

**REVOCABLE LIVING TRUST AGREEMENT**

THIS REVOCABLE LIVING TRUST AGREEMENT, (hereinafter "Trust"), is being made on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ of \_\_\_\_\_ County, State of South Dakota, hereinafter referred to as the Trustor, whether one or more, and the Trustee designated below and shall be governed and administered in accordance with the following terms and provisions:

**ARTICLE I  
NAME OF TRUST**

**1. NAME OF TRUST:** This trust may be referred to as THE \_\_\_\_\_ REVOCABLE LIVING TRUST and is created in accordance with Chapter 55 of the South Dakota Codified Laws Section 55-1-4 through 55-1-5.

**ARTICLE II  
IDENTIFICATION**

**2. TRUSTOR AND BENEFICIARIES:** The Trustors or Settlers of this trust are \_\_\_\_\_ and \_\_\_\_\_, Husband and Wife, residing at \_\_\_\_\_, \_\_\_\_\_, South Dakota \_\_\_\_\_. As used herein, the term "Trustor" shall mean all trustors of this trust, whether one or more. The Trustors are married and parents of the following living children:

\_\_\_\_\_  
\_\_\_\_\_

The Beneficiaries of the Trust during the lifetime of the Trustors is the Trustors. Except as otherwise provided herein, upon the death of the Trustor, the Beneficiaries are the Children of the Trustor.

**ARTICLE III  
TRUSTEE APPOINTMENT**

**3. TRUSTEE APPOINTMENTS:** The Trustor, hereby appoints \_\_\_\_\_, the Trustor, as Trustee of this Trust. If the Trustor, is unable to serve as Trustee for any reason, then the Trustor hereby appoints \_\_\_\_\_ as Successor Trustee. If neither the first or second Trustee are able to serve as Trustee for any reason, then the Trustor hereby appoints \_\_\_\_\_ as Successor Trustee, whether one or more. The Trustee shall have all powers as provided in this agreement and the laws of

the State of South Dakota. The principal place of administration of this trust is the Trustors place of residence, regardless of the residence of the Trustee. If multiple or Co-Trustees are appointed their exercise of powers shall be governed by South Dakota Codified Laws Chapter 55 Section 55-4-3. In the event a vacancy in the office of Trustee occurs and there is no successor trustee, the existing Trustee, if one, and the beneficiaries, or the beneficiaries, if there is no trustee, may agree to a non-judicial change in the trustee by amendment to this Trust agreement.

#### **ARTICLE IV ASSETS OF TRUST**

**4. ASSETS OF TRUST:** All rights, title, and interest in and to all real and personal property, tangible or intangible, listed on the attached Exhibit "A", is hereby assigned, conveyed and delivered to the Trustee for inclusion in this Trust.

**5. ADDITIONS TO TRUST PROPERTY:** Additional property may be conveyed to the Trust by the Trustor, or any other third party at any time. Trustor may execute such other documents as is necessary to effectuate the assignment of property to this Trust.

**6. RIGHTS TO TRUST ASSETS:** Except as specifically provided herein, the Beneficiaries of this trust shall have no rights to any assets of the trust.

**7. HOMESTEAD EXEMPTION:** Grantor(s) reserves the right to use, occupy and reside upon any real property placed in this Trust as their permanent residence during their lives. Grantor(s) shall have the right to reside in the property rent free and without charge except for the payment of the following: (1) all mortgages costs and expenses (2) all property taxes, and (3) reasonable expenses of upkeep and maintenance. Grantor(s) retain the legal right to use and benefit from the property in all respects. It is the intent of this provision to retain for the grantor(s) the requisite beneficial interest and possessor right in and to such real property needed to retain their qualification for any exemption, freeze of tax rates and/or valuation granted to any individual or individuals so qualifying.

#### **ARTICLE V TRUSTEE POWERS AND OTHER PROVISIONS**

**8. POWERS:** The Trustor does hereby grant to the Trustee all powers necessary to deal with any and all property of the Trust as freely as the Trustor could do individually. The Trustee shall at all times and in all actions act as a fiduciary in good faith. Trustee is hereby granted all powers contained herein

and all powers conferred upon Trustee under the applicable statutes and laws of the State of South Dakota, to the broadest extent possible, including, but not limited to all of the powers authorized by South Dakota Codified Laws Chapter 55 Section 55-1A-1 through 55-1A-40. All powers granted to the Trustee by this Trust Agreement are ministerial in nature and are not intended to create or alter substantial rights. Without limiting the foregoing general statement of powers, the Trustee powers include, but shall not be limited to the following:

