THE [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]
TRUST AGREEMENT[[1]](#footnote-1)

**Dated: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], 2020**

THE [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]
TRUST AGREEMENT

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THE [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]
TRUST AGREEMENT

 This irrevocable trust agreement (the “Agreement”) is entered into on this the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Grantor (the “Grantor”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as the initial Co-Trustees, without bond. All references to “Trustee” shall refer to the initial Co-Trustees, or their successor(s) in trust. In consideration of the premises and mutual covenants herein contained, the Grantor will convey and deliver to the Trustee certain property, and the Trustee agrees to hold such property in trust for the following uses and purposes and subject to the conditions, powers, and agreements hereinafter set forth.

B. An Irrevocable Agreement. This Agreement is irrevocable and the Grantor hereby renounces, individually and on behalf of the Grantor’s estate, any interest, either vested or contingent, including any reversionary right or possibility of reversion, in the principal or income of the [\_\_\_\_\_\_\_\_\_\_] Trust, as defined in the Article titled *The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Trust*, and any power to determine or control by alteration, amendment, revocation, or termination, or otherwise, the beneficial enjoyment of the principal or income thereof.

C. Statement of Intent. It is intended the [\_\_\_\_\_\_\_\_\_\_] Trust, as defined in the Article titled *The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Trust*, constitute a non-charitable trust described in T.C.A. §35-15-409 and, as such, shall terminate no later than required pursuant to applicable law. The primary purpose of the [\_\_\_\_\_\_\_\_\_\_] Trust is to acquire, own and retain sole ownership interest in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC, a Tennessee limited liability company which is intended to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “LLC”), and this Agreement shall at all times be administered and interpreted to achieve this primary purpose.

Article I.
The [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Trust

All amounts contributed hereto shall be retained in a trust, named the “[\_\_\_\_\_\_\_\_\_\_] Trust” (the “[\_\_\_\_\_\_\_\_\_\_] Trust”), which shall be administered as follows:

A. Income and Principal Distributions. The Trustee may distribute to or for the benefit of any one or more individuals or organizations as much of the net income and principal of the [\_\_\_\_\_\_\_\_] Trust, in such amounts and proportions among them, as the Trustee, in its sole and absolute discretion, shall determine. All undistributed net income of the [\_\_\_\_\_\_\_\_] Trust shall be accumulated and added to principal of them [\_\_\_\_\_\_\_\_\_] Trust at least annually. The Trustee shall have sole and absolute discretion in both selecting the individual(s) and/or organization(s) to whom distributions may be made as well as the amount and timing of such distributions, and the Trustee is permit to change its selection of the individual(s) and/or organization(s) to whom distributions may be made at any time and without notice.

B. Termination of the [\_\_\_\_\_\_\_\_\_\_] Trust. The [\_\_\_\_\_\_\_\_\_\_] Trust shall terminate in accordance with the applicable Rule Against Perpetuities. Upon termination of the [\_\_\_\_\_\_\_\_\_\_] Trust, all the remaining assets of the [\_\_\_\_\_\_\_\_\_\_] Trust shall be distributed as follows:
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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Article II.
Resignation, Removal, and Appointment of Trustees

## A. Resignation. Any Trustee of the [\_\_\_\_\_\_\_\_\_\_] Trust shall have the right to resign upon thirty (30) days’ prior written notice to the remaining Trustee or Trustees, if any, and to the Grantor. Following the Grantor’s death, such notice shall be given to the Grantor’s spouse and to the members of the eldest generation of the Grantor’s then living descendants. This Notice shall be given to the natural or legal guardian or conservator of any person who is under a legal disability. An individual serving as a Trustee of the [\_\_\_\_\_\_\_\_\_\_] Trust shall cease to serve as such whenever such individual is disabled.

## B. Right to Remove Trustee. The Grantor (or, during any period of the Grantor’s incapacity, the Grantor’s attorney-in-fact) shall have the power to remove any Trustee at any time. Following the Grantor’s death, [\_\_\_\_\_\_\_\_\_] shall have the power to remove any Trustee at any time. Any such removal right shall be exercised by a writing delivered to the Trustee. A Trustee may be removed for any reason, without cause. Any Trustee who has been given notice of removal shall continue to serve as Trustee until a replacement Trustee has been appointed and agreed to serve, unless at the time of such removal there is an additional Trustee then serving.

