EXHIBIT

Karen Y Johnson Davidson County
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WILL

OF

E. LYNN DAY

FILED
NOV 29 2018
RICHARD R. ROOKER, Clerk
By Deputy

I, E. Lynn Day, a resident of Davidson County, Tennessee, revoke all my prior wills and codicils and declare this to be my will.

Part One — Identification

1.1 **Marital Status.** I am currently unmarried.

1.2 **Sister.** My sister is Teresa Marie Day. All references in this will to "my sister" are to her.

1.3 **Parents.** My parents are William Allan Day and Lynda Anne Day. All references in this will to "my parents" are to them.

Part Two — Disposition of Property

2.1 **Household, Personal Effects, and Automobiles.** If I leave a handwritten memorandum, signed and dated by me, I give all my interest in family use personal property in accordance with the memorandum. I give all my interest in family use personal property not disposed of by the memorandum to my descendants who survive me, per stirpes, to be divided among them as they may agree, or, in the absence of an agreement within ninety days after my death, as the executors may determine.

2.2 **Residue.** I give all of my remaining property, including any lapsed gift ("my residuary estate"), as follows:

(A) **Gift to Management Trust.** I give my residuary estate to the acting trustees under the revocable trust agreement by and between myself, as settlor, and myself, as trustee, executed on the same date as this will (the "trust agreement"), to be administered as provided in the trust agreement.

(B) **Contingent Gift.** If the trust agreement is not in existence at my death, I give my residuary estate in the same manner as is provided in the trust agreement as it existed on the date of the execution of this will, which I fully incorporate by reference.

ELD

Part Three — Executors, Claims, Expenses, Taxes and Allocations

3.1 **Appointment of Executors.** I appoint Teresa Marie Day as sole independent executor of this will and my estate. If for any reason and at any time Teresa Marie Day is unable or unwilling to act, I appoint National Fiduciary Services, Inc. of Texas as sole independent executor of this will and my estate.

3.2 **Definition of Executors.** Unless another meaning is clearly indicated by the context, the term "executors" means any acting sole or co-independent executor. Co-executors must act (i) jointly if two executors are acting or (ii) by majority if more than two executors are acting. Co-executors may delegate to any one or more of them any power granted to the executors in this will. Any delegation shall be by written instrument signed by (i) both executors if two executors are acting or (ii) a majority of the executors if more than two executors are acting.

3.3 **Independent Administration Without Bond.** No action shall be required in any court of probate jurisdiction ("probate court") in relation to the settlement of my estate other than the probating and recording of this will (and any codicil to this will) and the return of an inventory and list of claims of my estate, if required by law. The executors shall be independent of the supervision and direction of the probate court to the full extent permitted by law. Without first obtaining the approval of any court, the executors shall have all of the powers of executors set forth in Tennessee Code Annotated Section 35-50-110, to the extent applicable, all of which provisions and powers are incorporated herein by reference (as set out in said statute on the date of the execution of this will), even if said statute be amended or repealed hereafter and even if my estate or the contingent trust hereunder be administered in a state other than Tennessee, and in addition, all the rights and powers granted in this will. No bond or other security shall be required of any executor.

3.4 **Resignation of Executors; Continuity of Authority.** Any executor may resign without court action by giving at least thirty days' written notice by certified mail, return receipt requested, to each acting co-executor, if any, and to each beneficiary entitled to receive a distribution from my estate. If any beneficiary is under a legal disability at that time, the notice may be given to the guardian of that beneficiary's estate or, if the beneficiary has no guardian, to the person having the care or custody of that beneficiary. If the location of any beneficiary cannot be determined by reasonable diligence, then the notice may be mailed to the beneficiary's last known address. A resignation is effective on the thirtieth day after the mailing of the last of the resignation notices or any earlier date that is specified in any waiver of notice signed by all persons entitled to notice. During the thirty day period after giving the last of the resignation notices, the resigning executor must file a copy of the resignation notice with the court having primary probate jurisdiction of my estate. Until the effective date of the resignation, the acting executors shall continue to have and exercise all of the rights, privileges, powers, duties and immunities conferred upon the original executors in this will.

3.5 **Payment of Claims and Expenses.** Except as otherwise provided, all of the following items shall be paid by the executors out of my residuary estate, without apportionment or proration, and the executors shall not seek contribution toward or recovery of any of these payments:

(A) Claims allowable against my estate, including claims by any executor individually, but excluding nonrecourse claims unless the executors determine that the payment of a nonrecourse claim would be in the best interest of my estate. Claims may be extended and renewed. Unmatured claims (*e.g.*, claims payable on a periodic basis) may be paid as they become due.

(B) Expenses of my last illness, funeral expenses, and expenses incurred in the administration of my estate.

The executors may apportion these items between income and principal in any manner that the executors, in their sole reasonable discretion, determine to be in the best interests of my estate. If any trust for my benefit of which I am a settlor is included in my gross estate for death tax purposes, the executors may seek contribution or reimbursement from the trustees of that trust for all or any portion of the items described above.

3.6 **Payment of Taxes.** Except as otherwise provided, (i) all death taxes and (ii) generation-skipping transfer taxes on direct skips shall be paid by the executors out of my residuary estate, without apportionment or proration, and the executors shall not seek contribution toward or recovery of any of these payments. Death taxes may be deferred. If any trust for my benefit of which I am a settlor is included in my gross estate for death tax purposes, the executors may seek contribution or reimbursement from the trustees of that trust for all or any portion of the items described above.

3.7 **Rights to Recovery.** Despite the preceding provisions and except as provided in the trust agreement, I do not waive, and the executors should enforce, all rights to recovery of any death taxes specified above which are imposed with respect to the following types of property:

(A) Any "appointive property" (meaning any property, or the transfer or receipt of any property, over which I have power of appointment).

(B) Any "marital deduction property" (meaning any property included in my gross estate under Section 2044 of the Code).

(C) Any "life estate property" (meaning any property included in my gross estate under Section 2036 of the Code).

3.8 **Allocation of Generation-Skipping Transfer Tax Exemption.** The executors, after consultation with the acting trustees under the trust agreement, may allocate my unused GST

exemption at the time of my death to any property as to which I am considered the "transferor" in whatever manner they determine, in their sole reasonable discretion, will generate favorable death tax and generation-skipping transfer tax consequences. All decisions of the executors are final and binding upon all interested persons, and the executors will not be liable to any person by reason of any allocation made in good faith.

Part Four — General Administrative Provisions

4.1 **Compensation.** Any executor is entitled to receive for services in that capacity reasonable compensation not exceeding the customary and usual compensation where the fiduciary services are performed. Any executor is entitled to reimbursement for all expenses incurred in the administration of my estate, including, among other expenses, compensation to agents or fees for professional services.

4.2 **Fiduciary Principles.** Despite any other provision of this will, the executors shall always be bound by the principles of equity which are the foundation of fiduciary capacity. The executors shall not have the power to enlarge or shift any of the beneficial interests created by this will, except as an incidental consequence of the discharge of their duties.

4.3 **Fiduciary Powers.** The executors shall have all of the powers granted to trustees under the Tennessee Trust Code, as amended, now or in the future, except any powers that conflict with this will. In addition, even if not necessary to pay debts of my estate, the executors may convey, lease (including a lease for a period extending beyond the duration of the administration of my estate), pool, unitize, mortgage, pledge, or otherwise encumber, partition, sell, retain, dispose of, invest and reinvest any of my property, real, personal or mixed, segregated or undivided (including, but not limited to, mineral fee, leasehold, royalty or any other interests in oil, gas or other minerals), publicly or privately, for cash, credit or exchange for any other property, or for any mixture of these considerations, without an order of court, upon any terms and conditions as the executors deem advisable. The executors may continue the operation of and make capital contributions to any business or entity, including, but not limited to, corporations, partnerships and proprietorships, and may participate as a partner, shareholder or in any other capacity in the formation, operation, dissolution, liquidation or reorganization of any business or entity.