- (A) **TRUST ASSETS:** The Trustee is hereby authorized and granted all powers necessary to retain as a permanent investment of the Trust, or for such time as the Trustee shall deem advisable, the original assets of the Trust and all other property later transferred, devised or bequeathed to the Trustee, without liability for loss or depreciation resulting from such retention.
- (B) **NONPRODUCTIVE ASSETS:** The Trustee is hereby granted all powers and authority necessary to hold uninvested cash, and to retain, acquire, and hold unproductive realty or personalty for any periods deemed advisable by the Trustee, even though the total amount so held is disproportionate under trust investment law or would not be permitted without this section.
- (C) **INVESTMENT POWERS:** The Trustee is hereby granted all powers necessary to invest and reinvest any and all of the property of the Trust in any and all types of property, security or other asset deemed by the Trustee to be in the best interests of the Trust as a whole, without limitation or regard to yield rates or income production.
- (D) **SECURITIES:** The Trustee is specifically authorized, in his or her discretion, to maintain brokerage margin accounts, to buy, sell or transfer options, warrants, puts, calls, commodities, futures contracts, and repurchase contracts, and to exercise any options, rights, and conversion privileges pertaining to any securities held by the Trustee as Trust assets.
- (E) **ADDITIONAL PROPERTY:** The Trustee is specifically authorized to receive additional property from any source and to hold and administer this property as part of the Trust Estate.
- (F) **SELL AND LEASE:** The Trustee is hereby granted all powers necessary to sell, convey, lease, transfer, exchange, grant options to purchase or otherwise dispose of any Trust asset on any terms deemed by the Trustee to be in the best interests of the Trust, to execute and deliver deeds, leases, bills of sale, and other instruments of whatever character, and to take or cause to be taken

all action deemed necessary or proper by the Trustee in furtherance of this authority.

- (G) INSURANCE:** The Trustee is specifically authorized to insure Trust property and assets with any insurer against any hazards, foreseeable or unforeseeable, including public liability, and to use insurance proceeds to repair or replace the asset insured, at the discretion of the Trustee. In addition, the Trustee may carry or purchase life insurance on the life of any Trust beneficiary, and may exercise or release any rights with regard to such policy.
- (H) BORROWING AND LENDING:** The Trustee is specifically authorized to lend Trust funds to any borrower, on any terms deemed advisable, and to change the terms of these loans at any time and for any reason. This authorization includes the power to extend loans beyond maturity with or without renewal and without regard to the existence or value of any security, and to facilitate payment, to change the interest rate, to consent to the modification of any guarantee, and to forgive loans in their entirety.

The Trustee is further granted all powers necessary to borrow whatever money the Trustee deems desirable for any Trust on any terms from any lender, and to mortgage, pledge or otherwise encumber as security any assets of the borrowing Trust.

- (I) MODIFICATION OF TERMS:** The Trustee is specifically authorized, incident to the exercise of any power, to initiate or change the terms of collection or of payment of any debt, security, or other obligation of or due to any Trust, upon any terms and for any period, including a period beyond the duration or the termination of any or all Trusts.
- (J) CLAIMS:** The Trustee is hereby granted all powers necessary to compromise, adjust, arbitrate, sue on, defend, or otherwise deal with any claim, upon whatever terms the Trustee deems advisable, against or in favor of any Trust, and to abandon any asset the Trustee deems of no value or of insufficient value to warrant keeping or protecting. The Trustee is further authorized, in his or her sole and absolute discretion, to refrain from paying taxes, assessments, or rents, and from repairing or maintaining any asset; and to permit any asset to be lost by tax sale or other proceeding.
- (K) DISTRIBUTIONS:** The Trustee is specifically authorized to distribute any shares of the Trust in cash or in property, or partly in each, and the Trustee's valuations of and selection of assets upon

making distribution shall, if made in good faith, be final and binding on all beneficiaries.

- (L) **NOMINEE:** The Trustee is specifically authorized to hold any or all of the Trust assets, real or personal, in the Trustee's own name, the name of any Co-Trustee, corporation, partnership, or any other person as the Trustee's nominee for holding the assets, with or without disclosing the fiduciary relationship. A corporate Trustee does hereby have the power necessary to appoint a Trustee to administer property in any jurisdiction in which it shall fail to qualify.
- (M) **FORECLOSURE:** The Trustee is specifically authorized to foreclose on any mortgage, to bid on the mortgaged property at the foreclosure sale, or acquire mortgaged property from the mortgagor without foreclosure, and to retain or dispose of the property upon any terms deemed advisable by the Trustee.
- (N) **ENCUMBRANCES:** The Trustee may pay off any encumbrance on any Trust asset and may invest additional amounts of money in the asset, as the Trustee deems appropriate, to preserve the asset or to increase its productivity.
- (O) **VOTING:** The Trustee may vote stock for any purpose, either in person or by proxy, may enter into a voting trust, and may participate in corporate activities related to a trust in any capacity as permitted by law, including service as officer or director.
- (P) **REORGANIZATION:** The Trustee is hereby granted all powers necessary to unite with other owners of property similar to any property held in this Trust in carrying out the foreclosure, lease, sale, incorporation, dissolution, liquidation, reincorporation, reorganization, or readjustment of the capital or financial structure of any association or corporation in which any Trust has a financial interest; to serve as a member of any protective committee; to deposit Trust securities in accordance with any plan agreed upon; to pay any assessments, expenses, or other sums deemed expedient for the protection or furtherance of the interests of the beneficiaries; and to receive and retain as Trust investments any new securities issued pursuant to the plan, even though these securities would not constitute authorized Trust investments without this provision.
- (Q) **PURCHASE FROM ESTATE OR TRUST:** The Trustee is specifically authorized to purchase property of any type, whether real or personal, from a Trustor or beneficiary's estate or Trust for their benefit upon such terms and conditions, price and terms of

payment as the Trustee and the respective personal Representative shall agree upon, and may hold any property so purchased in Trust although it may not qualify as an authorized Trust investment except for this provision, and may dispose of such property as and when the Trustee shall deem advisable.