## C. Appointment of Successor Trustees. There shall be serving an Independent Trustee and a Related Trustee at all times. In the event there is at any time a vacancy in the office of Independent Trustee or Related Trustee, as applicable, such vacancy shall be filled as provided in this paragraph.

1. Appointment of Successor Related Trustee. During the Grantor’s lifetime, the Grantor (or during any period of the Grantor’s disability, the Grantor’s attorney-in-fact) shall have the right to appoint an individual to serve as successor Related Trustee. The Grantor may exercise such power at any time (including by a valid Last Will and Testament), and any such exercise may be changed from time to time. Following the Grantor’s death, [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], the person or persons holding the power to remove a Trustee of the [\_\_\_\_\_\_\_\_\_\_\_\_\_] Trust under the provisions of paragraph B., above, shall appoint an individual to serve as successor Related Trustee in the same manner as would be necessary to remove the Related Trustee. If such person or persons cannot agree on a successor Related Trustee, any person or person belonging to the group with the power to appoint a successor Related Trustee can petition a court of competent jurisdiction, *ex parte*, to appoint an individual to serve as successor Related Trustee. Any such successor Related Trustee thus appointed shall be subject to the removal powers described above.

2. Appointment of Successor Independent Trustee. During the Grantor’s lifetime, the Grantor (or during any period of the Grantor’s disability, the Grantor’s attorney-in-fact) shall have the right to appoint an individual or corporate fiduciary to serve as successor Independent Trustee. The Grantor may exercise such power at any time (including by a valid Last Will and Testament), and any such exercise may be changed from time to time. Following the Grantor’s death, [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], the person or persons holding the power to remove a Trustee of the [\_\_\_\_\_\_\_\_\_\_\_\_\_] Trust under the provisions of paragraph B., above, shall appoint an individual or corporate fiduciary to serve as successor Independent Trustee in the same manner as would be necessary to remove the Independent Trustee. If such person or persons cannot agree on a successor Independent Trustee, any person or person belonging to the group with the power to appoint a successor Independent Trustee can petition a court of competent jurisdiction, *ex parte*, to appoint an individual to serve as successor Independent Trustee. Any such successor Independent Trustee thus appointed shall be subject to the removal powers described above.

## D. Corporate Fiduciaries. Any corporate fiduciary named pursuant to the provisions of this Agreement or appointed by a court of competent jurisdiction as a Trustee must be a bank or trust company situated in the United States having trust powers under applicable federal or state law. Such fiduciary shall be an Independent Trustee.

## E. Powers and Liabilities of Successor Trustee. Any successor Trustee shall have all of the rights, powers, and privileges, including the right to serve without bond, and shall be subject to all of the obligations and duties, both discretionary and ministerial, as given to the initial Co-Trustees. Any successor Trustee shall be subject to any restrictions imposed on the initial Co-Trustees. No successor Trustee shall be required to examine the accounts, records, and acts of any previous Trustee. No successor Trustee shall in any way be responsible for any act or omission to act on the part of any previous Trustee.

 F. Prohibition on Family Members Serving as Trustee. Notwithstanding any provision of this Agreement to the contrary, in no event shall the Grantor nor the Grantor’s spouse serve as a Trustee hereunder.

 G. Minimum Requirements for Co-Trustees. At all times, no more than half of all the Co-Trustees serving hereunder shall be Related Trustees.

Article III.
General Matters with Regard to the Trusteeship

A. Use of “Trustee” Nomenclature. As used throughout this Agreement, the word “Trustee”, when not preceded by the word “Independent” or “Related” shall refer to the initial Co-Trustees, as well as any single, additional, or successor Trustee, and shall also refer to any individual, corporation, or other entity acting as a replacement, substitute, or added Trustee. As used throughout this Agreement, the word “Independent Trustee” shall refer to the then acting Trustee who is a Disinterested

B. Requirements as to Bond. The Trustee shall not be required to furnish any bond for the faithful performance of its duties. If any law or court of competent jurisdiction requires a bond, no surety shall be required on such bond.