4.4 **Distribution Authority.** The executors shall have the following authority to make distributions from my estate, which they may exercise in their sole discretion:

(A) The executors may make distributions in cash, in kind, in undivided interests, or in any other manner they deem advisable. The executors may determine the values of the assets to be distributed and allot these assets between the beneficiaries under this will without regard to any difference in the federal income tax bases of these assets. Any determination or allocation made in good faith by the executors shall be binding on all interested persons.

(B) The executors may make distributions directly from my estate (i) to the entitled beneficiary; (ii) in any manner provided by law for gifts or distributions to or for the benefit of minors, including, but not limited to, the Tennessee Uniform Transfers to Minors Act, so long as any distribution made pursuant to the Tennessee Uniform Transfers to Minors Act consists of property which qualifies as "custodial property" under that act; or (iii) in any manner provided by law for gifts or distributions to or for the benefit of persons under any other legal disability.

4.5 **Application of Funds**. No person dealing with the executors shall become liable or responsible in any way for the proper application or distribution of any money that may be paid to the executors in that capacity. Each person dealing with executors in that capacity is relieved from all responsibility to inquire into the validity, regularity, or propriety of any sale or other disposition of any of the assets of my estate.

4.6 **Exercise of Powers in Other Jurisdictions**. All powers granted in this will to the executors shall be exercisable in the state or jurisdiction of my domicile at the time of my death, as well as in any other state or jurisdiction where I may own property or owe debts at the time of my death.

4.7 **Tax Determinations**. In determining the death and income tax liability of my estate, the decisions of the executors shall be binding and conclusive upon all interested person in all matters, including, but not limited to, (i) the date which should be selected for the valuation of property in my gross estate for death tax purposes, (ii) whether any portion of my estate should be specially valued under any of the applicable provisions of the Code, (iii) whether any portion of the federal estate tax liability for my estate shall be paid under any deferred payment option available under the Code, and (iv) whether a particular tax deduction should be taken as an income tax deduction or as an estate tax deduction. No compensating adjustments between income or principal or in the amount of any gift under this will shall be made as a result of any tax-related decision.

4.8 **Insurance Proceeds**. In the event one or more insurance policies on my life or any employee benefit plan in which I am a participant designates the trustees named in this will as the direct beneficiary thereof, the executors shall qualify as trustees without bond for the sole purpose of receiving and distributing the proceeds in the manner provided for the distribution of my residuary estate. Even though the proceeds and benefits shall be held in trust and distributed in the same manner as my estate, the proceeds and benefits shall not be or become a part of my estate, nor shall they be or become liable for any of my debts, funeral expenses, administration expenses or death taxes. It is my intent that the proceeds and benefits be payable to named or ascertainable beneficiaries through the medium of a trust and not to the executors or to my estate and not be deemed subject to distribution as a part of my estate. To the extent of payment to the trustees of amounts due the trustees, any insurance company or other remitter shall be relieved of all further liability. The trustees may select any option of settlement available under the terms of any policy or plan or the practice of any company. In exercising any deferred payment settlement option, or in

electing to receive any payments in a lump sum, the trustees shall take into account the federal income and estate tax consequences attendant thereto. The trustees shall not be liable to any beneficiary of my estate for any adverse income or estate tax consequences occasioned by the exercise or non-exercise of any deferred payment settlement option.

4.9 **Fiduciary Liability.** Any executor may rely upon the written opinion of a competent attorney, any facts stated in any instrument in writing and believed true or any other evidence deemed sufficient. No executor serving without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith. No executor receiving compensation for services in that capacity shall be liable for any loss which may occur as a result of any actions taken or not taken by the executor if the executor has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates. No executor shall be liable for the acts, omissions or defaults of any other executor, ancillary executor, agent or other person to whom duties may be properly delegated under the provisions of this will (except that any corporate fiduciary shall be liable for the acts, omissions and defaults of its officers and regular employees) if the agent or other person was engaged with reasonable care.

Part Five — Definitions; Rules

5.1 **Definitions; Rules.** For purposes of this will:

(A) A beneficiary shall not be considered to survive me if the beneficiary dies within sixty days of the date of my death.

(B) The term "child" or "children" means only lawful sons and daughters of the person in question. The term "descendant" or "descendants" means lawful, lineal descendants of the first, second or subsequent degree of the person in question, whether born before or after that person's death. The term "heirs" means the persons who would inherit the property in question from the person in question, assuming that the person in question had died intestate owning the property under the Tennessee laws of descent and distribution in effect at the time of the person's death. When the term "heirs" is used, the shares and proportions of taking by the heirs shall also be determined by the Tennessee laws of descent and distribution. The term "then surviving heirs" means the persons who would be the heirs of the person in question if that person had died at the time of the event which entitles the surviving heirs to the property in question.

(C) The following applies to Paragraph 5.1(B):

(1) A legally adopted child and the adopted child's descendants and legally adopted children shall be considered descendants of an adopting parent and of anyone

who is by blood or adoption an ancestor of an adopting parent. However, despite that preceding sentence, a person who is twenty-one years of age or older when legally adopted shall not be considered a descendant.

(2) In determining the heirs of a descendant of mine, all of my descendants shall be considered heirs of the whole blood.

(3) In the event that (i) the parental rights of a person (the "former parent") with respect to a child have been terminated, and (ii) that child is adopted during the former parent's lifetime, that child shall be considered born to or adopted by the adopting parent, but not considered born to or adopted by the former parent.

(D) Any references to the "Code" are to the United States Internal Revenue Code of 1986, as amended, and as it may be amended in the future.

(E) The term "per stirpes" means strict per stirpes and not per capita with representation.

(F) The term "corporate fiduciary" means any state or national bank, trust association or private trust company. The designation of any corporate fiduciary under this will and any reference that corporate fiduciary shall also include any successor institution under whatever name which is carrying on the activities of that corporate fiduciary.

(G) The term "death taxes" includes all estate, inheritance and succession taxes, together with any interest and penalties thereon imposed by reason of my death or of the transfer of property upon my death, but does not include (i) any recapture of estate taxes under Section 2032A of the Code or (ii) any generation-skipping transfer taxes under Chapter 13 of the Code).

(H) Wherever appropriate, the masculine gender may include the feminine or neuter, the singular may include the plural, and vice versa. The headings for each Paragraph in this will are for convenience only, and should not be construed substantively in determining my intent.

(I) The term "family use personal property" means (i) tangible personal property commonly associated with personal, home, family or recreational use, including, but not limited to, personal effects, jewelry, all family automobiles, recreational vehicles, watercraft, and other vehicles used for family purposes, household goods, furniture, furnishings, works of art, paintings, china, glassware, silverware, linens, books, sporting goods, and other similar items, wherever located, (ii) any contracts or policies insuring any of this property, (iii) burial spaces and (iv) club memberships.

(J) The term "my estate" or "my property" means all my property of every nature and description, separate and community, real, personal and mixed, wherever located, and whether acquired before or after the execution of this will.

5.2 Except as specifically provided in this will, I do not exercise any power of appointment.

I declare that I have no agreement or contract with any other person obligating me in any way as to the disposition of my property or obligating any other person in any way as to the disposition which may be made by any other person of any property taken under this will or any property owned by any other person at the time of that person's death.