- (R) ASSISTANTS AND AGENTS:** The Trustee is hereby granted all powers necessary to employ any person or persons the Trustee deems advisable for the proper administration of any Trust, including but not limited to: attorneys-at-law, accountants, financial planners, brokers, investment advisors, realtors, managers for businesses or farms, technical consultants, attorneys-in-fact, agents and any other consultants and assistants.
- (S) RESERVES:** The Trustee is hereby authorized to set aside and maintain reserves for the payment of present or future expenses, including but not limited to: taxes, assessments, insurance premiums, debt amortizations, repairs, improvements, depreciation, obsolescence, maintenance, fees, salaries and wages, as well as to provide for the effects of fluctuations in gross income, and to equal or apportion payments for the benefit of income beneficiaries under the Trust.
- (T) MANAGEMENT OF REALTY:** The Trustee is specifically authorized to deal with real and personalty, including oil, gas, and mineral rights in any manner lawful to an owner on any terms and for any period, including periods beyond the duration or termination of any Trusts.
- (U) BUSINESS:** With respect to any business that is part of or may become part of any Trust, no matter how such business may be organized, the Trustee is hereby granted the authority to:
- a. hold, retain and continue to operate such business solely at the risk of the Trust estate and without liability to the Trustee for any resulting losses;
  - b. incorporate, dissolve, liquidate, or sell such business at any time and upon any terms as the Trustee deems advisable. In exercise of this authority, the Trustee may obtain a qualified appraisal, although the Trustee is not obligated in any way to seek other offers in contracting for sale to any person including another shareholder, trust, or beneficiary; mortgage, pledge or otherwise encumber any assets of any Trust to secure loans for any business purposes;

- c. engage in the redemption of stock and to take such actions as are necessary to qualify the redemption under IRC Sections 302 or 303 and the applicable requirements of state law.
- d. create a special lien for the payment of deferred death taxes under IRC Section 6324, or similar provisions of state law.
- e. create, continue, or terminate an S-Corporation election.

Except as otherwise provided herein by provisions inconsistent therewith, the Trust shall be administered by the Trustee in accordance with the provisions of the Uniform Income and Principal Act, Chapter 55 Section 55-13A-101 through 55-13A-602.

**9. AUTHORITY TO ACT:** The approval of any court, the Trustor, or any beneficiary of any Trust created by this Trust shall not be required for any dealings with the Trustee of this Trust, and any person so dealing with the Trustee of this Trust shall assume that the Trustee has the same power and authority to act as any individual does in the management of his or her own affairs. Further, upon presentation of a copy of this page and any other page of this Trust, any person shall accept same as conclusive proof of the terms and authority granted by this Trust, and shall assume that no conflicting terms or directions are contained in any of the omitted pages.

## **ARTICLE VI TRUST ADMINISTRATION DURING LIFE OF TRUSTOR**

**10. MANAGEMENT OF TRUST PROPERTY:** All property of the Trust shall be managed by the Trustee at the direction of the Trustor. The Trustee shall collect all income of the Trust, and shall pay from the income such amounts and to such persons as the Trustor may from time to time direct. In the absence of direction from the Trustor, the Trustee may accumulate the net income of the Trust, or may disburse any portion of the net income to or for the benefit of the Trustor. The Trustee is also authorized to pay from the principal of this Trust any and all amounts necessary for the health or maintenance of the standard of living of the Trustor.

**11. INCAPACITY OF TRUSTOR:** During any period of incapacitation of the Trustor, as defined by this Trust Agreement, the Successor Trustee may apply or expend all or a part of the income and principal of this Trust, or both, for the health and maintenance of the Trustor, in his or her accustomed manner of living. Provided sufficient resources exist for the care and maintenance of the Trustor, during any period of incapacity of the Trustor, the Successor Trustee is further authorized to make distributions to or for the benefit of any issue of the Trustor who has no other financial resources and who requires said distribution for their

health or support. The Successor Trustee shall consider all financial resources available to a beneficiary, including, but not limited to, the ability of said beneficiary and his or her spouse, if any, to earn a living prior to making an invasion of this Trust. Under no circumstances may a Successor Trustee exercise this power for his or her own benefit.

**12. RESERVATION OF RIGHTS:** Except during periods of incapacitation as defined by this Trust Agreement, upon delivery to the Trustee of a written instrument, signed and acknowledged by the Trustor, the Trustor does hereby reserve during his or her lifetime the following rights:

- (A) To revoke this Trust Agreement in its entirety and to recover any and all remaining property of the Trust after payment of all Trust administration expenses in accordance with Chapter 55 Section 55-3-6,
- (B) To alter or amend this instrument in any and every particular at any time and from time to time,
- (C) To change, at any time and from time to time, the identity or number, or both, of the Trustee and/or Successor Trustee,
- (D) To withdraw from the operation of this Trust, at any time and from time to time, any or all of the Trust property.