C. Accounting and Notification. The Trustee shall not be required to render an accounting of the [\_\_\_\_\_\_\_\_\_\_] Trust to any court; however, the Trustee shall report, at least annually, all of the receipts, disbursements, and distributions occurring during the reporting period, along with a complete statement of the property of the [\_\_\_\_\_\_\_\_\_\_] Trust, to the Grantor, if then living, otherwise to [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]. If any individual to whom an account is so rendered is under a legal disability, the Trustee shall render the account to the individual’s parent or other legal representative. Except as specifically set forth above, the Trustee is directed to not provide the notification otherwise required pursuant to T.C.A. §35-15-813(b), or any similar successor statute. The Trustee shall not be required to respond to requests pursuant to T.C.A. §35-15-813(a) for information regarding the [\_\_\_\_\_\_\_\_\_\_] Trust from any individual who is not a current recipient of the annual accounting.

D. Trustee’s Compensation. The Trustee shall be entitled to fair and reasonable compensation for the services it renders as a fiduciary. The Trustee shall be reimbursed for the reasonable costs and expenses incurred in connection with its fiduciary duties under this Agreement and shall reasonably compensate those persons employed by it, including agents, auditors, accountants, and attorneys. No Trustee shall be entitled to a termination fee in the event such Trustee is removed or otherwise ceases to serve as Trustee. A corporate fiduciary’s regular schedule of fees for administering trusts shall not be entitled to any presumption of reasonableness.

E. Limitation on Powers and Authority. In no event shall a Trustee have the authority to exercise any power over distributions of income or principal of the [\_\_\_\_\_\_] Trust for the purpose of discharging any legal obligation of the Grantor or Trustee.

F. Exercise of Powers By Co-Trustees. During any period that there is more than one Trustee then serving with respect to a trust created hereunder, unless the terms of this Agreement require such action to be taken by either the Independent Trustee or Related Trustee, as the case may be, any and all actions taken by an individual Trustee pursuant to the authority granted in this Agreement shall require the unanimous consent of all then Trustees; provided, that any documents to be executed by a Trustee, including, but not limited to, the withdrawal of funds from checking or savings accounts, may be signed by any one of the Trustees then serving and no third party shall require documents be signed by all of the Trustee.

Article IV.
The Trustee’s Administrative and Investment Powers

In the administration of the [\_\_\_\_\_\_\_\_\_\_] Trust, the Trustee, in addition to and not by limitation of the duties or powers provided elsewhere in this Agreement or by law, shall have the following administrative and investment powers:

A. General Powers of Trustee. In addition to all of the powers specifically granted the Trustee in this Agreement, the Trustee shall have all the powers enumerated in the Tennessee Uniform Trust Code and in T.C.A. §35-50-110. Each power conferred upon the Trustee under this Agreement, or upon Trustees in general, by applicable state or federal statutes, shall be subject to any express limitations or contrary directions contained in this Agreement. The foregoing trust powers are incorporated by reference into this Agreement as if set forth verbatim herein and shall be applicable notwithstanding the later amendment or repeal of such provisions.

B. Income and Principal Powers. The Trustee may determine in a fair, equitable, and practical manner how all Trustee’s fees, disbursements, receipts, and wasting assets shall be credited, charged, or apportioned between principal and income. The Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and for the equalization of payments. The Trustee may select any and all accounting periods with regard to the trust property.

C. Payment of Expenses. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the [\_\_\_\_\_\_\_\_\_\_] Trust. The Trustee shall reasonably compensate those persons employed by the Trustee, including agents, auditors, accountants, and attorneys.

