

## DECLARATION OF TRUST

**DECLARATION OF TRUST**, made as of this        day of        , 20\_\_\_\_, between NAME OF GRANTOR, having an address at ADDRESS, CITY, STATE, ZIP, as grantor (hereinafter referred to as the "Grantor"), and NAME OF GRANTOR, having an address as aforesaid, as trustee (hereinafter referred to as the "Trustee").

### **W I T N E S S E T H:**

**WHEREAS**, the Grantor is the owner of the property more particularly described in Schedule A attached hereto and made a part hereof; and

**WHEREAS**, the Grantor's wife is WIFE'E NAME, and the Grantor has one child, CHILD'S NAME; and

**WHEREAS**, the Grantor desires to create a revocable trust of the property described in Schedule A hereto, together with such monies, securities and other assets as the Trustee hereafter may hold or acquire hereunder (said property, monies, securities and other assets, together with any additions thereto received pursuant to the Grantor's last will and testament or otherwise, being hereinafter referred to as the "trust estate"), for the purposes and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the covenants herein contained and other valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Grantor hereby transfers, conveys, assigns and delivers to the Trustee as and for the trust estate the property more particularly described in Schedule A hereto, to hold the same, and any other property which the Trustee hereafter may acquire, **IN TRUST**, for the purposes and upon the terms and conditions hereinafter set forth:

### **ARTICLE FIRST**

#### **Directions Of Grantor**

The Trustee shall hold, manage, invest and reinvest the trust estate, shall collect the income therefrom, and shall pay any part or all of the income and principal to whomever the Grantor from time to time may direct in writing.

Until the Grantor hereafter may direct to the contrary, the net income shall be paid to the Grantor quarter-annually.

Any income not so paid or applied shall be accumulated and added to the principal of this trust at least quarter-annually.

## **ARTICLE SECOND**

### **Disability Of Grantor**

If at any time the Grantor, in the judgment of the successor Trustee, shall be under any legal disability or shall be unable to manage properly his affairs by reason of illness or mental or physical disability (whether or not a court of competent jurisdiction has declared the Grantor incompetent or mentally ill or has appointed a conservator or other legal representative for the Grantor), the successor Trustee may pay or apply so much or all of the net income and the principal of the trust estate as the successor Trustee deems necessary or advisable for the health, education, maintenance or support of the Grantor, his wife and his child, in such amounts and proportions as the successor Trustee may determine. The successor Trustee also may pay any gift taxes and income taxes incurred by the Grantor, whether caused by the sale of any assets comprising the trust estate or otherwise. Any income not so paid or applied shall be accumulated and added to the principal of this trust at least quarter-annually.

In making any payment hereunder, the successor Trustee may consider, but shall not be required to consider, the income and other resources of the Grantor, his wife and his child. No such payment shall be charged upon a subsequent division of the trust estate against the principal of any share which may be set apart for any beneficiary hereunder.

## **ARTICLE THIRD**

### **Successor Beneficiaries**

Upon the death of the Grantor, the Trustee shall hold, manage, invest and reinvest the trust estate, shall collect the income therefrom, and shall pay the net income to or for the benefit of the Grantor's wife and child, for their health, education, maintenance or support, in such amounts and proportions as the Trustee may deem advisable. In addition, the Trustee may pay to or for the benefit of the Grantor's wife and child, for their health, education, maintenance or support, any part or all of the principal of this trust, as the Trustee may determine in the absolute discretion of the Trustee, without considering other resources available to the Grantor's wife and child. The Grantor's wife shall have the right to receive such portions of the principal of this trust as she from time to time may demand. Any commission payable with respect to principal so withdrawn shall be charged against such principal.

Upon the death of the Grantor's wife, the remaining principal of the trust estate, together with any accrued and unpaid income thereon, shall be paid and distributed to the Grantor's then living issue, by representation.