## **ARTICLE VII DISTRIBUTIONS DURING LIFETIME OF TRUSTORS**

**13. GENERAL DISTRIBUTIONS:** The following options are available to the Trustee regarding the distribution of principal or income to or for a beneficiary:

- (A) Payments may be made directly to the beneficiary as an allowance, in such amounts as the Trustee may deem advisable;
- (B) Payments may be made to the Guardian of the beneficiary.
- (C) Payments may be made to a relative of the beneficiary upon the agreement of such relative to expend such income or principal solely for the benefit of the beneficiary. Said agreement may include a custodianship under the Uniform Transfers (or Gift) to Minors Act of any state.



- (D) The Trustee may expending such income or principal directly for the beneficiary. After making a distribution as provided above, the Trustee shall have no further obligation regarding the distribution.
- (E) In making distributions of income or principal, the Trustee shall be mindful of the Beneficiaries health, education, support, maintenance, comfort and general welfare needs.

**14. RESIDENCE:** A residence may be purchased or otherwise obtained by the Trustee for the benefit of an income beneficiary of any Trust for use by the beneficiary and his or her family. Rent shall not be charged to said beneficiary and expenses of maintaining such residence may be borne by the Trust, the beneficiary, or partly by each, as the Trustee may deem proper.

**15. OTHER PAYMENTS:** At the request of any Trustor in writing, the Trustee shall make lump sum or periodic payments to any third party designated by such Trustor.

#### **ARTICLE VIII TRUST ADMINISTRATION AFTER TRUSTOR'S DEATH**

**16. TRUSTEE:** Upon the death of the Trustor, the Successor Trustee shall continue to administer the assets of this Trust, as well as any other property received by this Trust from any source, and shall distribute said assets as provided herein.

**17. BENEFITS PAYABLE TO TRUST:** Upon the death of the Trustor, the Trustee is hereby authorized to take any and every action necessary to collect any and all benefits payable to the Trust, including but not limited to proceeds from life insurance policies, retirement plans, or IRA's. The Trustee is further authorized to collect any and all tax refunds, health insurance proceeds, refunds under any contract, death benefits, or any other item payable to the Trustor's estate.

**18. LIABILITIES OF TRUSTOR'S ESTATE:** Prior to the distribution of any assets of this Trust, the Trustee may, at his or her sole and absolute discretion, pay to the Trustor's estate, from the principal or income of the Trust, any or all of the Trustor's just debts, funeral expenses, and administration expenses of the Trustor's estate. Alternatively, the Trustee may, but is not obligated to, pay such expenses directly.

**19. TAXES:** Upon the death of the Trustor, all estate and inheritance taxes that become due and payable upon all of the property comprising the Trustor's gross estate, without regard to how such property passes, shall be paid by the Trustee either to the estate of the Trustor or to the appropriate tax agency. The

Trustee shall have the right of contribution as provided by Section 2207 and 2207A IRC, if applicable.

**20. ADDITIONAL DISTRIBUTIONS:** The Trustee is hereby authorized to pay to the Probate Estate of the deceased Trustor as much of the income and principal of this Trust as the Trustee deems necessary for any purpose, in addition to the other distributions provided for in this Trust.

**21. GIFTS:** The Trustee shall, upon the death of the Trustor, make such gifts of the tangible personal property of the Trustor held or acquired by this Trust as may be directed by the Trustor's Will or any list, letter, or other writing of the Trustor permitted by the Will of the Trustor, or as may be directed by a list, letter or other writing designated as Schedule B of this Trust, whenever made.

#### **ARTICLE IX TRUSTOR'S DEATH**

**22. DISTRIBUTIONS:** Upon the death of the Trustor, the following distributions shall be made from the property of this Trust after payment of the Trustor's just debts, funeral expenses, expenses of any last illness, and the other distributions otherwise provided for in this Trust:

**(a) DISTRIBUTION UPON DEATH OF FIRST TRUSTOR:** Following the death of the first Trustor, and prior to the death of the Surviving Trustor, the Trustee shall pay to or for the benefit of the Surviving Spouse (Surviving Trustor), at the Trustee's discretion, so much of the income and principal as the Trustee deems necessary for the health, maintenance, education, support, and happiness of the Surviving Trustor.

If at any time before full distribution of the trust estate the Trustors and all the Trustor's issue are deceased and no other disposition of the property is directed by this instrument, the remaining portion of the trust shall then be distributed to the Trustor's legal heirs according to the laws of succession of the State of South Dakota then in force.

