

NO. C-1-PB-14-001245

IN RE: § **IN THE PROBATE COURT**
§
§ **NO. 1 OF**
§
TEL OFFSHORE TRUST § **TRAVIS COUNTY, TEXAS**

**Attorney Ad Litem’s Motion to Establish
The TEL Offshore Trust Qualified Settlement Fund
and to Appoint Trustee and Administrator**

Glenn M. Karisch (“Ad Litem”), appointed by this Court as attorney ad litem to represent the interests of the unit holders of TEL Offshore Trust (the “Trust”), who were served by publication and did not answer or appear in this proceeding (collectively, “AAL Parties”, files this Motion to Establish the TEL Offshore Trust Qualified Settlement Fund and to Appoint Trustee and Administrator (the “Motion”).

1. Ad Litem, RNR Production Land and Cattle Company (“RNR”) and Albert and Joyce Speisman (“Speismans”) (together, “Plaintiffs”) have reached a settlement with the current and one former Individual Trustees of the TEL Offshore Trust, Daniel Conwill, Gary C. Evans, Thomas H. Owen, Jr. and Jeffrey S. Swanson (together, the “Individual Trustees”). The terms of this agreement are contained in a Settlement Agreement dated effective January 13, 2017. (“Settlement Agreement”) By separate application, Ad Litem is asking the Court to approve the Settlement Agreement. The relief sought in this Motion is contingent upon the Court’s approval of the Settlement Agreement. RNR and the Speismans agree to the relief sought in this motion. The Individual Trustees do not oppose it.
2. Under the terms of the Settlement Agreement, the Individual Trustees are to irrevocably pay \$2,000,000 into a special fund (the “Fund”), which shall be a “qualified settlement

fund” for federal income tax purposes under the criteria in Internal Revenue Code § 468B and related provisions and regulations as set forth in Exhibit “A” attached hereto. The Settlement Agreement also provides that the judgment or order establishing the Fund will contain those provisions that are necessary to assure that the Fund is a qualified settlement fund.

3. The Settlement Agreement also provides that:

- a. The Court shall designate a person or entity as Administrator of the Fund. The Court shall establish the requirements for, compensation of and rules of operation of the Administrator. The Fund shall be used as described below.
- b. First, the Fund shall be used to pay certain compensation, attorneys’ fees and expenses in any of the following proceedings (collectively, the “Litigation”):
 - i. Cause No. C-1-PB-14-001245, styled *In Re TEL Offshore Trust*, in the Probate Court No. 1 of Travis County, Texas (the “Original Action”);
 - ii. Cause No. C-1-PB-16-000096 styled *In re: TEL Offshore Trust*, in the Probate Court No. 1 of Travis County, Texas (the “First Severed Action”);
 - iii. The severed action to be created pursuant to Paragraph 3.2 of the Settlement Agreement (the “Second Severed Action”);
 - iv. The action into which the order creating the qualified settlement fund is to severed pursuant to Paragraph 3.2 of the Settlement Agreement (the “Third Severed Action”);
 - v. Cause No. 16-0994; *In re Trustees of the TEL Offshore Trust, Relators*, In the Supreme Court of Texas (the “Supreme Court Mandamus Proceeding”);

- vi. Cause No. 93-16-00764-CV; In re Trustees of the TEL Offshore Trust, Relators, in the Third Court of Appeals, Austin, Texas (the “Court of Appeals Mandamus Proceeding”); and
 - vii. any other severed action or proceeding that arises from or relates to the Original Action, the First Severed Action, the Second Severed Action, or the Third Severed Action.
- c. The compensation, attorneys’ fees and expenses to be paid from the Fund are:
- i. Ad Litem’s compensation and expenses in the Litigation that are not paid from the Trust or the segregated account established in the First Severed Action (the “Segregated Account”);
 - ii. The attorneys’ fees and expenses of RNR Production Land & Cattle Company Inc.(“RNR”) in the Litigation; and
 - iii. the attorneys’ fees and expenses of Al Speisman and Joyce Speisman (“Speismans”) in the Litigation.
- d. All such compensation, fees and expenses shall be based on amounts approved by the Court, and subject to the Court’s policies regarding attorneys’ fees and expenses (including, but not limited to, its limits on hourly rates for attorneys and law firm personnel).
- e. Ad Litem shall first seek and if possible obtain payment of compensation and expenses from the Segregated Account and will only seek and obtain payment of compensation and expenses from the Fund to the extent that such compensation and expenses are not paid from the Segregated Account.

