitled to become a trustee of any trust under the foregoing provisions of this Article shall become such a trustee by affixing his/her/its signature to a written and acknowledged consent to serve as trustee and delivering a photocopy of the fully executed and acknowledged consent to any remaining trustee or, if none, to the adult income beneficiary or to the guardian of any income beneficiary who is a minor *vis-à-vis* the trust in question. Thereupon said person or bank or trust company shall be and become a trustee of the said trust and shall be entitled to exercise all of the powers and discretion herein conferred upon the original trustee.

7. Authority of Trustees When Multiple Trustees Are Serving. If at any time following the death of the Trustor there is more than one individual, bank or trust company serving as trustee of any trust established under this agreement, all trustees then serving must unanimously agree to a proposed transaction prior to binding the trust in any transaction,

including but not limited to negotiating securities, withdrawing and depositing any funds held in any bank or savings accounts and dealing in any manner with trust assets, but following such agreement, any trustee may be the sole signatory on any and all documents necessary to the accomplishment of such transaction. Any third party dealing with the trust may rely upon this singular authority without requiring the other trustee(s) to join in the transaction.

8. Resignation of Trustee. Any trustee can resign at any time by giving written notice to the Trustor, if she is then living and not incompetent. If at the pertinent time the Trustor is incompetent, the trustee may give such written notice to the person, if any, named to serve as successor trustee, the Trustor's attorney-in-fact under a valid durable power of attorney for asset management or to the conservator of the estate of the Trustor. If the Trustor is then deceased, the trustee may give such written notice of his/her/its intention to resign to the remaining trustee or, if none, to the person, if any, named to serve as successor trustee, or if none, to the person(s) authorized to receive distributions of income from such trust.

9. Compensation of Trustee. Each trustee shall be entitled to reasonable compensation for his/her/its services as trustee hereunder. In this regard, a bank or trust company serving as corporate trustee, whether acting as co-trustee or sole trustee, shall receive compensation for its services in the amount and at the time specified in its schedule of fees and



charges from time to time established by it for administration of trusts of the character similar to those established by this agreement and in effect when such compensation is payable. Said compensation shall not be affected by the fact that the corporate trustee or an affiliate thereof receives an investment management, administrative or other fee from an entity or fund in which the trust is an investor. If at any time there is more than one individual acting as a trustee, the compensation of those individuals acting as trustees as herein provided for shall be divided between/among them in proportion to the work done and attention given to the trust by each of them.

10. Delegation of Trustee's Powers. At any time and from time to time, any trustee is authorized and empowered to delegate the exercise of any or all of the powers, discretionary or otherwise, granted to such trustee to any other trustee of the trust, as permitted by law, and to revoke any such delegation. The delegation of any such power and the revocation of any such delegation shall be accomplished by delivering a written instrument setting forth the terms of the delegation or revocation to the trustee to whom such power is or has been delegated, including such limitations on the exercise of any power so delegated as the delegating trustee may deem advisable. So long as any such delegation is in effect, any power, discretionary or otherwise, so delegated may, subject to any limitations, be exercised solely by the other trustee. Any action taken by the trustee to whom such power is delegated shall have the same force and effect as if the trustee delegating such power had personally

joined in the exercise of such power or in the taking of such action; PROVIDED, HOWEVER, the trustee to whom any power is delegated shall not exercise any right or power which he/she/it is otherwise prohibited from exercising under the terms of this agreement.

11. Extent of Liability. The Trustor does not want the trustee to be personally liable for the trustee's good faith efforts in administering the trust estate.

(a) In General. A trustee shall not be personally liable to the trust or its beneficiaries, and shall be held harmless for any loss, expense, damage or claim incurred by the trustee by reason of any act performed or omitted to be performed by the trustee, acting in good faith, in the administration of the trust. The trustee shall be deemed to have acted in good faith on behalf of the trust if the trustee acted in a manner reasonably believed by the trustee to be within the scope of his/her/its authority and in the best interest of the trust and its beneficiaries.

(b) Successor Trustee Not Liable for Acts of Predecessors. No successor trustee shall be liable for, or be under any duty to see to the propriety of, the acts or omissions of the trustee occurring prior to his/her/its taking office as such trustee.

(c) Written Notice of Events. Until the trustee receives written notice of any birth, marriage, death or other event upon which the right to payments from any trust hereunder may depend, the trustee shall incur no liability for disbursements made in good faith to persons whose interests may have been affected by that event.