**(b) DISPOSITION OF TRUST ESTATE ON DEATH OF SURVIVING TRUSTOR:** If any of the children of the Trustors survives the Surviving Trustor, but none of the children are under the age of twenty-one (21) years at the time of the death of the Surviving Trustor, the Trustee shall divide the Trust property (including all income then accrued but uncollected and all income then remaining in the hands of the Trustee) into as many shares of equal market value as are necessary to create one share for each of the Trustor's children who survive the Surviving Trustor and one share for each of the Trustor's children who predecease the Surviving Trustor but who leave issue surviving him or her. The Trustee shall distribute one share outright to each of the Trustors' surviving children. The Trustee shall distribute each share created for a deceased child to the then-living issue of that child, with those issue to take that share of the trust

property as their deceased parent would have received. If all individual issue of a deceased child have reached the age of 21 years at the death of the Surviving Trustor, the Trustee shall distribute the share created for that deceased child outright to those issue; if any individual issue of a deceased child has not reached the age of 21 years at the death of the Surviving Trustor, the Trustee shall continue to hold, administer, and distribute the share created for that deceased child in a separate trust for all then-living issue of that deceased child according to the terms set forth applicable to the Sprinkling Trust for Issue.

If any children of the Trustors surviving the Surviving Trustor are under the age of 21 years at the time of the death of the Surviving Trustor, the property shall be held, administered, and distributed by the Trustee, in trust, according to the terms set forth in this article applicable to the Sprinkling Trust.

If no issue of the Trustors survives the Surviving Trustor, the Trustee shall distribute the property outright as follows: one half (1/2) to the heirs of the deceased Trustor and one half (1/2) to the heirs of the Surviving Trustor.

**(c) SPRINKLING TRUST:** The Trustee shall hold, administer, and distribute the assets of the Sprinkling Trust as follows:

**(i) DISCRETIONARY PAYMENTS BEFORE DIVISION INTO SHARES.** At any time or times before the division of the Trust into shares as provided below in this section, the Trustee shall pay to or apply for the benefit of any one or more of the Trustors' then-living children and the then-living issue of any then-deceased children of the Trustors so much of the net income and principal of the Trust as the Trustee deems proper for the health, education support, and maintenance of each of them. In making these payments, the Trustee may pay or apply more for some beneficiaries than for others, and may make payments to or for one or more beneficiaries to the exclusion of others. No amount paid or applied need thereafter be repaid to the Trustee or restored to the Trust. In exercising discretion, the Trustee shall give the consideration that the Trustee deems property to all other income and resources that are known to the Trustee and that are readily available to the beneficiaries for use for these purposes. All decisions of the Trustee regarding payments under this subsection, if any, are within the Trustee's discretion and shall be final and incontestable by anyone. The Trustee shall accumulate and add to principal any net income not distributed.

**(ii) DISCRETIONARY PAYMENTS OF INDIVIDUAL TRUSTS.** At any time or times during the term of the individual Trust to be created for each of the then-living children of the Trustors, the Trustee shall pay to or apply for the benefit of the child so much of the net income and principal of the individual trust as the Trustee deems proper for the child's health, education, support, and maintenance. In exercising discretion, the Trustee shall give the consideration that the Trustee deems property to all other income and resources that are

known to the Trustee and that are readily available to the child for use for these purposes. All decisions of the Trustee regarding payments under this subsection, if any, are within the Trustee's discretion and shall be final and incontestable by anyone. The Trustee shall accumulate and add to principal any net income not distributed.

**(iii) TERMINATION AND DISTRIBUTION OF INDIVIDUAL TRUSTS.**

The individual trust shall terminate when the child reaches the age of 21 years or on the death of the child, whichever occurs first.

**(iv) TERMINATION OF INDIVIDUAL TRUST ON DEATH OF CHILD.**

The Trust shall terminate on the death of the child for whom the trust was created. On termination of the Trust, the Trustee shall distribute the remaining Trust property to the then-living issue of the child. However, if any individual issue of that child has not reached the age of 21 years at the termination of this Trust, the Trustee is to continue to hold, administer, and distribute the Trust property in a separate Trust for all of the then-living issue of that child according to the terms set forth applicable to the Sprinkling Trust for Issue.

**(v) FINAL DISPOSITION.** If the trust property is not completely disposed of by the preceding provisions, the indisposed-of portion shall be distributed outright as follows: one half (1/2) to the heirs of the deceased Trustor and one half (1/2) to the heirs of the Surviving Trustor.

**(d) SPRINKLING TRUST FOR ISSUE.** Each share or portion of the Trust estate, or of the Trust property of any other Trust created by this Trust instrument, that is allocated to a Sprinkling Trust for Issue for the benefit of the beneficiaries when any beneficiary is under the age of twenty-one (21) years shall be held, administered, and distributed by the Trustee as a separate Trust, as follows:

**(i) BENEFICIARIES.** The beneficiaries of this Trust are all the issue of a deceased child of the Trustors or all issue of the Trustors, as the case may be, for whom this Trust is created pursuant to the other provisions of this Trust instrument.

**(ii) DISCRETIONARY PAYMENTS.** At any time or times during the Trust term, the Trustee shall pay to or apply for the benefit of each of the beneficiaries so much of the net income and principal of the Trust as the Trustee deems proper for the health, education, support, and maintenance of each of them. In making these payments, the Trustee may pay or apply more for some of the beneficiaries than for others, and may make payments to or for one or more beneficiaries to the exclusion of others. No amount paid or applied need thereafter be repaid to the Trustee or restored to the Trust. In exercising discretion, the Trustee shall give the consideration that the Trustee deems proper to all other income and resources that are known to the Trustee and that are

readily available to the beneficiaries for use for these purposes. All decisions of the Trustee regarding payments under this subsection, if any, are within the Trustee's discretion and shall be final and incontestable by anyone. The Trustee shall accumulate and add to principal any net income not distributed.