I, E. Lynn Day, declare this to be my will. I have signed my name to this will in the presence of the undersigned attesting witnesses, all of whom were present at the same time, each of whom signs this will at my request, in my presence and in the presence of each other. We have each signed this will on this 10 day of July, 2003.

E. Lynn Day

The undersigned, each being over eighteen years of age, declare that E. Lynn Day as testator declared to us that the foregoing instrument is the testator's will and the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. We each declare that we believe the testator to be of sound mind and memory. At the testator's request, in the testator's presence, and in the presence of each other, we now sign our names as attesting witnesses on this 10 day of July, 2003.

Witness

Address 47th Floor
1111 Bagby
Houston, Texas 77002

Witness

Address 47th Floor
1111 Bagby
Houston, Texas 77002

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared E. Lynn Day, Teresa Kelly and Barbara L. Thompson, known to me to be the testator and witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the testator declared to me and to the witnesses in my presence that this instrument is the testator's will, and that the testator had willingly made and executed it as the testator's free act and deed for the purposes therein expressed; and the witnesses, each on oath, stated to me, in the presence and hearing of the testator, that the testator had declared to them that this instrument is the testator's will, and that the testator executed the same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the testator and at the testator's request; that the testator was at that time eighteen years of age or over and was of sound mind; and that each of the witnesses was then at least eighteen years of age.

E. Lynn Day

Witness

Witness

SUBSCRIBED AND SWORN TO before me by the said E. Lynn Day, testator, and by the said Teresa Kelly and Barbara L. Thompson witnesses, on this 10 day of July, 2003.

(Seal) KARL C. ARRO
Notary Public, State of Texas
My Commission Expires
MAY 8, 2007

Notary Public, The State of Texas

FILED

NOV 29 2018

RICHARD R. ROCKER, Clerk
By _____ Deputy

THE E. LYNN DAY 2003 MANAGEMENT TRUST

THIS TRUST AGREEMENT is made by and between E. Lynn Day, as settlor ("settlor"), and E. Lynn Day, as trustee.

Part One — Contributions, Beneficiaries, and Irrevocability

1.1 **Gift in Trust.** Settlor has transferred and delivered to the trustees the property described in Exhibit "A" attached to and made a part of this agreement. The trustees accept the property in trust under the terms of this agreement. Settlor reserves the right to herself or to any other person to add any other property, whether real, personal or mixed, by deed, will or any other manner, to any trust created in this agreement, subject to the trustees' acceptance, and any property added shall be subject to the terms of this agreement.

1.2 **Beneficiaries.** The property originally placed in trust under this agreement shall constitute the trust estate of a separate trust for the benefit of settlor to be known as the E. Lynn Day 2003 Management Trust (the "Management Trust").

1.3 **Revocation and Amendment.** This agreement and each trust created in this agreement are revocable, and settlor may alter, amend, terminate or revoke this agreement or any trust created in this agreement in the following manner:

(A) **Rights Retained.** Settlor shall have the right by written instrument delivered to the trustees to revoke, alter, amend or terminate the trust in whole or in part.

(B) **Rights Personal.** The right of settlor to revoke, alter, amend or terminate the trust is personal to settlor and may not be exercised by settlor or by any other person acting on settlor's behalf (including a guardian of settlor's estate), if settlor is under a disability.

1.4 **Sister.** Settlor's sister is Teresa Marie Day. All references in this agreement to "settlor's sister" are to her.

1.5 **Parents.** My parents are William Allan Day and Lynda Anne Day. All references in this will to "my parents" are to them.

Part Two - Management Trust Provisions

2.1 **The Management Trust.** During the existence of the E. Lynn Day 2003 Management Trust, the trust estate (including any property which is added to the trust by any means)

shall be administered for the benefit of settlor on the following terms, as well as on all other applicable terms of trust in this agreement:

(A) **Distributions to Settlor**. If settlor is not under a disability, the trustees shall pay to or apply for the benefit of settlor any amounts out of the net income and principal (if income is insufficient) of the trust as settlor may direct in writing. In the absence of written directions or if settlor is under a disability, the trustees shall pay to or apply for the benefit of settlor any amounts out of the net income and principal (if income is insufficient) of the trust as, in the sole reasonable discretion of the trustees, are necessary or advisable for the health, education, support or maintenance of settlor.

(B) **Withdrawal Right**. Settlor may demand and withdraw from the trust estate any income or principal constituting a part of the trust estate. This trust agreement shall terminate as to the property so withdrawn, but shall continue as to all other property of the trust estate not so withdrawn. This withdrawal right shall be exercised by giving written notice to the trustees at least thirty days prior to the withdrawal and may not be exercised by settlor, or by any other person acting on behalf of settlor (including a guardian of settlor's estate), while settlor is under a disability.

(C) **Termination**. The trust shall terminate upon the death of settlor and the then remaining trust estate (including any property passing to the trustees under the will of settlor) shall be distributed as provided below in Part Three.

Part Three - Distribution upon Death of Settlor

3.1 **Distribution upon Death of Settlor**. Upon the death of settlor, the trustees shall make the distributions provided for in this Part Three from the unappointed trust estate of the Management Trust.

3.2 **Specific Gifts**. The trustees shall distribute settlor's interest, if any in the following properties in the manner indicated:

(A) **Household, Personal Effects, and Automobiles**. Upon settlor's death, if settlor leaves a handwritten memorandum, signed and dated by settlor, settlor's interest in family use personal property shall be distributed in accordance with the memorandum. Settlor's interest in family use personal property not disposed of by the memorandum shall be distributed to settlor's sister. If my sister does not survive me, I give all my interest in family use personal property not disposed of by the memorandum to my parents.

3.3 **Residue**. All the remaining portion of the unappointed trust estate of the Management Trust, including any lapsed gift ("settlor's residuary trust estate"), shall be distributed as follows:

(A) **Gift to Sister**. If my sister survives me, I give my residuary estate to her.

(B) **Gift to Parents**. If my sister does not survive me, I give my residuary estate to the acting trustees of the Parents' Trusts, to be administered as provided in Paragraph 3.1. If my parents fail to survive me, I give my residuary estate to their descendants.

(C) **Contingent Gift**. If neither my sister, my parents, nor any descendants of my parents survive me, I give my residuary estate to James Barton Kendrick II, if he survives me. If James Barton Kendrick II fails to survive me, then I give my residuary estate to the SPCA, Houston Chapter.

Part Four - Irrevocable Trust Provisions

4.1 **Parents' Trusts**. If my parents are entitled to receive any property from my residuary estate, the property shall be placed into a separate trust for my parents ("the beneficiary") and administered on the following terms, as well as on all other applicable terms of trust in this will:

(A) **Distributions to the Beneficiary**. The trustees shall pay to or apply for the benefit of the beneficiary any amounts out of the net income and principal (if income is insufficient) of the trust as, in the sole reasonable discretion of the trustees, are necessary or advisable for the beneficiarys' health, education, support or maintenance.

(B) **Termination**. The trust shall terminate upon the death of the last to die of my parents.

(C) **Final Distribution if Beneficiary Not Living**. Upon termination of the trust because of the death of the last to die of my parents, the trust estate shall be distributed as follows: the trust estate shall pass as provided in Paragraph 3.3, applied as if my sister, my parents and the descendants of my parents had predeceased me and I had then died disposing of the property under this will.

4.2 **Payment to Executors for Claims and Expenses**. Except as otherwise provided, the trustees shall (i) pay to the executors of settlor's estate any amounts that the executors show are necessary to pay all or any portion of or (ii) assume responsibility for the payment of the following items:

(A) Claims allowable against settlor's estate, including claims by any executor individually, but excluding nonrecourse claims unless the executors determine that the payment of a nonrecourse claim would be in the best interest of settlor's estate. Claims may be extended and renewed. Unmatured claims (*e.g.*, claims payable on a periodic basis) may be paid as they become due.

(B) Expenses of settlor's last illness, funeral expenses, and expenses incurred in the administration of settlor's estate.

The trustees shall make these payments out of settlor's residuary trust estate, without apportionment or proration, and shall not seek contribution toward or recovery of any of these payments.

4.3 **Payment to Executors for Taxes.** Except as otherwise provided, the trustees shall (i) pay to the executors of settlor's estate any amounts that the executors show are necessary to pay all or any portion of or (ii) assume responsibility for the payment of (a) all death taxes and (b) generation-skipping transfer taxes on direct skips. The trustees shall make these payments out of settlor's residuary trust estate, without apportionment or proration, and shall not seek contribution toward or recovery of any of these payments. Death taxes may be deferred.

Part Five — Trustees

5.1 **Appointment of Trustees.** The manner and order of appointment of trustees of trusts created in this agreement shall be as follows:

(A) **Initial Appointment.** E. Lynn Day is appointed as sole trustee of each trust. With respect to each trust, settlor shall have the right at any time and from time to time (i) to appoint one or more individuals or a corporate fiduciary to act as co-trustee, (ii) to remove any acting trustee, (iii) to fill any vacancy by appointing one or more individuals or a corporate fiduciary to act as sole trustee or co-trustees, (iv) to direct that a vacancy not be filled if another trustee is acting, (v) to designate one or more individuals or a corporate fiduciary to act as trustee in the event of a vacancy and to direct the manner and order in which those designees shall act, (vi) to revoke any prior designation of a successor trustee, and (vii) to provide for the removal and appointment of trustees in the event settlor is unable to exercise the powers granted in this Paragraph.

(B) **Successor Appointments.** With respect to any trust for which there is no other initial appointment, or, if for any reason and at any time a vacancy occurs with respect to any trust which has not been filled pursuant to the powers granted in this Paragraph 5.1 (an "unfilled vacancy"), Teresa Marie Day is appointed as sole trustee. If Teresa Marie Day is unwilling or unable to act, National Fiduciary Services, Inc. of Texas is appointed as sole trustee. If for any reason and at any time an unfilled vacancy still remains, then the acting trustees of that trust shall have the right (i) to fill any vacancy by appointing one or more individuals or a corporate fiduciary to act as sole trustee or co-trustees, and (ii) to designate one or more individuals or a corporate fiduciary to act as trustee in the event of a vacancy and to direct the manner and order in which those designees shall act.

(C) **Manner of Exercise.** The powers granted in this Paragraph 5.1 shall be exercised by written instrument delivered to each acting trustee and any affected successor

trustee. Any removal of a trustee shall be effective upon the thirtieth Day following the delivery of the written notice of removal.

5.2 **Definition; No Bond.** Unless another meaning is clearly indicated by the context, the term "trustees" means any acting trustee. Co-trustees must act (i) jointly if two trustees are acting or (ii) by majority if more than two trustees are acting. Co-trustees may delegate to any one or more of them any power granted to the trustees in this agreement. Any delegation shall be by written instrument signed by (i) both trustees if two trustees are acting or (ii) a majority of the trustees if more than two trustees are acting. Any successor trustee shall have the same powers, rights and responsibilities as the original trustees. A trustee shall not exercise the power to make discretionary distributions of the income or principal of a trust to a beneficiary in a manner that would discharge that trustee's legal obligation, if any, to support the beneficiary. A trustee shall have no power to make a discretionary distribution of the income or principal of a trust to himself or herself as a beneficiary of the trust in excess of distributions that are necessary for the trustee's health, education, support or maintenance. If a beneficiary is serving as a co-trustee, the beneficiary as co-trustee shall have no power to participate in any decision with respect to discretionary distributions to the beneficiary for purposes other than the beneficiary's health, education, support or maintenance. In that event, any other power to make distributions shall be exercised solely by the other co-trustees. No bond or other security shall be required of any trustee.

5.3 **Resignation.** Any trustee may resign without court action by giving at least thirty days' written notice to each acting co-trustee, if any, and each living income beneficiary of the trust from which the trustee is resigning. If any beneficiary is under a legal disability at that time, the notice may be given to the guardian of the beneficiary's estate or, if that beneficiary has no guardian, to the person having the care or custody of the beneficiary. If the location of any income beneficiary cannot be determined by reasonable diligence, then the notice may be mailed to the income beneficiary's last known address. A trustee's resignation is effective on the thirtieth Day after the mailing of the last of the resignation notices or any earlier date that is specified in any waiver of notice signed by all persons entitled to notice.

5.4 **Successor Appointment.** If for any reason and at any time no individual or corporate fiduciary named as trustee of a trust or designated pursuant to the powers, if any, granted in Paragraph 5.1 is able and willing to act with respect to that trust, a majority of the adult beneficiaries of that trust may appoint a corporate fiduciary as successor trustee without any formality other than an appointment and designation in writing. If no trustee is appointed in this manner, any court of record in (i) the county of settlor's domicile at the time of the execution of this agreement, (ii) the county in which the last acting trustee was domiciled, or (iii) the county in which a beneficiary of the trust is domiciled, on the application of the resigning trustee or of any person having a beneficial interest in any of the trusts created in this agreement (or the guardian of that person), may appoint a successor trustee, without any formality other than an appointment and designation in writing.

5.5 **Small Trust Provision.** If it ever becomes uneconomical for a corporate fiduciary to continue to act as trustee of any trust created in this agreement because of the small value of the trust estate, the corporate fiduciary may give the notices required of a resigning trustee by Paragraph 5.3 and either (i) allow the acting co-trustee, if any, to act as sole trustee or (ii) if no co-trustee is acting, appoint an individual as trustee.

5.6 **Continuity of Authority.** Pending the effective date of the appointment of a successor trustee, the acting trustees shall continue to have and exercise all of the rights, privileges, powers, duties and immunities conferred upon the original trustees. Upon the effective date of the appointment of a trustee, that trustee shall become vested with the estate and title in and to the trust estate of the trust, and shall possess and execute all of the titles, rights, powers, privileges, duties and immunities conferred on the original trustees named in this agreement.

5.7 **Nonexhaustion of Appointment Powers.** The power to appoint a trustee shall continue to exist, may be exercised whenever necessary, and shall not be exhausted during the continuance of any of the trusts created in this agreement.

Part Six — General Administrative Provisions

6.1 **Compensation.** Any trustee is entitled to receive for services in that capacity reasonable compensation not exceeding the customary and usual compensation where the fiduciary services are performed. Any trustee is entitled to reimbursement for all expenses incurred in the administration of any trust estate, including, among other expenses, compensation to agents or fees for professional services.

6.2 **Fiduciary Principles.** Despite any other provision of this agreement, the trustees shall always be bound by those principles of equity which are the foundation of fiduciary capacity. The trustees shall not have the power to enlarge or shift any of the beneficial interests created by this agreement, except as an incidental consequence of the discharge of their duties.