D. Participation in Business. With respect to any interest in any business held by the [\_\_\_\_\_\_\_\_\_\_] Trust, the Trustee may act as follows: comply with the provisions of any agreement restricting transfer of any business interest; to participate in the conduct of the related business or rely upon others to do so; take or delegate to others discretionary power to take any action with respect to its management and affairs which an individual could take as outright owner of the business or business interest, including the voting of stock (by separate trust or otherwise, regardless of whether that separate trust will extend for a term within or beyond the date of final distribution of the trust) and the determination of all questions of policy; execute and amend entity agreements; participate in any incorporation, reorganization, merger, consolidation, sale of assets, recapitalization, liquidation, or dissolution of the business, or any change in its nature, or enter into any buy-sell, stock restriction, or stock redemption agreements; invest in additional stock or securities of, or make secured, unsecured, or subordinated loans to, the business, with trust funds; elect or employ with compensation, as directors, officers, employees, or agents of the business, any persons, without adversely affecting the compensation to which that Trustee would otherwise be entitled; and rely upon reports of accountants as to the operations and financial condition of the business, without independent investigation. If the business is thus continued, the Trustee shall incur no liability for any loss arising therefrom to the [\_\_\_\_\_\_\_\_\_\_] Trust.

E. New Enterprises. Notwithstanding any rule of law with respect to the suitability of investments by a fiduciary or requirements of diversification of investments, the Trustee is expressly authorized (but not directed) to form, or participate with others in the formation of, a new enterprise in any jurisdiction for the purpose of continuing the business or investments of any enterprise, or for the purpose of engaging in any other lawful business. Such Trustee may invest and reinvest trust funds in any such new enterprise and may hold interests in and indebtedness of any such new enterprise for an indefinite period.

F. Rights of Dealing With Enterprise. The Trustee is expressly authorized (but not directed) to (i) transfer, sell, or lease property to; (ii) purchase or lease property from; (iii) make further investments in; (iv) advance or lend money to, any enterprise; or (v) to enter into voting trust, buy-sell, stock restriction, stock redemption, or other similar agreements with respect to any enterprise or the interests therein or indebtedness thereof; and in general to have and exercise all of the power, authority, and discretion with respect to any enterprise and the interests in and indebtedness of such enterprise as such Trustee would have if that Trustee was the individual owner of the interest or indebtedness held by the [\_\_\_\_\_\_\_\_\_\_] Trust.

G. Standard of Prudence Governing Investment Decisions and Statement of Intent Regarding Acquisition and Retention of Interest in LLC. The Grantor expressly states that it is the Grantor’s intent for the [\_\_\_\_\_\_\_\_\_\_] Trust to acquire and/or retain an interest in the LLC, as defined in paragraph C. of the Introductory paragraphs, and such intent is a material purpose of each trust created hereunder. In light thereof, the following provisions shall apply to the [\_\_\_\_\_\_\_\_] Trust, notwithstanding any provision of this Agreement to the contrary.

1. The Trustee shall be governed by the Tennessee Uniform Prudent Investor Act of 2002 (the “UPIA”) and T.C.A. §35-15-804, in exercising the Trustee’s discretion to retain, dispose of, and acquire assets; however, as permitted by T.C.A. §35-14-103 and T.C.A. §35-15-105, respectively, the otherwise applicable provisions of the LLC and T.C.A. §35-15-804 are hereby modified as follows:

(i) Notwithstanding any rule of law with respect to the suitability of investments by a fiduciary or requirements of diversification of investments or prudent administration (including, but not limited to, the UPIA and T.C.A. §35-15-804), the Trustee is specifically authorized (but not directed) to retain any and all assets without liability for depreciation in value of the trust estate even though such assets might be of a kind not ordinarily deemed suitable for trust investment and even though such retention may result in all or substantially all of the trust estate being invested in assets of the same character or securities in a single entity. Moreover, the Trustee is specifically authorized (but not directed) to retain and/or acquire any interest in the LLC. The Trustee shall be held harmless from and against any claim or liability that may be asserted against the Trustee by reason of its retention and/or acquisition of any assets, specifically including, but not limited to, an interest in the LLC.

(ii) Notwithstanding the provisions of the UPIA and/or T.C.A. §35-15-804 to the contrary, the Trustee shall be exempt from any duty of diversification. The Trustee may pursue investment strategies that involve a concentrated holding of an asset even if the entire portfolio consists of one asset or one type of asset or assets within one particular industry group or other category. The Trustee is further authorized to invest in and/or retain an interest in the LLC, notwithstanding that such a strategy may result in the assumption of asset-specific risk.