- f. Next, the Fund shall be used to pay the fees and expenses of the administrator and trustee of the Fund in amounts approved by the Court.
 - g. Finally, the remainder of the Fund shall be distributed to unit holders and/or former unit holders of the Trust at such time and in such proportions as determined by the Court. The Court shall determine the basis on which the funds shall be allocated among unit holders and/or former unit holders and shall establish a procedure for unit holders and/or former unit holders to make claims based on that basis.
4. Under Section 114.064 of the Texas Trust Code, it is equitable and just to cause this compensation, attorneys' fees and expenses to be paid from the Fund during the pendency of the Litigation, subject to reallocation as may seem equitable and just at the conclusion of the Litigation.
5. The Settlement Agreement also provides that:
 - a. If the Court orders any change to the use of the Fund as provided above, that change shall not provide any basis for withdrawing from the Settlement Agreement or for terminating or challenging the enforceability of the Settlement Agreement or the releases and judgment in the Second Severed Action.
 - b. The Individual Trustees acknowledge and agree that the settlement payment to the Fund shall be irrevocable and that they will have no rights to any distributions from the Fund and no rights to seek to withdraw or revoke all or any portion of the payment, regardless of any rulings or other developments in the Litigation. The Individual Trustees shall have no liability for how the settlement payment or the Fund is allocated or distributed after the Individual Trustees make the

settlement payment, and the effectiveness and enforceability of the releases and judgment in the Second Severed Action shall not be affected by the allocation or distribution of the settlement payment or the Fund.

6. Ad Litem believes that these terms and the terms of the Declaration of Trust Governing the TEL Offshore Trust Qualified Settlement Fund (the “Trust Instrument”) attached hereto as Exhibit “A” are in the best interests of the AAL Parties. Ad Litem asks the Court to approve these terms, establish the Fund and approve the Trust Instrument in the form attached hereto as Exhibit “A.”
7. The Fund will be an express Texas trust governed by the Texas Trust Code and other Texas laws applicable to trusts. The Court has the authority to create the Fund under Sections 114.008 and 115.001 of the Texas Trust Code and as a court of equity in matters pertaining to trusts. The Fund remains subject to the continuing jurisdiction of the Court until its termination.
8. The Court should establish the Fund and take continuing jurisdiction over it, pursuant to Treasury Regulation Section 1.468B-1(c). The establishment of the Fund is intended to satisfy the requirements of Treasury Regulation Section 1.468B-1 (c) because:
 - a. It will be established pursuant this Court's order and approval;
 - b. It will be established to resolve or satisfy one or more contested or uncontested claims of liability against the Individual Trustees stemming from the Litigation;
and
 - c. It will constitute a trust under applicable Texas law.
9. Under these regulations, the Fund must have an administrator and trustee, who may be the same person. Ad Litem asks the Court to appoint Karl Johnson as administrator and

trustee (the “Trustee”) of the Fund. Ad Litem believes that Karl Johnson is qualified to be the Trustee. The Trustee will be subject to the continuing jurisdiction of the Court.

The Trustee should be given the powers stated in the Trust Instrument.

10. The Trust Instrument provides that the Trustee shall not be required to give bond unless otherwise ordered by the Court. Ad Litem prefers that the Court require the Trustee to post a bond if one can be obtained, but will defer to the Court’s judgment.

11. The Trust Instrument provides that the Trustee shall pay from the Fund those amounts approved by the Court for the following:

- a. Trustee's reasonable compensation and expenses in amounts determined by the Court, calculated on the basis approved by the Court; and
- b. The expenses of administering the Fund, provided that Trustee shall seek and obtain Court approval before retaining the services of any person or entity, and payments to each such person or entity shall be made only after approval of the Court.