12. Bond Not Required. No bond shall be required of any trustee or successor trustee for any purpose whatsoever.

13. Definition of "Trustee". All references in this agreement to the "trustee" mean the trustee(s) in office at the pertinent time and all powers and discretions vested in the

original trustee shall be vested in and exercisable by any successor trustee(s).

#### ARTICLE ELEVEN

##### Subsequent Additions to the Trust

The Trustor or any other person may, at any time, either by lifetime or testamentary transfer, assign or give other and further property to the trustee to be added to and become a part of the principal of any of the trusts created under this agreement; PROVIDED, HOWEVER, no such transfer shall be effective unless such property transferred is acceptable to the trustee; PROVIDED FURTHER, no additions shall be made to the trusts under this agreement which are wholly exempt from federal generation-skipping transfer tax unless such addition causes no change to the zero inclusion ratio of such trust.

#### ARTICLE TWELVE

##### Powers of Revocation and Amendment

As used in this agreement, the term "power to revoke" means the power, exercisable by written instrument delivered to the trustee, to revoke or terminate the trust created by this agreement, or any of the separate trusts herein provided for, in whole or in part, and shall include the power to direct the trustee to deliver and pay over all or any part of the property of the trust to or upon the order of the person holding such power to revoke; and the term "power to amend" means the power, exercisable by written instrument delivered to the trustee, to amend, modify or alter the trusts created by this agreement, or

any of the separate trusts herein provided for, in whole or in part.

The following provisions shall govern the power to revoke and the power to amend:

1. While the Trustor is Living. While the Trustor is living and not incompetent, she shall have the power to revoke the trust, in whole or in part, by written instrument signed by her and delivered to the trustee. On receipt of such a revocation notice, the trustee shall promptly deliver to the Trustor the revoked portion of the trust assets.

While she is living and not incompetent, the Trustor shall have the power to amend the trust by written instrument signed by her.

2. After the Death of the Trustor. After the death of the Trustor, no one shall have the power to revoke or the power to amend, and the trusts established under this agreement shall be irrevocable and shall not be subject to amendment by any person(s) at any time(s).

3. General Provisions Governing Revocation and Amendment. Notwithstanding the foregoing provisions, no exercise of the power to amend which substantially affects the duties, rights, liabilities or compensation of the trustee shall be effective unless and until the trustee has agreed to same in writing.

#### ARTICLE THIRTEEN

##### Payment of Expenses and Death Taxes

1. Payment of Expenses. Upon the death of the Trustor, all debts of the Trustor, expenses of her funeral and last ill-

ness, expenses of the administration of property subject to this agreement or to the will of the Trustor and such costs, expenses of litigation, counsel fees or other charges as the trustee shall incur in connection with the determination of the amount of taxes, interest or penalties, or any thereof, referred to in paragraph 2 of this Article shall be paid out of The Decedent's Exclusion Trust held under Article Five or, if said trust shall be insufficient to pay all such expenses, from The Marital Trust held under Article Four.

2. Payment of Death Taxes on Death of the Trustor. All state and federal estate, death, inheritance, succession and similar taxes (but not generation-skipping transfer taxes) due as a result of the death of the Trustor, and whether or not any such tax(es) shall pertain to property subject to the provisions of this agreement, together with all interest and penalties, if any, that may accrue on account thereof, shall be paid by the trustee and charged to, pro rated among or recovered from the persons interested in such property and to whom such property is or may be transferred or to whom any benefit accrues. The proration of both the federal estate tax and the California estate tax shall be made in accordance with Sections 20100-20125 of the California Probate Code. Notwithstanding the foregoing provisions of this paragraph:

(a) Any such tax(es) attributable to a disclaimer by the Trustor's spouse of property which is subject to this agreement shall be paid by the trustee from The Decedent's Exclusion Trust held under Article Five prior to distribution thereof;

(b) If the personal representative of the Trustor's estate elects to qualify less than all of the trust under Article Four for the federal estate tax marital deduction, any such tax(es) attributable to said trust by reason of the death of the Trustor may be paid by the trustee from the nonqualifying portion of said trust; and

(c) If the Trustor is the beneficiary of a qualified terminable interest property trust or trusts as to which Section 2207A of the Internal Revenue Code of 1986 as amended, applies, any such tax(es) attributable thereto shall be paid from the property of said trust(s) prior to distribution thereof unless the trustee determines such payment is not in the best interest of the Trustor's estate or the persons interested therein, in which case such tax(es) or any portion thereof which the trustee agrees to pay shall be paid by the trustee from the balance of the trust fund passing under paragraph 2(b) of Article Three.

3. Right to Recover Federal Estate Tax. If at the date of her death, the Trustor is the income beneficiary of a trust which is included in her taxable estate pursuant to Section 2044 of the Internal Revenue Code of 1986, as amended, the trustee may, in the trustee's discretion, recover, in whole or in part, any gift tax or estate tax, together with any penalties and interest attributable thereto, imposed upon the Trustor's estate by reason of the inclusion of such property therein. The trustee may consider any factors deemed relevant by the trustee in deciding whether or not to seek full or partial recovery under Section 2207A of the Internal Revenue Code of 1986, as amended, from the trustee(s) of any such trust or any recipient of the property and shall not be personally liable to any person(s) for any decision by the trustee not to seek full recovery, so long as such decision was made in good faith. Notwithstanding the foregoing, if the Trustor is the income beneficiary of more than one such trust, at least one of which

is exempt from federal generation-skipping transfer tax, the trustee is authorized, in the trustee's discretion and to the extent practicable, to recover all such tax from the trust(s) which is(are) not exempt from federal generation-skipping transfer tax.

4. Exemption From Generation-Skipping Transfer Tax. The Trustor requests, but does not direct, that at her death, the trustee allocate any available unused GST exemption to The Decedent's Exclusion Trust held under Article Five if her spouse survives her or if not, to the exempt trusts for the children of the Trustor held under Article Six and the exempt trusts for the Trustor's more remote issue held under Article Eight, as the case may be, so that said trusts will have an inclusion ratio of zero for federal generation-skipping transfer tax purposes. It is the intention of the Trustor that The Decedent's Exclusion Trust held under Article Five, the exempt trusts for her children held under Article Six and the exempt trusts for her more remote issue held under Article Eight all be completely exempt from federal generation-skipping transfer tax, notwithstanding any provision of said trusts which might be construed as compromising this objective. If the spouse of the Trustor survives her, the balance, if any, of such GST exemption shall be allocated to the property passing to The Marital Trust held under Article Four. All questions regarding the allocation of the Trustor's unused GST exemption shall, to the extent possible, be resolved in accordance with the Trustor's afore-stated intention; and the powers and discretions of the trustee

with respect to said trusts shall likewise not be exercisable or exercised except in a manner consistent with said stated intention. It is also the intention of the Trustor that no other death or transfer taxes shall be paid from property which is exempt from the federal generation-skipping transfer tax. All other death and transfer taxes due by reason of the death of the Trustor or any beneficiary shall be paid, to the maximum extent possible, from property which is not exempt from the federal generation-skipping transfer tax and only to the extent such property is insufficient to meet the entire tax liability shall property which is otherwise exempt from the federal generation-skipping transfer tax be used to pay such tax liability. This paragraph shall be controlling over the provisions of paragraph 2 of this Article.

5. Payment of Generation-Skipping Transfer Taxes. It is the intention of the Trustor that, with respect to the property of any trust hereunder which is subject to the federal generation-skipping transfer tax, said tax shall be paid from the trust property subject to the tax in accordance with the provisions of Section 2603(b) of the Internal Revenue Code of 1986, as amended.

6. Reserves for Expenses and Death Taxes. The trustee is hereby authorized to reserve out of principal funds, if any, which would otherwise be payable outright to beneficiaries of any trust hereby created, such sum(s) as the trustee shall deem necessary or proper to carry out the purpose and intent of this Article and to defer and delay distribution of any trust



property, or any portion thereof, upon the death of the Trustor until the trustee has established adequate cash reserves.

7. Provisions Regarding Retirement Benefits. If any trust hereunder is the beneficiary of any Individual Retirement Account, pension or profit-sharing plan or other retirement plan in which the Trustor was a participant (hereinafter referred to as the "plan"), then following the death of the Trustor, the trustee shall pay no debts of the Trustor or similar expenses referred to in paragraph 1 of this Article and no death taxes referred to in paragraph 2 of this Article out of the proceeds from the plan if payment of such debts, expenses and taxes would reduce the maximum amount of time permitted for distribution of the plan benefits to the trust(s) hereunder.

8. Further Provisions Regarding Expenses and Death Taxes. The trustee is hereby expressly authorized to compromise (either on the trustee's own account or by joining in or approving any compromise which the executor or other personal representative of the Trustor's estate may make) any and all controversies which may arise with respect to determination of the amount of expenses and death taxes hereinabove mentioned in this Article, upon such terms as the trustee shall deem to be for the best interests of the trust or any other interest out of which the same is to be paid, and to pay any sum(s) which may be the subject of such compromise in like manner as the expenses and death taxes hereinabove referred to in this Article.

9. Reimbursement. The trustee may pay any of the death taxes, penalties and interest hereinabove referred to in this

Article either directly to the taxing authorities or to the executor or other personal representative of the estate of the Trustor, to be used for the payment thereof. The trustee shall have full power, in the trustee's discretion, to reimburse the principal of the trust (or not reimburse the principal of the trust) out of the income of the trust to the extent any of said death taxes otherwise payable by the trustee may have been increased by the deduction from the gross income of the trust for federal or state income tax purposes (or both) of any disbursement(s) made by the trustee which are alternatively deductible from the gross estate of the Trustor for the purpose of the determination of any such death tax payable by reason of the Trustor's death.

#### ARTICLE FOURTEEN

##### Miscellaneous Provisions

1. Applicable Law. Each trust herein provided for has been created and accepted by the trustee in the State of California, and all questions pertaining to validity, interpretation and administration thereof shall be determined in accordance with the laws of said state. Notwithstanding the foregoing, the Trustor or, following the death of the Trustor, a majority of the beneficiaries then entitled to trust income shall have the power to direct the trustee, by written instrument delivered to the trustee, to transfer the situs of a trust created hereunder to another state of the United States selected by the Trustor or the beneficiaries, as the case may be. After any change of situs for a trust, the administration

of the transferred trust shall be governed by the laws of the state of the new situs, but the validity of this agreement and its construction shall continue to be governed by the laws of the State of California. The California laws applied shall not include any principles or law relating to conflicts or choice of laws.

2. Simultaneous Death. If the Trustor and her spouse die simultaneously or under such circumstances that there is insufficient evidence as to which of them died first, then for all purposes of this agreement it shall be presumed that the Trustor's spouse predeceased the Trustor and this agreement shall be accordingly interpreted.

3. Survivorship Requirement. In each case in which, pursuant to the provisions of this agreement, any distribution to or for the benefit of a person is made conditional upon his/her surviving the Trustor, if such person survives the Trustor but dies within 45 days after the date of death of the Trustor, then upon his/her death such person's right to all or any portion of such distribution shall terminate. In each such case, the property subject to the distribution as to which the right of such person shall have so terminated shall be dealt with pursuant to the provisions of this agreement as though such person had predeceased the Trustor and such property shall be dealt with and distributed accordingly. Similarly, if pursuant to the provisions of this agreement any distribution to or for the benefit of any person is made conditional upon the death of some person(s) before the death of the Trustor and such person(s)

survive(s) the Trustor, but die(s) within 45 days after the date of death of the Trustor, then and in each such contingency it shall be deemed for all purposes under this agreement that such other person(s) predeceased the Trustor.

4. Definition of "Incompetent". For all purposes under this agreement, the Trustor or a trustee shall be deemed incompetent so long as a conservator of her/his person or estate duly appointed by a court of competent jurisdiction is serving, or upon a written and acknowledged statement (the "statement") attesting that the Trustor or trustee, as the case may be, is incompetent because of illness, age or any other cause which results in her/his inability to effectively manage her/his property or financial affairs, or the property or financial affairs of the trust, and which statement is signed by at least two of the following persons who are reasonably available at the time the determination needs to be made:

(a) the primary care physician (licensed to practice under the laws of the State of California or the state in which the Trustor or trustee, as the case may be, is located at the pertinent time) of the Trustor or trustee, as the case may be;

(b) a geriatric psychologist (licensed to practice under the laws of the State of California or the state in which the Trustor or trustee, as the case may be, is located at the pertinent time);

(c) any appropriate medical specialist (licensed to practice under the laws of the State of California or the state in which the Trustor or trustee, as the case may be, is located at the pertinent time) who is providing care or treatment to the Trustor or trustee, as the case may be, in connection with the illness, age or any other condition affecting the ability of the Trustor or trustee, as the case may be, to effectively manage her/his property or financial affairs; and

(d) the spouse, the parents, the siblings or the children of the Trustor or trustee, as the case may be, who are reasonably available and not under any form of legal disability or are otherwise unable or unwilling to act.