(iii) Notwithstanding anything contrary in the UPIA and/or T.C.A. §35-15-804, no type of property or investment shall be considered inherently prudent or imprudent, specifically including, but not limited to, an interest in the LLC. The Trustee may acquire and retain any and all types of property and investment, whether real or personal, tangible or intangible.

H. Self-Dealing. Any Trustee who is interested, in his or her individual capacity, in any firm, corporation or company in which the [\_\_\_\_\_\_\_\_] Trust may have an interest, may deal freely with said firm, corporation or company in his or her individual capacity, and the Trustee may borrow from or lend to any firm, corporation or company in which any Trustee is interested in his or her individual capacity, may purchase from and/or sell assets to any firm, corporation or company in which any Trustee is interested in his or her individual capacity, and may purchase and/or sell interests in any such firm, corporation or company, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, upon the condition, however, that any such transactions shall not be for less than full and adequate consideration. If one or more of the Trustees has no such personal interest (the “Non-Conflicted Trustee(s)”), then as to all matters involving such conflict of interest, only the Non-Conflicted Trustee(s) shall be qualified to participate on behalf of said trust hereunder.

Article V.
Definitions and General Provisions

A. Definitions.

1. Code and T.C.A.. Unless the context indicates otherwise, references to the “Code” shall mean the Internal Revenue Code of 1986, as amended (and any references to a section thereof shall include any successor, substituted, or amended section of the Internal Revenue Code), and shall also include the Treasury Regulations promulgated thereunder; provided, however, it shall not include any Treasury Regulation, or any portion thereof, that has been held invalid by a court having jurisdiction over federal tax matters. Unless otherwise indicated, any references to T.C.A. shall mean the Tennessee Code Annotated, as amended (and any references to a section thereof shall include any successor, substituted, or amended section of the Tennessee Code Annotated).

2. Disability of Individual Fiduciary. Except as otherwise provided in this Agreement, any individual fiduciary shall be considered disabled or incapacitated when at least two of his or her attending physicians certify in writing to any other fiduciary then serving under this Agreement (or, if none, then to the named successor trustee and, if none, to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) that his or her physical and/or mental state is so deteriorated that he or she is no longer able to attend to his or her own affairs without assistance. After a person is deemed to be disabled, he or she will continue to be so deemed until the Trustee then serving as successor to the disabled fiduciary receives a medical opinion letter written by at least one of his or her attending physicians stating that such person’s physical and/or mental state is such that he or she is once again able and capable of attending to his or her own affairs without assistance.

By executing this Agreement or accepting appointment as a fiduciary hereunder, each individual fiduciary hereby authorizes each physician who examines such person to determine his or her incapacity and to disclose such physician’s diagnosis or opinion by a writing to any third party including, but not limited to, the Grantor, a named successor Trustee. For purposes of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), pursuant to 45 CFR §164.508, and solely for the purposes of making a determination of the individual fiduciary’s disability and obtaining a written diagnosis or opinion of such disability by a physician, each individual fiduciary hereby authorizes any health care provider to disclose to the Grantor, a named successor Trustee, and/or a physician making the diagnosis any pertinent individually identifiable health information, including any protected health information which may be requested by a physician to determine whether such individual fiduciary by reason of illness or mental or physical disability is unable to give prompt and intelligent consideration to financial matters. The disclosure may be by mail, fax, electronic transmission, or verbally. This consent shall be valid during any interval an individual is serving in any capacity as a fiduciary under this Agreement.

3. GST Provisions. The terms “generation-skipping transfer tax,” “GST exemption,” and “inclusion ratio” are to be construed as defined in Chapter 13 of the Code.

4. Independent Trustee. “Independent Trustee” means a Trustee who is neither (1) a person who is or in the future may be eligible to receive income or principal pursuant to the terms of the [\_\_\_\_\_\_\_\_\_\_] Trust, even if the person’s only interest is a remote contingent remainder interest; nor (2) related or subordinate to a beneficiary or the Grantor within the meaning of Code Section 672(c).