**(iii) DISTRIBUTION ON TERMINATION.** The Trust shall terminate when there are no living beneficiaries who are under 25 years of age. On termination, the Trustee shall distribute the Trust property (including all income then accrued but uncollected and all net income then remaining in the hands of the Trustee) outright to the then-living beneficiaries.

**(iv) FINAL DISPOSITION.** If the Trust property is not completely disposed of by the preceding provisions, the indisposed-of portion shall be distributed outright as follows: one half (1/2) to the heirs of the deceased Trustor and one half (1/2) to the heirs of the Surviving Trustor.

**23. DEATH OF BENEFICIARY:** Should a named beneficiary die before a complete distribution of this Trust is made, and that Beneficiary leave no living issue, then that beneficiary's share shall go to the surviving Beneficiaries.

## **ARTICLE X TRUSTEE PROVISIONS**

**24. THIRD PARTIES:** Any person dealing in good faith with the Trustee shall deal only with the Trustee and shall presume the Trustee has full power and authority to act on behalf of the Trust. Court confirmation or approval of any beneficiary shall not be required for any transaction with the Trustee. No Trustee of this trust shall be personally liable for contracts entered into on behalf of the trust unless the Trustee fails to reveal his or her representative capacity and identify the trust estate in the contract. Further, the Trustee shall not be personally liable for contracts or torts in connection with the administration of the trust unless the Trustee is personally at fault. See South Dakota Codified Laws Chapter 55 Section 55-4-21.

**25. COMPENSATION:** Any beneficiary of this Trust serving as Trustee shall do so without compensation for his or her services, except that the Trustee shall be reimbursed for reasonable expenses incurred in the administration of the Trust. Any Trustee not a beneficiary hereunder shall be compensated at the rate customarily charged by commercial trust companies for services as a trustee of an inter vivos trust in the State of South Dakota, unless such compensation is waived by the Trustee.

**26. BOND AND QUALIFICATIONS:** Bond shall not be required of the Trustee or any Successor Trustee. The Trustee and any Successor Trustee shall

not be required to qualify in any court and is hereby relieved of the requirement of filing any document and accounting in any court or beneficiary.

**27. SUCCESSOR TRUSTEE(S):** No Successor Trustee shall be responsible for acts of any prior Trustee. In the event a vacancy in the office of Trustee occurs and there is no successor trustee, the existing Trustee, if one, and the beneficiaries may agree to a non-judicial change in the trustee by amendment to this trust agreement. No person shall be required to apply to any court in any jurisdiction for confirmation of said appointment. A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee. Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service.

**28. REMOVAL OF SUCCESSOR TRUSTEES:** A Successor Trustee may be removed by the last individual to serve as Trustee; however, if that person is deceased or incapacitated, the Successor Trustee may be removed by a majority vote in interest in Trust income. Said removal must be in writing, stating the reasons for removal and indicate the successor Trustee, which must be a corporate trustee.

Removal of a Successor Trustee shall be permitted only for the convenient administration of the Trust and not for the purpose of influencing the exercise of the discretionary powers of a Successor Trustee as granted by this instrument.

Removal of a Successor Trustee shall be effective upon delivery of the notice of removal. The removed Trustee shall have a reasonable period of time to transfer assets to his or her successor. In the event the successor Trustee believes that his or her removal is improper, he or she may, but shall not be required to, apply to a court of competent jurisdiction, at his or her expense, for a declaration of the propriety of the removal. In that event, the removal shall be effective only upon the order of said court and after any appeal. In the event the Successor Trustee prevails, he or she shall be entitled to reimbursement from the Trust for reasonable costs and attorneys fees associated with such action.

**29. DELEGATION OF POWERS:** Any management function of any Trust may be delegated by any Trustee to any Successor Trustee, even if such Successor Trustee is not then serving as Trustee. The terms of such delegation of power shall be any conditions agreed to by the Trustees which are not detrimental to the Trust. Provided, however, that the Trustee shall not delegate ALL of the trustee's duties and responsibilities.

**30. LIMITED AMENDMENT POWER:** The Trustee shall enjoy a limited power to amend management functions of this Trust only as may be required to

facilitate the convenient administration of this Trust, to deal with the unexpected or the unforeseen, or to avoid unintended or adverse tax consequences. Any amendment under this provision shall be in writing and must be consented to by the Trustor, if not then deceased or incapacitated, or the beneficiaries of any Trust if the Trustor is deceased or incapacitated. The amendment may be retroactive. This limited power to amend shall not affect the rights of any beneficiary to enjoy Trust income or principal without the consent of said beneficiaries. The dispositive provisions of any Trust shall not be affected by this limited power to amend, and such power shall not be exercisable in such any manner as to create gift, estate, or income taxation to the Trustee or any beneficiary. No amendment shall affect the rights of third persons who have dealt or may deal with the Trustee without their consent.