12. The Court should require the Trustee to apply to the Court for payment of his fees and expenses. The Court should order that the Trustee’s reasonable compensation and expenses in amounts determined by the Court, calculated on the basis approved by the Court, be paid from the Fund.

13. The Trustee will need the assistance of a certified public accountant to deal with tax and accounting issues related to the Fund. The Trustee has been in contact with Paula Wendling of the accounting firm of Flieller, Kruger, Skelton & Plyler, PLLC about tax issues. It was necessary for Ms. Wendling to work on qualified settlement fund tax issues before the filing of this Motion and before the hearing on this Motion. The Court

should authorize Trustee to retain Flieller, Kruger, Skelton & Plyler, PLLC, for tax and accounting services, and for its fees and expenses to be paid from the Fund after submission to and approval of the Court. The Court should authorize the payment for services rendered before the hearing on this Motion because of the necessity of having that work done before the hearing.

14. The Trustee should be authorized to apply for a taxpayer identification number for the Fund and to make such tax filings and pay such taxes as may be required.
15. The Trustee is likely to need to retain the services of a bookkeeping service or qualified settlement fund management company to handle distributions and other disbursements from the Fund. Initially, there should not be too many checks written, so the Trustee may not need those services. Ultimately, though, there could be thousands of checks to be written, and it is impractical to expect the Trustee to write those checks without assistance. The Court should authorize the Trustee to investigate companies to provide these services and to apply to the Court for permission to retain one or more before retaining them.
16. The Court's approval and order establishing the Fund will best serve the interests of the unit holders of the Trust and the Individual Trustees because it will enable the parties to facilitate payment of the settlement funds. It will also allow the parties to derive the tax benefits associated with qualified settlement funds, as is further explained in Internal Revenue Code Section 468B and the accompanying Treasury Regulation Sections 1.468B-1 through 1.468B-5.

Prayer

For these reasons, Ad Litem prays that the Court will:

1. Establish the Fund and take continuing jurisdiction over it, pursuant to Treasury Regulation Section 1.468B-1(c), to be governed by the terms stated in the Trust Instrument attached hereto as Exhibit "A."
2. Order that the establishment of the Fund is intended to satisfy the requirements of Treasury Regulation Section 1.468B-1 (c) because:
 - a. It is established pursuant this Court's order and approval;
 - b. It is established to resolve or satisfy one or more contested or uncontested claims of liability against the Individual Trustees stemming from the Litigation; and
 - c. It constitutes a trust under applicable Texas law.
3. Order that the Fund will be an express Texas trust governed by the Texas Trust Code and other Texas laws applicable to trusts, and that the Fund remains subject to the continuing jurisdiction of the Court until its termination.
4. Appoint Karl Johnson as administrator and trustee of the Fund, subject to the continuing jurisdiction of the Court, with the powers stated in the Trust Instrument.
5. Determine if the Trustee should be required to give bond and, if so, so order and set the amount of the bond.
6. Order that the Fund shall be used as described below.
 - a. First, the Fund shall be used to pay certain compensation, attorneys' fees and expenses in any of the Litigation as defined above as follows:
 - b. The compensation, attorneys' fees and expenses to be paid from the Fund are:

- i. Ad Litem's compensation and expenses in the Litigation or in any other proceedings which may have been severed are will be severed in the future from any of the Litigation that are not paid from the Trust or the Segregated Account;
 - ii. The attorneys' fees and expenses of RNR in the Litigation; and
 - iii. the attorneys' fees and expenses of the Speismans in the Litigation.
- c. All such compensation, fees and expenses shall be based on amounts approved by the Court, and subject to the Court's policies regarding attorneys' fees and expenses (including, but not limited to, its limits on hourly rates for attorneys and law firm personnel).
- d. Ad Litem shall first seek and if possible obtain payment of compensation and expenses from the Segregated Account and will only seek and obtain payment of compensation and expenses from the Fund to the extent that such compensation and expenses are not paid from the Segregated Account.
- e. Next, the Fund shall be used to pay the fees and expenses of the Trustee in amounts approved by the Court. The Trustee is required to apply to the Court for payment of his fees and expenses and order that the Trustee's reasonable compensation and expenses in amounts determined by the Court, calculated on the basis approved by the Court, be paid from the Fund.
- f. Finally, the remainder of the Fund shall be distributed to unit holders and/or former unit holders of the Trust at such time and in such proportions as determined by the Court. The Court shall determine the basis on which the funds shall be allocated among unit holders and/or former unit holders and shall