6.3 **Fiduciary Powers.** The trustees shall have, but shall not be limited to, the following powers and authority, which they may exercise in their uncontrolled discretion and judgment:

(A) To take possession of, and to retain, without any liability for loss or depreciation in value resulting from any retention, the original property in any trust estate for as long as they deem advisable; to invest and reinvest in any property, real, personal, or mixed, including, but not limited to (i) any mineral fee, leasehold, royalty or any other interest in oil, gas or other minerals, (ii) corporate stocks (either common or preferred), bonds, other corporate securities, or any options with respect to any stocks, bonds, or securities traded on a national or regional market or exchange, or (iii) interests in investment trusts, mutual funds or common trust funds; and to retain any investments for as long as they deem advisable;

(B) To convey, lease (including a lease for a period extending beyond the duration of a trust estate), pool, unitize, mortgage, pledge, grant options on or otherwise encumber, partition, sell or dispose of, any property of a trust estate (including, but not limited to, mineral fee, leasehold, royalty or any other interest in oil, gas or other minerals), whether the property is real, personal or mixed, segregated or undivided, publicly or privately, for cash, credit or exchange for any other property, without a court order, upon any terms and conditions that they deem advisable;

(C) To make loans (including loans to a beneficiary) or guarantee loans (other than personal loans of a beneficiary) in any manner, with or without security, upon any terms and conditions that they deem advisable; to renew and extend promissory notes and the liens securing payment of those notes, without reference to the value of the security at the time of any renewal or extension; to reduce the interest rate on any note; to foreclose any mortgage or pledge securing a bond or note and purchase the mortgaged or pledged property or acquire mortgaged or pledged property by deed or assignment without foreclosure, and to retain mortgaged or pledged property for as long as they deem advisable;

(D) To continue the operation of and make capital contributions to any business or entity, including, but not limited to, corporations, partnerships and proprietorships, and to participate as a partner or shareholder or in any other capacity in the formation, operation, dissolution, liquidation or reorganization of any business; to register any security in the name of a nominee; to vote any corporate security, directly or by proxy, with or without power of substitution, and to execute and deliver proxies to one or more nominees;

(E) To borrow money in any amounts and upon any terms that they deem advisable; to secure the repayment of the borrowed amounts by mortgage or pledge of any part of the property held in a trust estate; and to renew and extend notes and the liens securing payment of the notes;

(F) To pay all expenses which, in their discretion, may be reasonably necessary for the proper management and preservation of, and collection of income from, a trust estate; and to create and maintain reserves for taxes, insurance premiums, repairs, other expenses, depreciation, depletion and obsolescence in any amounts that they deem advisable;

(G) To employ attorneys, accountants, agents, brokers and other persons they deem advisable and to pay reasonable compensation for their services;

(H) To appoint one or more investment managers to manage any part of a trust estate, and to delegate investment discretion to an investment manager, including the power to acquire and dispose of assets, and to pay reasonable compensation for the investment manager's services out of the trust estate;

(I) In addition to the express powers granted in this agreement, the trustees shall have all of the powers of trustees under the Texas Trust Code, as amended, as it exists on the date of the exercise of any power, except any powers that conflict with the terms of this agreement.

6.4 **Purchase of Assets; Loans.** The trustees may purchase assets from, and make loans to, the estate of a settlor or any beneficiary on any terms and in any amounts that they deem advisable. However, any assets which are not includable in the gross estate of a settlor or a beneficiary for federal estate tax purposes shall not be used in any manner that would cause their inclusion in that person's gross estate.

6.5 **Distribution Authority.** The trustees shall have the following authority to make distributions of either income or principal from any trust (whether during the term of or upon termination of the trust), which they may exercise in their sole discretion:

(A) The trustees may make distributions in cash, in kind, in undivided interests, or in any other manner they deem advisable. The trustees may determine the values of the assets to be distributed and allot these assets between the beneficiaries under this agreement without regard to any difference in the federal income tax bases of these assets. Any determination or allocation made in good faith by the trustees shall be binding on all interested persons.

(B) The trustees may make distributions from any trust (i) to the entitled beneficiary; (ii) in any manner provided by law for gifts or distributions to or for the benefit of minors, including, but not limited to, the Texas Uniform Transfers to Minors Act, so long as any distribution made pursuant to the Texas Uniform Transfers to Minors Act consists of property which qualifies as "custodial property" under that act; (iii) in any manner provided by law for gifts or distributions to or for the benefit of persons under any other legal disability; (iv) to the person with whom a beneficiary under a legal disability resides or who has the care or custody of that beneficiary; (v) to any account in a bank or savings institution in the name of the beneficiary or established solely for the benefit of the beneficiary; (vi) to the trustees of any trust established solely for the benefit of the beneficiary; (vii) in any form of annuity; or (viii) by using, expending or applying a distribution for the benefit of the beneficiary.

6.6 **Distribution Factors.** In making any discretionary payments to a beneficiary, the trustees shall consider (i) the standard of living to which the beneficiary has been accustomed during settlor's lifetime, (ii) any known resources of the beneficiary, including the ability of the beneficiary (other than settlor) to earn funds for the beneficiary's own support and maintenance, except while obtaining an education, and (iii) the ability of any person who is legally obligated to support the beneficiary to do so. Despite any other provisions in this agreement, in the event two or more trusts with differing inclusion ratios, as defined in Section 2642 of the Code, are held for the benefit of a

beneficiary, all distributions of principal shall be made first out of the trust which has the smallest inclusion ratio, unless the distribution to that beneficiary would not constitute a taxable distribution under Section 2612(b) of the Code, after consideration of the exclusion of certain transfers for educational or medical expenses under Section 2611(b)(1) of the Code, in which event the distribution shall be made from the trust which has the greatest inclusion ratio. In the event two or more trusts have equal inclusion ratios, all distributions of principal shall be made first out of the trust, if any, which will be includable in the primary beneficiary's gross estate for federal estate tax purposes.

6.7 **Reimbursement of Death Taxes.** If any part of a trust is includable in a beneficiary's gross estate for federal estate tax purposes upon the death of the beneficiary, and that part of the trust estate is not distributable to the personal representative of the beneficiary's estate, the trust estate is charged, unless otherwise directed by the will of the beneficiary, with the payment of any death taxes due by reason of the inclusion of that part of the trust estate in the beneficiary's gross estate. The amount of the charge shall be equal to the amount of tax computed in accordance with Section 2207 of the Code. The trustees are authorized, in their sole discretion, (i) to contribute the amount required to pay the tax liability to the personal representative of the beneficiary's estate and distribute the balance of the trust estate; (ii) to withhold distribution of the trust estate until the liability can be determined and paid; (iii) to make partial distribution and establish a reserve fund for the payment of the liability; or (iv) to make distribution of the trust estate subject to the charge for the liability. The trustees' decision in this respect shall be binding on all interested persons.

6.8 **Transactions with Others.** The trustees shall not be disqualified to enter into any transaction on behalf of a trust solely because another party to the transaction is: (i) a trust (including another trust created in this agreement) of which a trustee is a trustee; (ii) a business controlled directly or indirectly by a beneficiary of any trust created in this agreement; (iii) a beneficiary of any trust created in this agreement acting in the beneficiary's own behalf; or (iv) an estate (including a settlor's estate) of which an executor is acting in any fiduciary capacity.

6.9 **Third Parties not Liable.** No person dealing with the trustees shall be liable or responsible for the proper application or distribution of any money that may be paid to them as trustees. Each person dealing with them in either or both capacities shall be relieved from all responsibility to inquire into the validity, regularity or propriety of any sale or other disposition of any of the assets of any of the assets of any trust created in this agreement.

6.10 **Tax Elections.** The trustees shall make any tax elections that appear advisable and in the best interests of any trust and the beneficiaries of any trust in order to minimize taxes and expenses. In determining the income tax liability of any trust, the decisions of the trustees shall be binding and conclusive upon all interested persons in all matters. No adjustments shall be made (between income and principal) to compensate for the effect of any tax-related election on the interests of the beneficiaries or the amount of recovery of death taxes imposed on appointive

property, marital deduction property, or life estate property. The authority of the trustees to make tax-related elections includes, but is not limited to, the following:

(A) The trustees may, in their sole reasonable discretion, divide any property allocated to any trust which would otherwise have an inclusion ratio, as defined in Section 2642 of the Code, of neither one hundred percent nor zero into two separate trusts consisting of two fractional shares of that property, one having an inclusion ratio of one hundred percent, and the other having an inclusion ratio of zero.

(B) The trustees may, in their sole reasonable discretion, elect to treat any portion of federal estimated taxes paid by any trust as a payment made by any one or more income beneficiaries of that trust. The election need not be made pro rata among all beneficiaries. If a beneficiary is serving as a trustee, that beneficiary may not take part in any decision to treat any trust estimated tax payment as a payment by the beneficiary.

(C) If the trustees consider any distribution or termination of an interest or power in a trust to be a taxable distribution for generation-skipping transfer tax purposes, the trustees may increase the amount of the distribution by an amount estimated to be sufficient to permit the beneficiary receiving the distribution to pay the estimated generation-skipping transfer tax attributable to the distribution. (Generally, the trustees would not be expected to augment any partial terminating distribution in order to pay generation-skipping transfer taxes attributable to that partial terminating distribution.) If the trustees consider any distribution or termination of an interest or power in a trust to be a taxable termination or direct skip for generation-skipping transfer tax purposes, the trustees shall pay the generation-skipping transfer tax attributable to the termination or direct skip, may postpone final termination of any trust or the complete funding of any direct skip, and may withhold all or any portion of the trust property, until the trustees are satisfied they no longer have any liability to pay any generation-skipping transfer tax with respect to the termination or direct skip. If a generation-skipping transfer tax is imposed in part by reason of property held in trust under this agreement and in part by reason of other property, the trustees shall pay only the portion of the tax that is fairly attributable to the distribution, termination, or direct skip, taking into consideration deductions, exemptions, credits and other factors which the trustees deem appropriate. The trustees may, but need not, make any equitable adjustments among beneficiaries of a trust as a consequence of additional distributions or generation-skipping transfer tax payments pursuant to this Paragraph.

(D) The trustees shall advise settlor's executors with respect to (i) the date for the valuation of property in settlor's gross estate for death tax purposes; (ii) whether any portion of settlor's estate should be valued under any of the applicable provisions of Section 2032A of the Code; (iii) whether any portion of the federal estate tax liability for settlor's estate shall be paid under any deferred payment option available to settlor's estate under the Code; and

(iv) whether a deduction shall be taken as an income tax deduction or as an estate tax deduction.

(E) The trustees shall advise settlor's executors with respect to the allocation of settlor's unused GST exemption at the time of settlor's death to any property as to which settlor is considered the "transferor" in whatever manner they determine, in their sole reasonable discretion, will generate favorable death tax and generation-skipping transfer tax consequences. All decisions of the trustees are final and binding upon all interested persons, and the trustees will not be liable to any person by reason of any allocation made in good faith.

6.11 **Conflicts**. In the resolution of any conflict of interest, the trustees shall make a reasonable effort to determine the overall effect of the conflict in the administration of the trusts created in this agreement and then to make reasonable efforts to resolve the conflict by mutual agreement of the respective beneficiaries. In the event that mutual agreement cannot be reached after reasonable efforts, then the trustees shall resolve that conflict in their sole discretion based on the following priorities:

(A) Settlor's children shall be favored at the expense of more remote descendants.

(B) Life tenants shall be favored at the expense of remaindermen of whatever class.

6.12 **Books and Records**. The trustees shall keep (or cause to be kept) accurate books of account reflecting all of the receipts and disbursements of the trusts. Each beneficiary shall have free access to those books, records and accounts at all reasonable times during regular business hours. If any beneficiary requests, a profit and loss statement, fully disclosing the fiscal operations of the trust for the preceding year, and a balance sheet, which accurately reflects the financial status of the trust at the expiration of the preceding year, shall be furnished to the beneficiary within ninety days of the end of the fiscal year. Any beneficiary may cause the books, records and accounts of any trust in which the beneficiary has a beneficial interest to be audited at any time, but the cost of the audit shall be paid by the beneficiary demanding it.

6.13 **Situs**. The construction and validity of any trust created in this agreement shall be controlled by the laws of the State of Texas. The administration of any trust shall be controlled by the laws of the State of Texas unless the trustees designate the laws of any other jurisdiction as the controlling law with respect to the administration of the trust, in which event the designated laws shall apply to the trust from that point on (until the laws of another jurisdiction are designated). However, the laws of the State of Texas shall continue to apply to the extent that the powers of the trustees are broader under the laws of the State of Texas than under any other designated laws. The trustees shall designate the laws of another jurisdiction by written notice to each income beneficiary

of the trust or, if any beneficiary is under a legal disability, to the guardian of the person of that beneficiary or the person having the care or custody of that beneficiary.

6.14 **Spendthrift Provision**. While in the hands of the trustees, neither the principal of nor the income from any of the trusts created in this agreement shall be liable for the debts, contracts, or torts of any beneficiary, nor shall the trust estate be subject to any claim of any creditor of any beneficiary under any writ, process or proceeding, either at law or in equity. No beneficiary shall have the power to sell, assign, transfer, mortgage, pledge or encumber any interest of any kind in a trust created in this agreement. Any attempted sale, assignment, transfer, mortgage, pledge or encumbrance made by any beneficiary prior to actual receipt of trust income or principal shall be void.

6.15 **Perpetuities Savings Provision**. Despite any other provision of this agreement, none of the interests in any trust created in this agreement or pursuant to the exercise of a power of appointment granted in this agreement shall fail to vest before the expiration of the perpetuities period. If all of the interests in a trust have not previously vested, then all interests in the trust shall vest at that time in the primary beneficiary, regardless of the age or competence of the primary beneficiary. If the trust estate is not distributed to the primary beneficiary during the primary beneficiary's lifetime, then upon the primary beneficiary's death, the trust estate shall be distributed to the personal representative of the primary beneficiary's estate.

6.16 **No Court Accounting Required**. The trustees shall be relieved of any duty to examine the acts of any prior fiduciary and no court accounting shall be required. Each successor trustee shall be responsible only for properties which are actually delivered to that trustee.

6.17 **Fiduciary Liability**. Any trustee may rely upon the written opinion of a competent attorney, any facts stated in any instrument in writing and believed true or any other evidence deemed sufficient. No trustee serving without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith. No trustee receiving compensation for services in that capacity shall be liable for any loss which may occur as a result of any actions taken or not taken by the trustee if the trustee has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates or trusts. No trustee shall be liable for the acts, omissions or defaults of any other trustee, ancillary trustee, agent or other person to whom duties may be properly delegated under the provisions of this agreement (except that any corporate fiduciary shall be liable for the acts, omissions and defaults of its officers and regular employees) if the agent or other person was engaged with reasonable care.

6.18 **Exercise of Discretion**. Wherever the judgment or discretion of the trustees may be exercised, the trustees' determination shall be final and binding upon all interested persons. Any trustee exercising any discretionary power relating to the distribution or accumulation of principal

or income, or to the termination of any trust, shall be responsible only for lack of good faith in the exercise of the power.

Part Seven — Insurance, Employee Benefit Plans, Disclaimers, and Other Trusts

7.1 **Payments to Trustees.** The trustees may be named as the direct beneficiary of one or more insurance policies on settlor's life, annuities or other contracts, or employee benefit plans. The trustees shall take all necessary actions (including the prosecution and maintenance of litigation) to collect any sums of money or other properties that are due the trustees under the terms of those policies or plans. However, the trustees need not incur any substantial expense in collecting any payments until the trustees hold funds sufficient to pay any substantial expenses. No insurance company or other remitter shall have any responsibility to see to the performance of any trust created in this agreement. The insurance company or other remitter shall be relieved of all further liability to the extent of payment to the trustees of amounts due the trustees.

(A) **Settlement Options.** The trustees may select any option of settlement available under the terms of any policy, contract or plan or the practice of any company. In exercising any deferred payment settlement option, or in electing to receive any payments in a lump sum, the trustees shall take into account the federal income and estate tax consequences. The trustees shall not be liable to any beneficiary for any adverse income or estate tax consequences occasioned by the exercise or nonexercise of any deferred payment settlement option.

(B) **Distribution of Proceeds.** All proceeds and benefits described in this Paragraph 7.1 which are payable directly to the trustees, unless made payable to the trustees of a specific trust created in this agreement, shall be allocated and distributed in the manner provided for the distribution of settlor's residuary trust estate.

(C) **Payments Not Liable for Debts.** Even though any proceeds or benefits may be held in trust and distributed in the same manner as settlor's residuary trust estate, the proceeds or benefits are not to be liable for any claims, funeral expenses, administration expenses or death taxes. It is settlor's intent that these proceeds and benefits be payable to named or ascertainable beneficiaries through the medium of a trust and not to settlor's estate, nor are they to be considered subject to distribution as a part of settlor's estate. However, upon the request of settlor's executors, these proceeds and benefits may be loaned to settlor's estate for these purposes or used to pay death or other taxes assessed with respect to the proceeds or benefits.

7.2 **Disclaimers.** If any property becomes payable to the trustees as the result of a renunciation or disclaimer, or if a beneficiary of any trust created in this agreement renounces or disclaims any right, property or other interest in any trust, the property shall be distributed as follows:

(A) **Disclaimed Property Payable to Trustees.** If any property becomes payable to the trustees as the result of a renunciation or disclaimer (the "disclaimed property"), the disclaimed property shall be distributed in the same manner as if the person disclaiming the disclaimed property had predeceased settlor, and the disclaimed property had been made payable directly to the trustees.

(B) **Other Disclaimers.** In the event a beneficiary of any trust created in this agreement renounces or disclaims any right, property or other interest in any trust, the renounced or disclaimed right, property or other interest ("the disclaimed property") under this agreement shall be distributed as follows:

(1) If the renunciation or disclaimer is a qualified disclaimer under Section 2518 of the Code, the disclaimed property shall pass as if the disclaimant had predeceased settlor.

(2) If the renunciation or disclaimer is not a qualified disclaimer under Section 2518 of the Code, the disclaimed property shall pass as if the disclaimant had died on the date of the renunciation or disclaimer.

7.3 **Contingent Trusts.** If any beneficiary of any trust created in this agreement is entitled to receive outright any property from a trust (other than discretionary distributions of income and principal or distributions under the provisions of the exercise of a power of appointment, if any, granted in this agreement or as the result of the exercise of a withdrawal right) and is under the age of twenty-one or is incompetent to handle the management of the property, the property shall be placed into a separate trust for the beneficiary administered on the following terms, as well as on all other applicable terms of trust in this agreement:

(A) **Distributions to the Beneficiary.** The trustees shall pay to or apply for the benefit of the beneficiary any amounts out of the net income and principal (if income is insufficient) of the trust as, in the sole reasonable discretion of the trustees, are necessary or advisable for the beneficiary's health, education, support or maintenance.

(B) **Termination.** The trust shall terminate upon the first to occur of (i) the beneficiary attaining the age of twenty-one years and regaining competency or (ii) the beneficiary's death.

(C) **Final Distribution.** Upon termination of the trust because of the beneficiary's age or competency, the trust estate, if any, shall be paid to the beneficiary outright. Upon termination of the trust because of the beneficiary's death, the trust estate shall pass to the personal representative of the beneficiary's estate to be distributed as a part of the beneficiary's estate. However, if the beneficiary dies without a will and no personal

representative has been appointed for the beneficiary's estate, the trust estate may be paid to the beneficiary's then surviving heirs.

(D) **Miscellaneous**. No guardian of the beneficiary's estate nor any other person shall have the right to receive outright any property which would otherwise be held in trust as provided in this Paragraph.

7.4 **Subchapter S Trusts**. The trustees shall transfer any stock in a corporation into a separate S corporation trust (a "qualified subchapter S trust") if stock in an S corporation (as defined in the Code) would be transferred to a trust which is not an eligible S corporation shareholder under the Code (a "nonqualifying trust"). The trustees shall also transfer any stock in a corporation into a qualified subchapter S trust if the trust is a nonqualifying trust, the trust acquires stock in a corporation that is not an S corporation, and all of the other shareholders of that corporation request in writing that the trustees take any actions that are necessary to allow that corporation and its shareholders to elect S corporation status, **unless** the trustees have determined, in their sole reasonable discretion, that it would not be in the best interests of the beneficiaries of the trust for the corporation to elect S corporation status. Any stock transferred to a qualified subchapter S trust shall be held for the beneficiary on the following terms, as well as on (i) any identical terms and conditions as the original nonqualifying trust and (ii) all other applicable terms of trust in this agreement which are not in conflict with the following terms:

(A) **Distributions to the Beneficiary**. During the life of the primary beneficiary, the trustees shall pay to or apply for the benefit of the primary beneficiary (i) all of the net income of the trust in convenient installments, but in no event less often than annually, and (ii) any amounts out of the principal of the trust (if income is insufficient) as, in the sole reasonable discretion of the trustees, are necessary or advisable for the health, education, support or maintenance of the primary beneficiary.

(B) **Termination**. The trust shall terminate at the same time and in the same manner as the original nonqualifying trust.

(C) **Final Distribution**. Upon termination of the trust because of the primary beneficiary's age or competency, the trust estate, if any, shall be paid to the primary beneficiary outright. Upon termination of the trust because of the primary beneficiary's death, the trust estate shall pass in the same manner as the original nonqualifying trust.

(D) **Miscellaneous**. In no event may the trustees distribute any portion of the principal of the trust to anyone other than the primary beneficiary during the life of the primary beneficiary. If subchapter S of the Code is amended, the trustees may amend or add any provisions to a qualified subchapter S trust which, in their sole reasonable discretion, are necessary or advisable for the continued operation of the corporation as an S corporation. The trustees may, in their sole reasonable discretion, terminate the S corporation election at

any time, but once created, the terms of a qualified subchapter S trust shall be irrevocable. The trustees shall evidence the creation of a qualified subchapter S trust by filing a signed and dated instrument with the records of the trust and shall give written notice of the creation to the primary beneficiary.

Part Eight — Definitions; Rules

8.1 For purposes of this agreement and each trust created in this agreement:

(A) A beneficiary shall not be considered to survive settlor and shall not be entitled to receive any portion of the trust estate of a trust terminating by reason of settlor's death upon its termination if the beneficiary dies within sixty days of the date of settlor's death. Except as provided above, a beneficiary entitled to receive any portion of the trust estate of a trust upon its termination shall not be required to survive the termination of the trust for any time period as a condition to receiving a portion of the trust estate if the beneficiary is surviving at the time of the event causing the termination of the trust.