**31. RESIGNATION OF TRUSTEE:** Any Trustee may resign by writing filed among the trust papers effective upon the trustees' discharge. The resigning Trustee, or other interested party, shall provide notice to all adult income beneficiaries and other adult beneficiaries of the Trust. The resignation shall be effective upon agreement of all parties entitled to notice, or thirty days after notice, whichever occurs first.

**32. NONLIABILITY FOR ACTION OR INACTION BASED ON LACK OF KNOWLEDGE OF EVENTS.** When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for any action or inaction based on lack of knowledge of the event. A corporate trustee is not liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered.

**33. TRUSTEE AS BENEFICIARY.** A trustee who is also a beneficiary of the trust may exercise powers to make:

(1) Discretionary distributions of either principal or income to or for the benefit of the trustee;

(2) Discretionary allocations of receipts or expenses as between principal and Income; or

(3) Discretionary distributions of either principal or income to satisfy a legal obligation of the trustee.

**34. WAIVER OF ACCOUNTING.** Except as otherwise provided herein, neither this trust, nor any Trustee, shall be required to provide an accounting to any Beneficiary.

**ARTICLE XI  
TRUST ADMINISTRATION**

**35. ALLOCATION TO PRINCIPAL AND INCOME – SEPARATE TRUSTS:**

All expenses and all receipts of money or property paid or delivered to the Trustee may be allocated to principal or income in the sole discretion of the Trustee. The Trustee, in a reasonable and equitable manner, shall also have the discretion to allocate, in whole or in part:

- (A) Expenses of administration of the Trust to income or principal.
- (B) Fees of the Trustee to income or principal.
- (C) Any expense of Trust administration or administration of its assets which are deductible for Federal Income Tax purposes to income.
- (D) The gains or losses from option trading, and capital gains distributions from utility shares, on mutual funds, or tax managed funds to income; and
- (E) To income or principal, distributions from qualified or non-qualified pension plans, profit sharing plans, IRA accounts or deferred compensation arrangements.

To the extent that division of any Trust is directed, the Trustee may administer any Trust physically undivided until actual division becomes necessary. Further, the Trustee may add the assets of the Trust for any beneficiary to any other trust for such beneficiary having substantially the same provisions for the disposition of trust income and principal, whether or not such trust is created by this agreement. The Trustee may commingle the assets of several trusts for the same beneficiary, whether or not created by this agreement, and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and to allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several trusts as a single estate shall not defer the vesting of any whole or fractional share of a trust for its beneficiary at the times specified.

**36. ALIENATION:** Excepting the Trustor, no income or principal beneficiary of any Trust shall have any right or power to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the Trust, in any way. No interest in any Trust shall, in any manner, be liable for or subject to the debts, liabilities or obligations of such beneficiary or claims of any sort against such beneficiary.



**37. TERMINATION OF TRUST:** Should the aggregate principal of any Trust at any time be valued at Twenty Thousand Dollars (\$20,000) or less, the Trustee may, in his or her sole discretion, terminate such Trust and distribute the assets of the Trust to the beneficiaries in proportion to each beneficiary's share of the Trust.

**38. ELECTIONS:** The Trustee and the Personal Representative of the Trustor's estate will have various options in the exercise of discretionary powers, and may exercise any such discretion without incurring liability to any beneficiary, nor shall any beneficiary have the right to demand a reallocation or redistribution of Trust income or principal as a result of the proper action of the Trustee or Personal Representative, subject only to the requirement that the Trustee and the Personal Representative act in good faith and within the bounds of their fiduciary duty. Specifically, the Trustee or Personal Representative may make certain elections for Federal Income Tax and Estate Tax purposes which may affect the administration of Trust income or principal.

**39. BENEFICIARY DESIGNATION:** Upon written designation by the Trustor of a beneficiary for a qualified plan or IRA benefits made payable to this Trust, the Trustee shall distribute the right to receive such benefits to the designated beneficiary. If no such designation of beneficiary exists, the Trustor grants to the Trustee the power, on behalf of the Trustor, to distribute the right to receive such benefits as a part of the share which is otherwise to be distributed to any beneficiary, and such person shall be the Trustor's designated beneficiary. It is intended that the operation of this paragraph qualify under the requirements of 401(a) (9) and 408(a) (6) IRC and it shall be interpreted in all regards in accordance with this intent.

**40. CERTIFICATE OF TRUST:** The Trustee is hereby authorized and granted all powers necessary to execute a Certificate of Trust, describing any Trust matter, including but not limited to a description of the Trust terms, the administrative powers of the Trustee and the identity of any current Trustee. Any person receiving an original or photocopy of said Certificate of Trust shall be held harmless from relying on same, and shall not be obligated to inquire into the terms of the Trust or maintain a copy of the Trust.

**41. REGISTRATION OF TRUST ASSETS:** Assets of this Trust during the Trustor's lifetime shall be registered as follows: \_\_\_\_\_, Trustee, or his or her successors in trust, under THE \_\_\_\_\_ REVOCABLE TRUST, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and any amendments thereto.