The physician and persons named in subparagraphs 4(a)-4(d) of this Article who sign the statement (the "Panel") shall deliver it to the Trustor if she is then living and not incompetent and, if applicable, the remaining trustee. The incompetency of the Trustor or trustee, as the case may be, shall be deemed to continue until the statement is revoked by at least two of the Panel members, such revocation to be documented by a written, signed and acknowledged statement. No physician or person who executes such a statement or revocation in good faith shall be subject to liability. The Trustor hereby waives any privilege that may apply to a release of information included in such certification.

5. HIPAA Release Authority. The Trustor intends for the her agents, including the successor trustee under this agreement, to be treated as she would be with respect to her rights regarding the use and disclosure of her individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (also known as HIPAA), 42 USC 1320d and 45 CFR 150-164. The Trustor authorizes:

any physician, health-care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any insurance company, and the Medical Information Bureau Inc. or other health-care clearinghouse that has provided treatment or services to her, or that has paid for or is seeking

payment from her for such services, to give, disclose and release, without restriction, to her agents, including the successor trustee under this agreement, all of her individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The authority given the Trustor's agents shall supersede any prior agreement that the Trustor may have made with her health-care providers to restrict access to or disclosure of her individually identifiable health information. The authority given the Trustor's agents has no expiration date and shall expire only in the event the Trustor revokes the authority in writing and delivers it to her health-care provider.

6. Definition of "Education". As used in this agreement, the term "education" shall be given a broad interpretation and may include, but is not limited to:

(a) education at public or private preschool, elementary or high schools (including boarding schools and schools for the learning-impaired);

(b) undergraduate and graduate study in any and all fields whatsoever, whether of a professional character or otherwise, at public or private universities, colleges or other institutions of higher learning;

(c) specialized tutoring or instruction;

(d) specialized formal or informal training in music, the stage, the handicrafts, the arts or athletic endeavors, whether by private instruction or otherwise, and vocational training; and

(e) any other activity, including foreign or domestic travel, which tends to develop fully the talents and potential of each beneficiary, regardless of age.

The activities described in this paragraph may be carried on either in the United States or elsewhere.

7. After-Born Children. In determining whether any person died without leaving descendants of his/hers, when such determination is significant, and in determining, on the termination of any trust hereunder, whether a child is entitled to share in the disposition of the then remaining principal and undistributed income of such trust, a child in gestation who is later born alive shall be regarded in this agreement as a child in being during the period of gestation; but for other purposes, such child's rights shall accrue from date of birth.

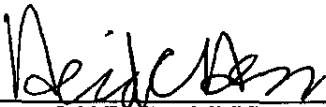
8. Severability Clause. Should any of the provisions of this agreement be for any reason invalid, the invalidity thereof shall not affect any of the other provisions of this agreement, and all invalid provisions hereof shall be wholly disregarded.

9. Headings. The headings of Articles, paragraphs and subparagraphs appearing herein are for convenience of reference only and shall have no significance in the construction or interpretation of this agreement.

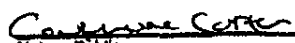
10. Gender and Number. As used in this agreement, the feminine, masculine or neuter gender, and the singular or plural number, shall each be deemed to include the other(s) whenever the context so indicates.

11. No Interest on Gifts. No gift provided for in this agreement or in any amendment hereto shall bear interest if not paid or satisfied within any period of time prescribed by law.

IN WITNESS WHEREOF, the Trustor and the trustee have signed and executed this agreement the day and year first above written.

  
HEIDI C. HESS  
Trustor and trustee

  
DONALD HESS  
trustee

State of Colorado  
County of Eagle  
The foregoing instrument acknowledged before me  
this Feb 20, 2013 by Donald Hess  
  
Notary Public

CATHERINE CARTER  
Notary Public  
State of Colorado

My Commission Expires 06/08/2014

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DIVISION OF CORPORATIONS  
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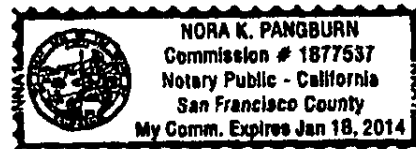
STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On February 13, 2013, before me, Nora K. Pangburn, Notary Public, personally appeared HEIDI C. HESS who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Nora K Pangburn (seal)