(B) The term "child" or "children" refers only to lawful sons and daughters of the person in question. The term "descendant" or "descendants" includes lawful, lineal descendants of the first, second or subsequent degree of the person in question, including descendants born subsequent to that person's death. The term "heirs" refers to those persons who would inherit the property in question from the person in question, assuming that the person in question had died intestate owning that property under the Texas laws of descent and distribution in effect at the time of that person's death. When the term "heirs" is used, the shares and proportions of taking shall be determined by Texas law. The term "then surviving heirs" refers to those persons who would be the heirs of the person in question if that person had died at the time of the event which entitles the heirs to delivery of the property in question.

(C) The following shall apply to Paragraph 8.1(B):

(1) A legally adopted child and the adopted child's descendants and legally adopted children shall be deemed descendants of the adopting parents and of anyone who is by blood or adoption an ancestor of either of the adopting parents. However, a person who is twenty-one years of age or older when legally adopted shall **not** be deemed a descendant.

(2) In determining the heirs of a descendant of a settlor, all of the descendants of a settlor shall be deemed to be heirs of the whole blood.

(3) In the event that (i) the parental rights of a person (the "former parent") with respect to a child have been terminated, and (ii) the child was adopted during

the former parent's lifetime, the child shall be treated as born to or adopted by the adoptive parent, and not as born to or adopted by the former parent.

(D) In the event any person is the beneficiary of an existing trust at a time when pursuant to a provision of this agreement it is directed that any property be held in a separate trust having identical terms to those of the previously existing trust for the benefit of that person, then, despite any direction in this agreement to the contrary, that property shall be added to the trust estate of the previously existing trust and administered as a part of that trust.

(E) The term "education" includes, but is not limited to, education, travel and maintenance while attending school from the preschool level through the post-graduate level, including vocational and trade schools.

(F) References to the "Code" are to the United States Internal Revenue Code of 1986, as amended, and as it may be amended in the future.

(G) The income of a trust less expenses and other charges to income constitutes the "net income" of the trust. The term "income beneficiary" refers not only to a beneficiary who is presently entitled to receive the income of a trust, but also to a beneficiary to whom income of a trust could then be paid in the sole reasonable discretion of the trustees. The term "primary beneficiary" means the beneficiary whose age or death determines the duration of a trust. Whenever the term "trust" or "trust estate" is used, it includes the original principal and all other properties of the trust, real, personal or mixed, however and whenever acquired, which may be included in or belong to the trust, and any income, including any accumulated income, so long as the property or income remains in the trust. Accumulated income may be added to principal for accounting purposes. The interest in a trust estate of a beneficiary other than a settlor is intended to be that beneficiary's separate property, both as to income and principal, to the extent that the beneficiary's interest is subject to marital property characterization, and any distributions received by that beneficiary are intended to be that beneficiary's separate property, whether the distributions consist of income, principal, or both.

(H) The term "per stirpes" means strict per stirpes and not per capita with representation.

(I) The term "death taxes" refers to all estate, inheritance and succession taxes, together with any interest and penalties (other than (i) any recapture of estate taxes under Section 2032A of the Code and (ii) any generation-skipping transfer taxes under Chapter 13 of the Code) imposed by reason of a person's death or of the transfer of property in that event.

(J) The term "employee benefit plan" refers to any plan, fund or program established or maintained by an employer or by an employee organization, or both, which provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of employment or beyond, or which provides death benefits to beneficiaries of employees. The term includes, but is not limited to, pension plans, profit sharing plans, trust plans, stock bonus plans, annuity plans, individual retirement accounts and HR-10 plans, qualified under the provisions of Subtitle A, Chapter 1, Subchapter D of the Code, and any deferred compensation agreements or plans arising out of service or employment which are not qualified under the provisions of Subtitle A, Chapter 1, Subchapter D of the Code.

(K) Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa. The headings for each Paragraph in this agreement are for convenience only, and should not be construed substantively in determining settlor's intent.

(L) The term "corporate fiduciary" refers to any state or national bank, trust association or private trust company (i) originally appointed or acting as a trustee, or (ii) having trust powers and having trust assets with a value, at the time of its appointment as successor trustee, in excess of Fifteen Million Dollars ($15,000,000.00). The designation of any corporate fiduciary and any reference to it shall extend to any successor institution under whatever name which is carrying on the activities of that corporate fiduciary.

(M) The "perpetuities period" means the period ending twenty-one years after the death of the survivor of settlor, settlor's descendants and the descendants of Queen Elizabeth, II, of England who are alive at the time this agreement becomes irrevocable.

(N) Unless specifically restricted to a class of persons (*e.g.*, "any one or more of settlor's descendants"), a power of appointment granted in this agreement may be exercised in favor of one or more charitable organizations. Unless a provision of this agreement specifically provides otherwise, a holder of a power of appointment granted in this agreement may not exercise that power (i) in favor of a person who is a creditor of the holder or the holder's estate in the other person's capacity as a creditor or (ii) in any manner that would discharge a debt or liability of the holder or the holder's estate.

(O) The term "charitable organization" refers to an organization defined in Sections 170(c), 2055(a) and 2522(a) of the Code.

(P) A person shall be considered "incompetent" if that person's attending physician has signed a written certificate that, in the physician's opinion, the person is not capable of managing his or her own financial affairs because of age, illness or other causes. Once a person is determined to be "incompetent," the person shall be deemed to remain

"incompetent" until the certifying physician (or another attending physician of the person if the certifying physician is no longer practicing medicine or is no longer the person's attending physician) has signed a written certificate that, in the physician's opinion, the person is no longer "incompetent." A person shall be deemed to be "unable" to act or exercise a power granted in this will if he or she (i) is deceased, (ii) is incompetent, or (iii) has voluntarily relinquished a power to act by written instrument.

(Q) The term "family use personal property" means (i) tangible personal property commonly associated with personal, home, family or recreational use, including, but not limited to, personal effects, jewelry, all family automobiles, recreational vehicles, watercraft, and other vehicles used for family purposes, household goods, furniture, furnishings, works of art, paintings, china, glassware, silverware, linens, books, sporting goods, and other similar items, wherever located, (ii) any contracts or policies insuring any of this property, (iii) burial spaces and (iv) club memberships.

EXECUTED on the dates of the respective acknowledgments, to be effective as of the 10 Day of July, 2003.

- SETTLOR -

E. Lynn Day

- TRUSTEE -

E. Lynn Day

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this 10 day of July, 2003, by E. Lynn Day.

KARL C. ARRO
Notary Public, State of Texas
My Commission Expires
MAY 8, 2007

(Seal)

Notary Public, The State of Texas

HOU:2497711.1
14931.80540

EXHIBIT "A"

EXHIBIT "A" TO THAT REVOCABLE TRUST AGREEMENT BY AND BETWEEN E. LYNN DAY, AS SETTLOR, AND E. LYNN DAY, AS TRUSTEE, DATED THE 10 DAY OF July ,2003.

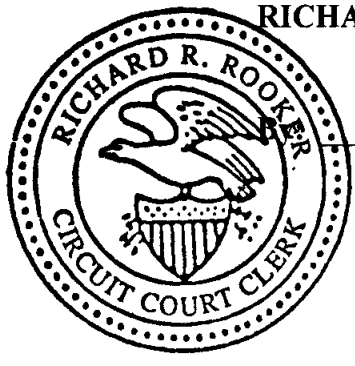
STATE OF TENNESSEE

I, RICHARD R. ROOKER, Clerk of the Circuit Court for Davidson County, do hereby certify that the foregoing is a true and complete copy of the **LAST WILL AND TESTAMENT** heretofore assigned to Seventh Circuit Court (Probate Division) for Davidson County, Tennessee, Case No. **18P1917.**

ESTATE OF ELIZABETH LYNN DAY

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 29th day of November in the year Two Thousand and Eighteen.

RICHARD R. ROOKER, Clerk



Deputy Clerk