**42. TAX IDENTIFICATION:** This Trust shall be identified during the Trustor's lifetime by the Trustor's Social Security Number \_\_\_\_\_. Upon the Trustor's death, the Trustee shall then apply to the IRS for a tax identification number for the Trust and any other Trust created by this Trust Agreement.

**43. SPENDTHRIFT CLAUSE:** The interest of any Beneficiary of this Trust in the income and principal shall not be subject to claims of his or her creditors, or others, or be liable to attachment, execution, or other process or law and no Beneficiary shall have the right to encumber, hypothecate, or alienate his or her interest in any of the trust in any manner except as provided herein. Nor may a creditor compel a trustee to make a discretionary transfer to a beneficiary. Where the trustee is also a beneficiary, restraint on transfer is invalid against transferees or creditors of the Trustor. In no case shall a disclaimer by a beneficiary be considered a transfer to that Beneficiary.

**44. PERPETUITIES CLAUSE:** All Trusts created by this instrument and interests therein shall vest in their then beneficiary twenty-one years after the death of the last of the issue of the Trustor who was alive when the Trustor died, notwithstanding any provision of this Trust to the contrary. No provision of an instrument creating a trust, including the provisions of any further trust created, and no other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument is invalid under the rule against perpetuities, or any similar statute or common law, during the said time period.

## **ARTICLE XII TERMS AND DEFINITIONS**

The terms below, as used throughout this Trust Agreement, shall have the following meaning

**45. INCAPACITATED:** For the purposes of this Trust Agreement, if a Trustee or a beneficiary, is under a legal disability, or by reason of illness, mental or physical disability is, in the written opinion of two doctors currently practicing medicine, unable to properly manage her affairs, he or she shall be deemed incapacitated.

**46. REHABILITATION:** For the purposes of this Trust Agreement, as a Trustee or as a beneficiary, shall be deemed rehabilitated when he or she is no longer under a legal disability or when, in the written opinion of two doctors currently practicing medicine, he or she is able to properly manage his or her own affairs. Upon rehabilitation, his or her successors shall relinquish all powers and be relieved of all duties, and the rehabilitated party shall resume the duties and powers he or she had prior to incapacity.

**47. GUARDIANSHIP:** During any period of incapacity or incompetence, the Trustor does hereby nominate as Guardian of the Trustor's property the same person(s) in name and order of succession who serve as Trustee as provided herein.

**48. SURVIVORSHIP:** This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

**49. APPLICABLE LAW:** This Agreement shall in all respects be construed and regulated according to the laws of the State of South Dakota. Should any Trust or asset of any Trust be administered in another State, this Trust may be regulated by the laws of that State if required to avoid excessive administration expenses or to uphold the validity of any terms of this Trust.

**50. TRUSTEE AND TRUST:** The term "Trustee" refers to the single, multiple and Successor Trustee, who at any time may be appointed and acting in a fiduciary capacity under the terms of this agreement. Where appropriate, the term "Trust" refers to any trust created by this agreement.

**51. GENDER - SINGULAR AND PLURAL:** Where appropriate, words of the masculine gender include the feminine and neuter; words of the feminine gender include the masculine and neuter; and words of the neuter gender include the masculine and feminine. Where appropriate, words used in the plural or collective sense include the singular and vice-versa.

**52. IRC:** The term "IRC" refers to the Internal Revenue Code and its valid regulations.

**53. SERVE OR CONTINUE TO SERVE:** A person cannot "serve or continue to serve" in a particular capacity if they are incapacitated, deceased, have resigned, or are removed by a court of competent jurisdiction.

**54. ISSUE:** The term "issue", unless otherwise designated herein, shall include adopted "issue" of descendants and lineal descendants, both natural and legally adopted indefinitely. Such term shall specifically exclude individuals adopted out of the family of the Trustor or out of the family of a descendant of the Trustor. The word "living" shall include unborn persons in the period of gestation.

**55. NOTICE:** No person shall have notice of any event or document until receipt of written notice. Absent written notice to the contrary, all persons shall rely upon the information in their possession, no matter how old, without recertification, verification, or further inquiry.

**56. MERGER:** The doctrine of merger shall not apply to any interests under any Trust.

**57. REPRESENTATION:** In any Trust matter a beneficiary whose interest is subject to a condition (such as survivorship) shall represent the interests in the Trust of those who would take in default of said condition. The members of a class shall represent the interests of those who may join the class in the future

(e.g. living issue representing unborn issue). The legal natural guardian of a person under a legal disability shall represent the interests of the disabled person.

IN WITNESS WHEREOF, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Trustor, and Trustee have signed this Instrument.

\_\_\_\_\_  
TRUSTOR

\_\_\_\_\_  
TRUSTOR

\_\_\_\_\_  
TRUSTEE

STATE OF SOUTH DAKOTA

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_) to be the person who is described in, and who executed the within instrument and acknowledged to me that \_\_\_\_\_ he/she/they executed the same.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**THE \_\_\_\_\_ REVOCABLE LIVING TRUST**

**Schedule A**

The sum of One Hundred Dollars (\$100.00) in cash.

TOGETHER WITH: