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January 13, 2017

VIA EFILE

Probate Clerk
Travis County Probate Court
Travis County court House
100 Guadalupe, Room 217
Austin, TX 78701

In Re: In Re Tel Offshore Trust; Cause No. C-1-PB-14-001245; In the Probate Court of Travis
County, Texas

Dear Clerk:

Attached for e-filing with the Court please find a proposed Order Establishing TEL
Offshore Trust Qualified Settlement Fund and Appointing Trustee and Administrator.

I am also paying the \$2.00 fee for the signature for the Order.

Thank you for your assistance with this filing.

Sincerely,



Daniel C. Bitting

DCB:mlp
Enclosure

NO. C-1-PB-14-001245

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

**Order Establishing TEL Offshore Trust Qualified Settlement Fund
and Appointing Trustee and Administrator**

On the ___ day of January 2017, the Court heard the Motion to Establish the TEL Offshore Trust Qualified Settlement Fund and to Appoint Trustee and Administrator (the “Motion”) filed by Glenn M. Karisch (“Ad Litem”), as attorney ad litem representing 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.

Having considered the Motion and the terms of the Settlement Agreement entered by Ad Litem, RNR Production Land and Cattle Company (“RNR”) and Albert and Joyce Speisman (“Speismans”) (together, “Plaintiffs”) and 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 Court finds that the relief sought in the Motion will serve the best 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; that the Court has the authority to create the qualified settlement fund described below under Sections 114.008 and 115.001 of the Texas Trust Code and as a court of equity in matters pertaining to trusts; that Karl Johnson is qualified to be administrator and trustee of the qualified settlement fund; and that the Motion is meritorious and should be GRANTED.

It is therefore ORDERED ADJUDGED AND DECREED that a Qualified Settlement Fund (the “Fund”) is hereby established under the criteria in Internal Revenue Code § 468B and related provisions and regulations to be governed by the Declaration of Trust Governing the TEL Offshore Trust Qualified Settlement Fund (the “Trust Instrument”) attached hereto as Exhibit “A.” The Fund is an express Texas trust governed by the Texas Trust Code and other Texas laws applicable to trusts, and remains subject to the continuing jurisdiction of this Court until its termination.

It is further ORDERED that the Fund satisfies 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.

It is further ORDERED that Karl Johnson (“Trustee”) is appointed as administrator and trustee of the Fund, who shall be subject to the continuing jurisdiction of the Court, with the powers stated in the Trust Instrument.

It is further ORDERED that the Trustee **IS/IS NOT** required to post a bond in the amount of \$_____.

It is further ORDERED that the Trustee is entitled to reasonable compensation and expenses in amounts approved by this Court, calculated on the basis approved by the Court; and the Trustee is entitled to reimbursement for 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 Court approval.

It is further ORDERED that the Trustee is authorized 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. The Court specifically authorizes the payment for services rendered by Flieller, Kruger, Skelton & Plyler, PLLC before the hearing on this Motion.

It is further ORDERED that the Trustee is 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.

It is further ORDERED that the Trustee is authorized to investigate companies to provide bookkeeping or qualified settlement fund management services and is required to apply to the Court for permission to retain one or more before retaining them.

It is further ORDERED that the Fund shall be used as follows:

- a. The Fund shall pay 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.
- b. Specifically such 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 in the Litigation; and
 - iii. the attorneys’ fees and expenses of the Speismans in the Litigation.
- c. the Fund shall pay the reasonable compensation and expenses of the Trustee in amounts approved by the Court.

It is further ORDERED that 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.

It is further ORDERED that all such compensation, fees and expenses to be paid by the Fund shall be based on amounts approved by the Court, and subject to the Court's policies regarding trustee compensation, attorneys' fees and expenses (including, but not limited to, its limits on hourly rates for attorneys and law firm personnel).

It is further ORDERED that the remainder of the Fund, if any, 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.

It is further ORDERED that 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.

It is further ORDERED that, if the Court orders any change to the use of the Fund, 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.

It is further ORDERED that the settlement payment to the Fund by the Individual Trustees is 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.

SIGNED on the ____ day of January, 2017.

Honorable Guy Herman
Presiding Judge

EXHIBIT A

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. **Transferees.** Swanson, Evans, Owen and Conwill are the initial transferees to the Fund. The transferees 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 transferees 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 transferees 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