6. Person. “Person” shall mean any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

6. Related Trustee. “Related Trustee” means a Trustee who is either (1) a person who is or in the future may be eligible to receive income or principal pursuant to the terms of the [\_\_\_\_\_\_\_\_\_\_] Trust, even if the person’s only interest is a remote contingent remainder interest, or (2) related or subordinate to a beneficiary or the Grantor within the meaning of Code Section 672(c).

B. Spendthrift Clause. Except as otherwise provided herein, neither the principal of the [\_\_\_\_\_\_\_\_\_\_] Trust nor the income therefrom while in the hands of the Trustee shall be subject to assignment, alienation, pledge, attachment, execution, or claims of creditors of any person whomsoever through legal process, bankruptcy, operation of law, or otherwise. Any attempted sale, assignment, alienation, pledge, or attachment of the principal or income held in the [\_\_\_\_\_\_\_\_\_\_] Trust shall be null and void and shall not be recognized under any circumstances by the Trustee. In the event of any attempted sale, assignment, alienation, pledge, attachment, execution, or claim resulting from an act of a person, voluntarily, involuntarily, by operation of law, by bankruptcy, or otherwise with respect to the principal or income of the [\_\_\_\_\_\_\_\_\_\_] Trust, the Trustee is authorized to withhold from making distributions thereto until such attempted anticipation, voluntary or involuntary transfer, or lien is completely removed. The provisions of this paragraph are material to the purpose for which the [\_\_\_\_\_\_\_\_\_\_] Trust has been created.

C. Rule Against Perpetuities. The [\_\_\_\_\_\_\_\_] Trust shall terminate in accordance with provisions of T.C.A. §35-15-409, as the same may be amended.

D. Disclaimer and Renunciation. The following provisions notify persons of their right to disclaim any benefit, right, or power with respect to the [\_\_\_\_\_\_\_\_\_\_] Trust.

1. Disclaimer. If any person is entitled to a benefit (including a power) under this Agreement, such person or a representative thereof may disclaim all or any part of that benefit. In addition to any other method of disclaimer or release recognized by law, the person or his or her representative may disclaim or release any interest under this Agreement by delivering to the Trustee a notarized instrument to that effect. Disclaimed or released benefits shall pass in the same manner as if such person had predeceased the vesting of such benefit.

2. Renunciation. If any person has any right or power with respect to the [\_\_\_\_\_\_\_\_\_\_] Trust, exercisable in either a fiduciary or non-fiduciary capacity and either alone or in conjunction with any other person, including but not limited to the right to appoint and remove a Trustee, or a right of reversion, said person may renounce all or any part of the right or power, even though the renunciation may fail to qualify as a valid disclaimer under applicable state law. Any person may designate the renunciation as irrevocable, may designate a specific time period in which the renunciation shall be effective, or may designate an event upon the occurrence of which the renunciation shall become null and void. Any renunciation shall become effective by delivering to the Trustee a notarized instrument to that effect. Upon receipt by the Trustee, the renunciation shall be valid and binding even though it may fail to qualify as a valid disclaimer or release under applicable state law. The right or power renounced shall be exercisable by the person(s), if any, who could have exercised the power had the renouncing person died. At such time as a renunciation is no longer in effect, the right or power previously renounced shall be exercisable by the person(s), if any, who could have exercised the power had the renunciation never been made.

E. Additions to Trusts. The Trustee is permitted to accept additions to the principal of [\_\_\_\_\_\_\_\_\_\_] Trust.

F. Fiduciary Liability. T.C.A. §35-3-117(b) shall not apply to any corporate fiduciary serving as trustee hereunder.

G. *Situs* (Legal Location) of Trusts. The *situs* of the [\_\_\_\_\_\_] Trust may be changed by [\_\_\_\_\_\_\_\_\_] [through agreement and representation, if any, as required thereunder to remove a trustee]. Upon any such change in *situs*, [\_\_\_\_\_\_\_] shall notify the Trustee in writing of such change of trust *situs* and, if necessary, a successor Trustee in the new *situs* shallbe appointed in accordance with [\_\_\_\_\_\_\_]. This notice shall constitute removal of the current Trustee if appropriate, and any successor Trustee shall assume its duties as provided under this Agreement. A change in *situs* under this paragraph shall be final and binding and shall not be subject to judicial review. If the addition of a Trustee in the new *situs* requires the removal of one but not all current Trustees, the Trustee to be removed shall be determined by the person(s) (in the same manner of agreement and representation) who may change the *situs* of any trust under this paragraph.