establish a procedure for unit holders and/or former unit holders to make claims based on that basis.

7. Order that, if the Court orders any change to the use of the Fund as provided above, that change shall not provide any basis for withdrawing from the Settlement Agreement or for terminating or challenging the enforceability of the Settlement Agreement or the releases and judgment in the Second Severed Action.
8. Order that the settlement payment to the Fund by the Individual Trustees shall be irrevocable, that the Individual Trustees will have no rights to any distributions from the Fund and no rights to seek to withdraw or revoke all or any portion of the payment, regardless of any rulings or other developments in the Litigation, that the Individual Trustees shall have no liability for how the settlement payment or the Fund is allocated or distributed after the Individual Trustees make the settlement payment, and that the effectiveness and enforceability of the releases and judgment in the Second Severed Action shall not be affected by the allocation or distribution of the settlement payment or the Fund.
9. Authorize Trustee to retain Flieller, Kruger, Skelton & Plyler, PLLC, for tax and accounting services, with its fees and expenses to be paid from the Fund after submission to and approval of the Court.
10. Authorize the payment for services rendered by Flieller, Kruger, Skelton & Plyler, PLLC before the hearing on this Motion.
11. Authorize the Trustee to apply for a taxpayer identification number for the Fund and to make such tax filings and pay such taxes as may be required.

12. Authorize the Trustee to investigate companies to provide bookkeeping or qualified settlement fund management services and to apply to the Court for permission to retain one or more before retaining them.

Ad Litem also prays that he be granted such other and further relief to which he may justly be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served or will be served in accordance with the Court's orders regarding service dated September 28, 2015 and January 21, 2016.

/s/ Daniel C. Bitting _____
Daniel C. Bitting

Exhibit “A”

**Declaration of Trust Governing the TEL Offshore Trust
Qualified Settlement Fund**

NO. C-1-PB-_____

In Re:	§	In the Probate Court No. 1
	§	
TEL Offshore Trust	§	of
	§	
Qualified Settlement Fund	§	Travis County, Texas

Declaration of Trust Governing the TEL Offshore Trust Qualified Settlement Fund

This instrument governs the TEL Offshore Trust Qualified Settlement Fund (the “Fund”) created by the Probate Court No. 1 of Travis County, Texas (the “Court”) in the above captioned proceeding.

1. Basis for Declaration

1.1. The following are referred to in this instrument collectively as “the Litigation:”

1.1.1. Cause No. C-1-PB-14-001245, styled *In Re TEL Offshore Trust*, in the Probate Court No. 1 of Travis County, Texas (the “Original Action”);

1.1.2. Cause No. C-1-PB-16-000096 styled *In re: TEL Offshore Trust*, in the Probate Court No. 1 of Travis County, Texas (the “First Severed Action”);

1.1.3. The severed action to be created pursuant to Paragraph 3.2 of the Settlement Agreement described below (the “Second Severed Action”);

1.1.4. The action into which the order creating the qualified settlement fund is to severed pursuant to Paragraph 3.2 of the Settlement Agreement described below (the “Third Severed Action”);

1.1.5. Cause No. 16-0994; In re Trustees of the TEL Offshore Trust, Relators, In the Supreme Court of Texas (the “Supreme Court Mandamus Proceeding”);

1.1.6. Cause No. 93-16-00764-CV; In re Trustees of the TEL Offshore Trust, Relators, in the Third Court of Appeals, Austin, Texas (the “Court of Appeals Mandamus Proceeding”); and

1.1.7. any other severed action or proceeding that arises from or relates to the Original Action, the First Severed Action, the Second Severed Action, or the Third Severed Action.