If the Grantor's child shall then be under the age of twenty-one (21), this trust shall continue for the benefit of the child, in accordance with the aforesaid terms and conditions, until the child attains said age. At such time as the child shall attain the age of twenty-one (21) years, the trust

for the child shall terminate and the balance of the principal thereof at that time remaining, together with any accrued and unpaid income thereon, shall be paid and distributed to the child, discharged of trust. If the child shall die prior to attaining the age of twenty-one (21) years, the principal of the child's trust at that time remaining, together with any accrued and unpaid income thereon, shall be paid and distributed to the then living issue of the child, by representation, or if there is no living issue, to the then living issue of the Grantor, by representation, or if there is no living issue of the Grantor, to those who would take from the child if the child had died without a will. If any such issue is the income beneficiary of another trust under this Agreement, any property which would pass to such issue shall instead be added to the principal of that trust.

If there are no issue of the Grantor then living, the trust estate shall be paid and distributed to such persons and in such proportions as the same would be distributed under the laws of the State of Colorado then in force had the Grantor then died intestate, a resident of Colorado and the owner of said property.

## **ARTICLE FOURTH**

### **Use Of Principal**

The Trustee is authorized, at any time and from time to time, to pay to, or apply to the use of, the beneficiary of any trust held hereunder, for such beneficiary's health, education, maintenance or support, any part or all of principal of such trust as the Trustee may determine in the absolute discretion of the Trustee, without necessarily taking into account other resources available to such beneficiary. No such payment shall be charged upon a subsequent division of the trust estate against the principal of any share which may be set apart for a beneficiary.

## **ARTICLE FIFTH**

### **Rights To Demand Principal**

The income beneficiary of any trust at any time held hereunder shall have the right to demand and receive from the principal of such trust in each of its fiscal years the greater of \$5,000 or five percent of the fair market value of such principal determined as of the date the request to withdraw is made by written notice to the Trustee. Such right shall lapse to the extent it is not exercised in any year. Any commission payable with respect to funds so withdrawn shall be charged against such funds.

## **ARTICLE SIXTH**

### **Distributions To Minors Or Incompetents**

In any case in which the Trustee is authorized or directed by any provision of this Agreement to pay or distribute income or principal to any person who shall be a minor or incompetent, the Trustee, in the absolute discretion of the Trustee and without authorization of any court, may pay or distribute the whole or any part of such income or principal to such minor or incompetent personally, or may apply the whole or any part thereof directly to the health, education, maintenance or support of such minor or incompetent, or may pay or distribute the whole or any part thereof to the guardian, committee, conservator or other legal representative, wherever appointed, of such minor or incompetent or to the person with whom such minor or incompetent may from time to time reside, or in the case of a minor, may pay or distribute the whole or any part thereof to a custodian for such minor under any gifts to minors or transfers to minors act. Evidence of such payment or distribution or the receipt therefor by the person to whom any such payment or distribution is made shall be a full discharge of the Trustee from all liability with respect thereto, even though the Trustee may be such person.

The Trustee, in the absolute discretion of the Trustee, may defer payment or distribution of any or all income or principal to which a minor may be entitled until such minor shall attain the age of twenty-one (21) years, or to make such payment or distribution at any time and from time to time, during the minority of such minor, holding the whole or the undistributed portion thereof as a separate fund vested in such minor but subject to the power in trust hereby given to the Trustee to administer and invest such fund and to use the income or principal thereof for the benefit of such minor as if such fund were held in trust hereunder. No bond or other security and no periodic accounts shall be required with respect to such fund, and the same shall be subject to commission as if it were a separate trust fund. The Trustee shall pay and distribute any balance of such fund to such minor when such minor shall attain the age of twenty-one (21) years. Except as is hereinabove provided, if such minor shall die before attaining the age of twenty-one (21) years, the Trustee shall pay and distribute such balance to the personal representatives, executors or administrators of the estate of such minor.

The word "minor", wherever used in this Article SIXTH, shall mean any person who has not attained the age of twenty-one (21) years.

## **ARTICLE SEVENTH**

### **Payment Of Debts**

Upon the death of the Grantor, the Trustee may pay from the principal of the trust estate the amount of any estate or death taxes, by whatever name called, imposed under the laws of any jurisdiction by reason of the Grantor's death, whether in respect of property passing under this Agreement or the Grantor's last will and testament or otherwise, and the amount of all of the debts which the Grantor's estate must pay, the expenses of his last illnesses and funeral, and the expenses of administering his estate. The Trustee may rely upon the written certification of the personal representatives, executors or administrators of the Grantor's estate as to the amount of any such tax, debt or expense, without any duty to inquire as to the correctness thereof, and, in its discretion, may

make payment thereof either to said personal representatives, executors or administrators or to the taxing authority or person to whom such amount is owed.

## **ARTICLE EIGHTH**

### **Grantor's Right To Revoke Or Amend**

The Grantor reserves the right, at any time and without the consent of any person or notice to any person other than the Trustee, to amend or revoke in whole or in part this Agreement or any trust created hereunder, including the right to change the terms or beneficiaries thereof, by delivering to the Trustee written notice of such amendment or revocation signed by the Grantor. No amendment of this Agreement, however, shall increase the obligations or reduce the commissions of the Trustee without the consent of the Trustee. Upon any such revocation, the Trustee shall deliver to the Grantor all property in the possession or control of the Trustee with respect to any trust which has been revoked and shall execute and deliver any instruments necessary to release any interest of the Trustee in such property. The sale or other disposition by the Grantor of the whole or any part of the trust estate held hereunder shall constitute as to such whole or part a revocation of this Agreement and the trust or trusts affected thereby.

The Grantor reserves the power and right during the life of the Grantor to collect any rent, interest or other income which may accrue from the trust estate and, in his sole discretion, to accumulate such income as a trust asset or to pay such income to the Grantor individually and not in any fiduciary capacity. The Grantor further reserves the power and right during life of the Grantor to mortgage or pledge all or any part of the trust estate as collateral for any loan.

## **ARTICLE NINTH**

### **Powers Of Trustee**

In the administration of any property, real or personal, at any time forming a part of the trust estate, including accumulated income, and in the administration of any trust created hereunder, the Trustee, in addition to and without limitation of the powers provided by law, shall have the following powers to be exercised in the absolute discretion of the Trustee, except as otherwise expressly provided in this Agreement:

- (a) To retain such property for any period, whether or not the same is of the character permissible for investments by fiduciaries under any applicable law, and without regard to the effect any such retention may have upon the diversity of investments;
- (b) To sell, transfer, exchange, convert or otherwise dispose of, or grant options with respect to, such property, at public or private sale, with or without security, in such

manner, at such times, for such prices, and upon such terms and conditions as the Trustee may deem advisable;

(c) To invest and reinvest in common or preferred stocks, securities, investment trusts, bonds and other property, real or personal, foreign or domestic, including any undivided interest in any one or more common trust funds, whether or not such investments be of the character permissible for investments by fiduciaries under any applicable law, and without regard to the effect any such investment may have upon the diversity of investments;

(d) To render liquid the trust estate or any trust created hereunder in whole or in part, at any time and from time to time, and to hold unproductive property, cash or readily marketable securities of little or no yield for such period as the Trustee may deem advisable;

(e) To lease any such property beyond the period fixed by statute for leases made by fiduciaries and beyond the duration of any trust created hereunder;

(f) To join or become a party to, or to oppose, any reorganization, readjustment, recapitalization, foreclosure, merger, voting trust, dissolution, consolidation or exchange, and to deposit any securities with any committee, depository or trustee, and to pay any fees, expenses and assessments incurred in connection therewith, and to charge the same to principal, and to exercise conversion, subscription or other rights, and to make any necessary payments in connection therewith, or to sell any such privileges;

(g) To vote in person at meetings of stock or security holders and adjournments thereof, and to vote by general or limited proxy with respect to any stock or securities;

(h) To hold stock and securities in the name of a nominee without indicating the trust character of such holding, or unregistered or in such form as will pass by delivery, or to use a central depository and to permit registration in the name of a nominee;

(i) To initiate or defend, at the expense of the trust estate, any litigation relating to this Agreement or any property of the trust estate which the Trustee considers advisable, and to pay, compromise, compound, adjust, submit to arbitration, sell or release any claims or demands of the trust estate or any trust created hereunder against others or of others against the same as the Trustee may deem advisable, including the acceptance of deeds of real property in satisfaction of notes, bonds and mortgages, and to make any payments in connection therewith which the Trustee may deem advisable;

(j) To borrow money for any purpose from any source, including any trustee at any time acting hereunder, and to secure the repayment of any and all amounts so borrowed by mortgage or pledge of any property;

(k) To possess, manage, develop, subdivide, control, partition, mortgage, lease or otherwise deal with any and all real property; to satisfy and discharge or extend the term of any mortgage, deed of trust or similar instrument thereof; to execute the necessary instruments and covenants to effectuate the foregoing powers, including the giving or granting of options in connection therewith; to make repairs, replacements and improvements, structural or otherwise, or abandon the same if deemed to be worthless or not of sufficient value to warrant keeping or protecting; to abstain from the payment of real estate taxes, assessments, water charges and sewer rents, repairs, maintenance and upkeep of the same; to permit to be lost by tax sale or other proceeding or to convey the same for a nominal consideration or without consideration; to set up appropriate reserves out of income for repairs, modernization and upkeep of buildings, including reserves for depreciation and obsolescence, and to add such reserves to principal and, if the income from the property itself should not suffice for such purposes, to advance out of other income any sums needed therefor, and advance any income of the trust for the amortization of any mortgage, deed of trust or similar instrument on property held in the trust;

(l) To purchase from the legal representatives of the estate of the Grantor (or the estate of the Grantor's wife) or from the trustees of any trust established by the Grantor (or by the Grantor's wife) any property constituting a part of such estate or trust at its fair market value and to make loans for adequate consideration to such legal representatives or trustees, upon such terms and conditions as the Trustee may determine in the absolute discretion of the Trustee;

(m) To carry insurance of the kinds and in the amounts which the Trustee considers advisable, at the expense of the trust estate, to protect the trust estate and the Trustee personally against any hazard;

(n) To make distribution of the trust estate or of the principal of any trust created hereunder in cash or in kind, or partly in kind, and to cause any distribution to be composed of cash, property or undivided fractional shares in property different in kind from any other distribution, and to determine the fair valuation of the property so allocated, with or without regard to the tax basis; to hold the principal of separate trusts in a consolidated fund and to invest the same as a single fund; to split trusts for purposes of allocating GST exemptions (within the meaning of Section 2642(a) of the Internal Revenue Code); and to merge any trusts which have substantially identical terms and beneficiaries, and to hold them as a single trust;

(o) To employ and pay the compensation of accountants, attorneys, experts, investment counselors, custodians, agents and other persons or firms providing services or advice, irrespective of whether the Trustee may be associated therewith;

to delegate discretionary powers to such persons or firms; and to rely upon information or advice furnished thereby or to ignore the same, as the Trustee in its discretion may determine;

(p) To execute and deliver any and all instruments or writings which it may deem advisable to carry out any of the foregoing powers; and

(q) To exercise all such rights and powers and to do all such acts and enter into all such agreements as persons owning similar property in their own right might lawfully exercise, do or enter into.

Except as otherwise provided herein, the Trustee may determine, when there is reasonable doubt or uncertainty as to the applicable law or the relevant facts, which receipts of money or other assets should be credited to income or principal, and which disbursements, commissions, assessments, fees and other expenses should be charged to income or principal. Any distributions or dividends payable in the stock of a corporation, and rights to subscribe to securities or rights other than cash declared or issued by a corporation, shall be dealt with as principal. The proceeds from the sale, redemption or other disposition, whether at a profit or loss, and regardless of the tax treatment thereof, of any property constituting principal, including mortgages or similar instruments and real estate acquired through foreclosure or otherwise, shall normally be dealt with as principal, but the Trustee may allocate a portion of any such proceeds to income if the property disposed of produced no income or substantially less than the current rate of return on trust investments, or if the Trustee shall deem such action advisable for any other reason. The preceding provisions of this paragraph shall not be deemed to authorize any act by the Trustee which may be a violation of any law prohibiting the accumulation of income.

No person who deals with any Trustee hereunder shall be bound to see to the application of any asset delivered to such Trustee or to inquire into the authority for, or propriety of, any action taken or not taken by such Trustee.

Notwithstanding anything to the contrary contained herein, during such time as any current or possible future beneficiary of any trust created hereunder (other than the Grantor) may be acting as a Trustee hereunder, such person shall be disqualified from exercising any power to make any discretionary distributions of income or principal to himself or herself (unless the discretion to make such distributions is limited by an ascertainable standard within the meaning of Section 2041(b)(1)(A) of the Internal Revenue Code), or to satisfy any of his or her legal obligations, or to make discretionary allocations of receipts or disbursements as between income and principal. No Trustee who is a current or possible future beneficiary of any trust hereunder (other than the Grantor) shall participate in the exercise of any powers of the Trustee which would cause such beneficiary to be treated as the owner of trust assets for tax purposes.

No Trustee shall be liable for acts or omissions in administering the trust estate or any trust created by this Agreement, except for that Trustee's own actual fraud, gross negligence or willful misconduct. If any Trustee becomes liable as Trustee to any other person who is not a beneficiary in connection with any matter not within the Trustee's control and not due to the Trustee's actual

fraud, gross negligence or willful misconduct, such Trustee shall be fully indemnified and held harmless by the trust estate and any trust created hereunder giving rise to such liability, as the case may be, against and in respect of any damages that such Trustee may sustain, including without limitation attorneys' fees. No successor Trustee shall incur any liability, by reason of qualifying as a Trustee hereunder, for the acts or omissions of any predecessor Trustee.

The Trustee is authorized, but not required, to accept any property transferred to the Trustee by any person during such person's lifetime or by such person's last will and testament. Any property so transferred to, and accepted by, the Trustee shall become a part of such trust or trusts created by this Agreement as such person shall direct and may be commingled with the other property in the trust or trusts to which such property has been added and shall be held, administered and disposed of as a part of such trust or trusts.

## **ARTICLE TENTH**

### **Appointment Of Trustee**

The Grantor appoints himself as Trustee hereunder. The Grantor hereby appoints NAME OF SUCCESSOR TRUSTEE, having an address at ADDRESS, CITY, STATE, ZIP, as successor Trustee hereunder in the event of the death of the Grantor, or his physical or mental incapacity.

The term "Trustee" wherever used herein shall mean the trustee in office from time to time. Any such trustee shall have the same rights, powers, duties, authority and privileges, whether or not discretionary, as if originally appointed hereunder.

No bond, surety or other security shall be required of any Trustee acting hereunder for the faithful performance of the duties of Trustee, notwithstanding any law of any State or other jurisdiction to the contrary.

## **ARTICLE ELEVENTH**

### **Accounts Of Trustee**

The Trustee, at any time and from time to time, may render to the Grantor an account of the acts and transactions of the Trustee with respect to the income and principal of any trust created hereunder, from the date of the creation of such trust or from the date of the last previous account of the Trustee. After the death of the Grantor, the Trustee, at any time and from time to time, may render an account to the living person or persons who are entitled, at the time of such account, to receive all or a portion of the income of the trusts herein created. The approval of any person of full age, or a guardian or parent of a minor or incompetent person, to whom an account is rendered shall, as to all matters stated therein, be final and binding upon him or such minor or incompetent person, or any persons claiming through him or such minor or incompetent person, as

the case may be. A person of full age, or a guardian or parent of a minor or incompetent person, to whom an account is rendered shall be deemed to have approved the account if he assents to the account in writing or if he does not communicate to the Trustee his written objections to the account within sixty days after the receipt of the account (provided the account was accompanied by a notice of said sixty day period within which to raise objections).

The Grantor shall have full power and authority on behalf of all persons interested in any trust hereunder, whether such interest relates to income or principal, to settle any account of the Trustee. Such settlement shall be final and binding upon all persons so interested in such trust. Upon such settlement, the Trustee shall be fully and completely discharged and released from all further liability with respect to acts and transactions set forth in the account so settled.

The Trustee shall not be required at any time to file any account in any court, nor shall the Trustee be required to have any account judicially settled. Nothing herein, however, shall be construed as limiting the right of the Trustee to seek a judicial settlement of any account.

## **ARTICLE TWELFTH**

### **Decisions Of Trustee Are Conclusive**

The determination of the Trustee in respect of the amount of any discretionary payment of income or principal from any trust established hereunder, and of the advisability thereof, shall be final and conclusive on all persons, whether or not then in being, having or claiming any interest in such trust, and upon making any such payment, the Trustee shall be released fully from all further liability or accountability therefor.

The right of any beneficiary to any payment of income or principal shall in every case be subject to any charge or deduction which the Trustee may make against the same under the authority granted to the Trustee by any law or by this Agreement.

## **ARTICLE THIRTEENTH**

### **Simultaneous Death**

If any beneficiary under this Agreement shall die simultaneously with the Grantor or any other person upon whose death such beneficiary shall become entitled to receive either income or principal under this Agreement, or in such circumstances as to render it difficult or impracticable to determine who predeceased the other, then for purposes of this Agreement such beneficiary shall be deemed to have predeceased the Grantor or such other person. The provisions of this Agreement shall be construed as aforesaid, notwithstanding the provisions of any applicable law establishing a different presumption of order of death or providing for survivorship for a fixed period as a condition of inheritance of property.

## **ARTICLE FOURTEENTH**

### **Rights Of Beneficiaries Are Not Assignable**

No disposition, charge or encumbrance on the income or principal of any trust established hereunder shall be valid or binding upon the Trustee. No beneficiary shall have any right, power or authority to assign, transfer, encumber or otherwise dispose of such income or principal or any part thereof until the same shall be paid to such beneficiary by the Trustee. No income or principal shall be subject in any manner to any claim of any creditor of any beneficiary or liable to attachment, execution or other process of law prior to its actual receipt by the beneficiary.

## **ARTICLE FIFTEENTH**

### **Construction**

The validity and construction of this Agreement and the trusts created hereunder shall be governed by the laws of the State of Colorado.

Any provision herein which refers to a statute, rule, regulation or other specific legal reference which is no longer in effect at the time said provision is to be applied shall be deemed to refer to the successor, replacement or amendment to such statute, rule, regulation or other reference, if any, and shall be interpreted in such a manner so as to carry out the original intent of said provision.

For purposes of this Agreement, the disability or incapacity of an individual (including the Grantor or any Trustee) shall be conclusively established by a written statement signed by such individual's then attending physician and filed with the records of any trust established hereunder attesting that, in such physician's opinion, such individual is unable to manage his or her affairs. Such written statement shall be conclusive evidence of such fact, and any third party may rely on same in dealing with any trust established hereunder and shall not be obliged to inquire whether such individual is no longer under such disability or incapacity at the time of such dealings.

Wherever used in this Agreement and the context so requires, the masculine shall include the feminine and the singular shall include the plural, and vice versa.

The captions in this Agreement are for convenience of reference, and they shall not be considered when construing this Agreement.

If under any of the provisions of this Agreement any portion of the trust estate would be held in trust beyond a date twenty-one years after the death of the last survivor of the Grantor, his wife, and the issue of the Grantor and other beneficiaries hereunder in being when this Agreement becomes irrevocable; then, upon such date, the trust of such portion shall terminate and the principal, and any unpaid income thereof, shall be paid and distributed to the person or persons then living who would have been entitled to receive the income therefrom had the trust continued, in the proportions to which they would have been so entitled.

**ARTICLE SIXTEENTH**

**Binding Effect**

This Agreement shall extend to and be binding upon the heirs, personal representatives, executors, administrators, successors and assigns of the undersigned Grantor and upon the Trustee acting hereunder.

**ARTICLE SEVENTEENTH**

**Short Name**

This Agreement and the trusts created hereunder may be referred to, in any other instrument, by the name: "NAME OF GRANTOR Living Trust dated \_\_\_\_\_, 1997". Any transfers to this Agreement or any trust hereunder may refer to the aforesaid name or to "NAME OF GRANTOR as Trustee under NAME OF GRANTOR Living Trust dated \_\_\_\_\_, 1997", with or without specifying any change in Trustee or any amendment to this Agreement.

**IN WITNESS WHEREOF**, this Agreement has been duly executed as of the date first above written.

\_\_\_\_\_  
NAME OF GRANTOR  
Grantor

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, SS.:

The foregoing instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by NAME OF GRANTOR.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires on \_\_\_\_\_

**SCHEDULE A**

**TRUST ESTATE PROPERTY**