H. Tennessee Administration. Notwithstanding any other provision of this Agreement, because the [\_\_\_\_\_\_\_\_\_\_\_\_\_] Trust is intended to be a Tennessee trust with its situs and administration located in the State of Tennessee, until such time, if ever, such *situs* is changed pursuant to paragraph G., above, the Trustee shall have, the following exclusive duties, which shall all be carried out in the State of Tennessee:

 1. To maintain bank accounts, brokerage accounts and other custody accounts which receive trust income and contributions and from which trust expenditures and distributions are disbursed;

 2. To maintain storage of tangible personal property and evidence of intangible trust property;

 3. To maintain trust records on an exclusive or non-exclusive basis;

 4. To maintain an office for Trustee meetings and other trust business;

 5. To originate, facilitate and review trust accountings, reports and other communications with any Co-Trustee, beneficiaries and/or unrelated third parties;

 6. To respond to inquiries concerning the [\_\_\_\_\_\_\_\_\_] Trust from any Co-Trustee, beneficiaries and unrelated third parties;

 7. To allocate or charge between income and principal and to segregate, allocate or charge based upon tax or exempt status of beneficiaries;

 8. To execute documents and authorize trust account transactions;

 9. To retain accountants, attorneys, investment counsel, agents and other advisers in connection with its duties hereunder; and

 10. To prepare or arrange for the preparation of fiduciary income tax returns.

I. General Matters. The following general matters of construction shall apply to the provisions of this Agreement:

1. State Law. The validity of this Agreement shall be determined by reference to the laws of the State of Tennessee. Questions with regard to the construction, interpretation and administration of the [\_\_\_\_\_\_\_\_\_\_] Trust shall be determined by reference to the laws of the state in which the [\_\_\_\_\_\_\_\_\_\_] Trust *situs* is then currently located, which shall be the State of Tennessee unless there is a change in situs of the [\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Trust pursuant to the provisions of paragraph G., above.

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

3. Headings of Articles, Paragraphs, and Subparagraphs. The headings of Articles, paragraphs, and subparagraphs used within this Agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this Agreement.

4. Notices. All written notices required to be given in this Agreement shall be delivered by either personally delivering such notice to the party requiring it, and securing a written receipt, or mailing such notice by registered or certified United States mail, return receipt requested, or via nationally recognized overnight carrier, to the last known address of the party requiring notice. The effective date of the written notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would normally have been received via registered or certified mail, provided there is evidence of mailing; with respect to a nationally recognized overnight carrier, the effective date shall be the date notice was delivered.

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

6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[*remainder of page intentionally left blank*]

Article VI.
Execution

The Grantor certifies that the Grantor has read the foregoing Agreement, and that it correctly states the terms and conditions under which the trust property is to be held, managed, and disposed of by the Trustee. The Grantor approves this Agreement in all particulars, and requests the Trustee to execute it.

IN WITNESS WHEREOF, the Grantor hereby executes this Agreement on the day and year first written above.

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

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_ )

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

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Grantor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged that he/sheexecuted the within instrument for the purposes therein contained.

Witness my hand and seal on this the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020.

NOTARY PUBLIC

My Commission Expires:

TRUSTEE’S ACCEPTANCE

\_\_\_\_\_\_\_\_\_\_\_\_\_, as Trustee, hereby signs this trust agreement to evidence his/her acceptance of the terms, conditions, and provisions thereof, on this the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020.

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

1. This agreement was provided by Aaron B. Flinn and Richard A. Johnson, attorneys with Waller Lansden Dortch & Davis, LLP. The information contained herein is intended for general informational purposes only and does not constitute legal advice. You are urged to consult with your own legal advisor before taking any action based on information contained herein [↑](#footnote-ref-1)