1.2. In the Original Action in the Court, Glenn M. Karisch (“Ad Litem”), attorney ad litem for the unit holders of the TEL Offshore Trust who were served by publication and did not answer or appear, RNR Production Land & Cattle Company (“RNR”) and Al Speisman and Joyce Speisman (the “Speismans”), plaintiffs, sued Bank of New York Mellon Trust Company, N. A. (“BNYM”), Jeffrey S. Swanson (“Swanson”), Gary C. Evans (“Evans”), Thomas H. Owen, Jr. (“Owen”) and Danny Conwill (“Conwill”), trustees and a former trustee of the TEL Offshore Trust (the “Trust”) on various grounds. BNYM, Swanson, Evans, Owen and Conwill are collectively referred to as the “Defendants” and individually referred to as a “Defendant.”

1.3. The Court was asked to approve a Settlement Agreement dated effective January 13, 2017, between plaintiffs and Swanson, Evans, Owen and Conwill. Under the terms of the Settlement Agreement, Swanson, Evans, Owen and Conwill are causing to be paid \$2,000,000 into the Fund and a final judgment was entered dismissing with prejudice the claims brought against Defendants. This final judgment is being severed into a new cause of action: the “Second Severed Action”. Plaintiffs’ claims against BNYM remain pending in the Original Action.

1.4. The Court has approved the Settlement Agreement and entered the final judgment. Pursuant thereto, the Court now creates the Fund, to be known as “The TEL Offshore Trust Qualified Settlement Fund” and to be governed by this instrument.

2. Identification and Transfer into the Fund

2.1. **Transferors.** Swanson, Evans, Owen and Conwill are the initial transferors to the Fund. The transferors are not related to Trustee, fully and finally relinquish all rights in and claims to the funds transferred to the Fund and are not permissible parties to litigation involving the Fund. The Fund is irrevocable, and the transferors have no power to alter, amend, revoke or terminate the Fund.

2.2. **Administrator and Trustee.** Karl Johnson is administrator and trustee of the Fund and is referred to in this instrument as “Trustee.”

2.3. **Claimants.** The claimants are current and former unit holders of the Trust. The Court will determine the basis on which the settlement funds are to be allocated among unit holders and/or former unit holders and shall establish a procedure for unit holders and/or former unit holders to make claims on that basis. The claimants entitled to receive distributions are the beneficiaries of the Fund.

2.4. **Transfer into the Fund.** The transferors have or will cause to be transferred \$2,000,000 cash to Trustee as the initial corpus of the Fund. The corpus of the Fund shall include:

A. All sums transferred to the Fund pursuant to court order or future orders of the Court, being amounts paid by one or more of the Defendants;

B. All rights and similar thing of every kind, nature and description transferred to the Fund pursuant to an order of the Court or otherwise belonging to the Fund; and

C. All income derived from any of the above assets of the Fund.

Trustee will hold, administer and distribute the property of the Fund in accordance with this instrument.

2.5. **Purpose of the Fund.** The Fund is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has given rise to at least one claim asserting liability. The purpose of the Fund is to discharge the obligations required of the Fund under the terms of this instrument and by Court order.

2.6. **Nature of the Fund.**

A. The Fund is an express Texas trust governed by the Texas Trust Code and other Texas laws applicable to trusts. The Court has the authority to create the Fund under Sections 114.008 and 115.001 of the Texas Trust Code and as a court of equity in matters pertaining to trusts. The Fund remains subject to the continuing jurisdiction of the Court until its termination.

B. It is the intent of the Court and the parties to the Settlement Agreement that the Fund shall be and remain a “Designated” or “Qualified” settlement fund within the meaning of §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto and codified at 26 C.F.R. §1.468B-1. For purposes of this Fund, Swanson, Evans, Owen and Conwill shall be severally classified as a “transferor” within the meaning of Treasury Regulations §1.468B-1(d)(1), 26 C.F.R. §1.468B-1(d)(1). Trustee shall be classified as the “administrator” within the meaning of Treasury Regulation §1.468B-2(k)(3), 26 C.F.R. §1.468B-2(k)(3). Accordingly, Trustee shall elect to apply settlement fund rules, if appropriate, by filing a “Section 1.468B-5(b)(2) Election.” It is further intended that the transfers to the Fund will satisfy the “all events test” and the “economic performance” requirement of Section 461(h)(1) of the Internal Revenue Code, 26 U.S.C. §461(h)(1), and Treasury Regulation Section 1.461-1(a)(2), 26 C.F.R. §1.461-1(a)(2). As such, the transferors shall not be taxed on the income of the Fund. The Fund shall be taxed on its modified gross income, excluding the sums, or cash equivalents of things, transferred to it. In computing the Fund’s modified gross income, deductions shall be allowed for, inter alia, administrative costs and other incidental deductible expenses incurred in connection with the operation of the Fund, including, without limitation, state and local taxes and legal, accounting, and actuarial fees relating to the operation of the Fund. This instrument shall be construed and if necessary reformed by the Court to be consistent with the intent expressed in this paragraph.

2.7. ***Continuing Jurisdiction of the Court.*** The Fund is subject to the continuing jurisdiction of the Court.

3. Disbursements From the Fund

3.1. ***No Disbursements or Transfers Without Court Order.*** Trustee shall not make any disbursements or transfers from the Fund unless authorized to do so by a written order of this Court. This restriction applies not only to distributions to claimants but also to payments to attorneys, compensation of Trustee and the expenses of administering the Fund.

3.2. ***Disbursement of Attorneys' Fees and Expenses.*** Trustee shall pay from the Fund those amounts approved by the Court for the following:

A. The compensation and expenses of Ad Litem in the Litigation which are not paid from the Trust or from the funds in the segregated account (the "Segregated Account") holding the proceeds of the sale of the Trust's net profits interest that was created pursuant to the Final Judgment and Order dated January 15, 2016, in the First Severed Action. Ad Litem shall first seek and if possible obtain payment of compensation and expenses from the Segregated Account and will only seek and obtain payment of compensation and expenses from the Fund to the extent that such compensation and expenses are not paid from the Segregated Account.

B. The attorneys' fees and expenses of RNR in the Litigation; and

C. The attorneys' fees and expenses the Speismans in the Litigation.

All compensation, fees and expenses paid under this Section 3.2 shall be based on amounts approved by the Court, and subject to the Court's policies regarding attorneys' fees and expenses (including, but not limited to, its limits on hourly rates for attorneys and law firm personnel). All compensation, attorneys' fees and expenses paid from the Fund during the pendency of the Litigation is subject to reallocation as may seem equitable and just pursuant to Section 114.064 of the Texas Trust Code at the conclusion of the Litigation.

3.3. ***Trustee's Compensation and Expenses of Administering the Fund.*** Trustee shall pay from the Fund those amounts approved by the Court for the following:

A. Trustee's reasonable compensation and expenses in amounts determined by the Court, calculated on the basis approved by the Court; and

B. The expenses of administering the Fund, provided that Trustee shall seek and obtain Court approval before retaining the services of any person or entity, and payments to each such person or entity shall be made only after approval of the Court.

3.4. ***Distributions to Claimants.*** Distributions to claimants shall not be made until the Original Action and all severed actions are fully and finally resolved. The Court will determine

the basis on which the property remaining in the Fund are to be allocated among unit holders and/or former unit holders and shall establish a procedure for unit holders and/or former unit holders to make claims on that basis. Trustee shall make no payments or distributions to claimants until ordered to do so by the Court. Trustee will make distributions to those claimants designated by the Court in those amounts designated by the Court after the Court enters an order to that effect.

3.5. ***Termination of the Fund.*** The Fund shall terminate upon the earlier of: (i) the date on which no assets remain in the Fund; or (ii) the date on which the Fund has discharged all obligations required by order of the Court. Whenever Trustee determines that the Fund may be properly terminated pursuant to this provision, Trustee may submit a petition for termination of the Fund to the Court. After reviewing the petition and any objections thereto, the Court may terminate the Fund or may order that Trustee undertake such further actions as the Court deems necessary and appropriate.

4. Administration of the Fund

4.1. ***Additional Transfers.*** Other transferors may transfer funds or other property to Trustee of the Fund with the approval of the Court, provided that the transferors are not related to Trustee, fully and finally relinquish all rights in and claims to the funds transferred to the Fund and are not permissible parties to litigation involving the Fund. The Fund is irrevocable, and any such transferors shall have no power to alter, amend, revoke or terminate the Fund.

4.2. ***Waiver of Bond.*** Trustee shall not be required to give bond unless otherwise ordered by the Court.

4.3. ***Provisions Regarding Successor Trustees.*** Any trustee may resign by giving at least 60 days' written notice to the Court. The Court may remove and replace any trustee for any reason, with or without cause. The Court may fill any vacancy in the office of trustee. All rights and powers given to, and all duties imposed on, Trustee also apply to and are binding upon each substitute or successor trustee. The trustee, whether original, substitute or successor, whether individual or corporate, and whether one or more, is referred to in this instrument as "Trustee."

4.3.1. *Restriction on Liability of Successor Trustees.*

Unless otherwise ordered by the Court, no trustee shall be liable for the acts or omissions of any other or prior fiduciary or for failure to contest any accounting rendered by a prior fiduciary and no trustee is required to perform any independent verification as to the proper conduct of the prior fiduciary or the assets which the trustee is entitled to receive; rather, the trustee shall be entitled to accept the assets as are actually delivered to the trustee and shall be responsible solely to the extent of the assets.

4.4. *Powers of Trustee.*

In addition to any other powers expressly granted in this instrument, the Court grants to Trustee the following powers:

A. To invest trust corpus and income on corpus in one or more cash accounts, money market accounts or certificates of deposit at banks or other financial institutions;

B. To make the disbursements described in Article 3, but only pursuant to an order of the Court.

C. To make, sign, execute, acknowledge and deliver any documents that may be necessary or appropriate to effectuate the purpose of the Fund or to maintain or administer the Fund;

D. To apply to the Court for instructions on or approval of any matter;

E. To apply to the Court for modification of the provisions of this instrument if Trustee determines that such modifications are necessary to conform to legal and/or administrative requirements;

F. To institute, conduct, defend, settle and compromise any litigation or other proceeding involving the Fund; and

G. To retain and employ attorneys, accountants, advisors and other agents but only with prior approval of the Court, and to pay those persons or entities in amounts approved by the Court.

To the extent that they are not inconsistent with the preceding powers, Trustee shall have all powers conferred on trustees by the common law, by the Texas Trust Code (Title 9, Subchapter B, Texas Property Code) as may be amended, and as may be ordered by the Court.

4.5. ***Liability of Trustee.*** Trustee shall be held to the standards of liability imposed by applicable law on trustees; provided, however, that Trustee shall have no personal liability for actions taken in good faith reliance on orders of the Court.

4.6. ***Reporting to the Court.*** Trustee shall report to the Court, verbally or in writing, with respect to any matter arising from the administration of the Fund that Trustee deems advisable to bring to the attention of the Court. In addition, Trustee shall provide accountings and other information to the Court to the extent ordered to do so by the Court.

4.7. ***Spendthrift Trust.***

The Fund is a “spendthrift trust” as that term is used in Section 112.035(b) of the Texas Trust Code.

4.8. ***Rules of Construction.*** The headings at the beginning of the various articles and sections of this instrument have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this instrument. The definitions used in this instrument have been included only in order to make this instrument easier to understand without the unnecessary repetition of the defined terms and are not to be used in construing this instrument. As used in this instrument, whenever the context so indicates, the masculine, feminine, or neuter gender, and the singular or plural number, shall be deemed to include the others.

The undersigned accepts this trust.

Karl Johnson, Trustee