**Trust Agreement Establishing the [Name of Child] Trust**

This Trust Agreement is made effective the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2022, and entered into between [Name of Grantor], as the Grantor, and [Name of Trustee], as the Trustee, on the following terms and conditions:

**Article I**

**Trust Fund**

The Grantor, desiring to establish a trust for the benefit of [Name of Child], has simultaneously with the execution of this agreement, delivered to the Trustee those assets described on Schedule “A” attached hereto, the receipt of which is hereby acknowledged, which the Trustee agrees to hold in trust subject to the following terms, conditions and purposes. This trust shall be known as the [Name of Child] Trust.

**Article II**

**Additions to Trust**

The Grantor or any other person may at any time and from time to time increase the principal of the trust by adding thereto cash, securities, or other property. Additions to the trust shall be subject to the willingness of the Trustee to accept them. Upon acceptance, the additions shall be held according to the terms of this agreement in the same manner and to the same extent as if they had been delivered to the Trustee by Grantor as part of the principal of the trust estate at the time of the execution of this agreement. Additional funds or properties may also be added to this trust estate by the last will and testament of any person.

**Article III**

**Trust Irrevocable**

 This trust is irrevocable, and may not be modified, amended, or revoked by the Grantor.

**Article IV**

**Distributions**

4.1 Payment of Income and Principal. The Trustee is authorized and directed to distribute to or for the benefit of [Name of Child] out of the income, and if income is insufficient, out of the principal of such trust from time to time such sums as are reasonably needed for [Name of Child]’s health, including medical, dental, hospital, and nursing expenses, and expenses of invalidism, and such sums as are reasonably needed for [his/her] education, maintenance and support in [his/her] accustomed manner of living. In determining the amounts to be distributed to or for the benefit of [Name of Child], the Trustee shall take into consideration such other income or means of support known to the Trustee that [Name of Child] is entitled to receive, but not [his/her] capital resources.

4.2 Power of Appointment. [Name of Child] shall have the power to appoint by [his/her] will, by specific reference to the exercise of this power of appointment, the principal of the trust and any accumulated income in such proportions and in such manner, outright or in trust or otherwise, to or for the benefit of any one or more persons; provided, however, that [Name of Child] shall not have the power to appoint the principal or any accumulated income of this trust to [his/her] estate, [his/her] creditors, or the creditors of [his/her] estate.

4.3 Termination of Trust. The trust shall terminate upon [Name of Child] attaining the age of 21 years, or upon [his/her] death, whichever first occurs. Upon termination of the trust, after paying the expenses of the trust, the Trustee shall distribute the principal and undistributed income remaining in the trust as follows:

A. To [Name of Child], if living.

B. If [Name of Child] is not living, to any person or persons appointed by [his/her] last will and testament as provided for by Paragraph 4.2 above.

C. If [Name of Child] is not living and has failed to appoint a person or persons by [his/her] last will as provided for by Paragraph 4.2 above to receive the principal and undistributed income of such trust, to [his/her] then living descendants, per stirpes, if any.

D. If [Name of Child] is not living and has failed to appoint a person or persons by [his/her] last will as provided for by Paragraph 4.2 above to receive the principal and undistributed income of such trust, and [Name of Child] has no living descendants, then to [Name of Child]’s heirs-at-law, determined as if [Name of Child] died intestate, unmarried, and a resident of the State of Texas at such time.

**Article V**

**Powers of Trustee**

 In addition to the powers granted to a Trustee by law, each Trustee administering a trust established hereunder shall have the following authorities, powers and privileges or obligations:

5.1 Retention with No Duty to Diversify. The Trustee is authorized to retain, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention, any property that constitutes the initial trust corpus or that which is added to the trust.

5.2 Sale and Reinvestment. The Trustee is authorized to sell, upon such terms and conditions as the Trustee may deem proper, real property, any stocks, bonds or any asset of a trust, and from time to time to invest and reinvest the proceeds from such sale or sales and to purchase additional real property or to invest the trust funds in any kind of property specifically including, but not by way of limitation, bonds or common or preferred stocks, shares (whether common or preferred) of investment companies, investment trusts or mutual funds and to make any and all investments and reinvestments as the Trustee may, in the Trustee’s judgment, deem to be in the best interest of the trust and to the beneficiary or beneficiaries of the trust. The Trustee is specifically authorized to place fractional or undivided interests in property into one or more trusts.

5.3 Lend Money and Guarantee Obligations. The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, provided that any such loan shall be adequately secured and shall bear a reasonable rate of interest. The Trustee, in the Trustee’s discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, when the Trustee believes such actions advance the purposes of any trust established herein. The Trustee may make loans from any trust to or for the benefit of a beneficiary of such trust on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee’s judgment such loan would be consistent with the purposes of such trust.

5.4 Distribution. Any division or distribution of principal upon final termination of the trust, or at any other time, may be made either in cash or in kind, or partly in each, at the discretion of the Trustee; and any division or distribution in kind shall be on the basis of the fair market values determined at the time of distribution. There shall be no requirement that distributions be made on a pro rata basis. Distributions may be made on a non-pro rata basis as long as the fair market values are used.

5.5 Facility of Payment. The payments made to or for the benefit of any beneficiary of this trust may be made by the Trustee directly to such beneficiary, or for his or her benefit to any hospital, institution, rest home, school, to any person rendering services to or for the beneficiary, or to any party deemed appropriate by the Trustee.

5.6 Expenses. The Trustee is authorized to deduct, retain, expend and pay out of any money belonging to a trust any and all necessary and proper expenses in connection with the operation and conduct of a trust, and to pay all taxes and other legal assessments, debts, claims or charges which at any time may be due and owing by, or which may exist against the trust.

5.7 Powers Continue Until Final Accounting. After the date of the termination of the trust, the Trustee shall continue to have all the powers provided for the Trustee of the trust until the final accounting has been made, and all of the tax reports have been made and filed with the appropriate authorities, and the assets of the trust have been distributed to the parties entitled to receive them.

5.8 Disabled Beneficiary. If any beneficiary under this trust is receiving means-tested public benefits at the time the trust terminates (a “Disabled Beneficiary”), then the Trustee is authorized but not required to distribute the Disabled Beneficiary’s share of the trust to an account for his or her benefit in a pooled trust managed by a non-profit organization, to be selected by the Trustee, rather than distributing the Disabled Beneficiary’s share outright to him or her. The Trustee is authorized but not required to select Trust III of the Arc of Texas Master Pooled Trust established December 2, 2000 for this purpose. Remainder beneficiaries of the joinder agreement shall be the same persons and entities who would take the share of such Disabled Beneficiary under this agreement if he or she died immediately prior to the termination of this trust. If a pooled trust sub-account so established is terminated at a future time due to discontinuation of the pooled trust or for any other reason, the assets in the sub-account that were originally directed from this trust shall be distributed to a different pooled trust or to a new individual trust with provisions as to distributions substantially similar to this trust and with the same representatives and remainder beneficiaries as the pooled-trust subaccount. The Trustee shall have no duty to investigate whether a beneficiary is receiving means- tested public benefits at the time of the trust’s termination and shall have no liability for exercising or failing to exercise his or her power under this paragraph.

**Article VI**

**General Provisions**

6.1 Bond. No Trustee shall be required to give bond or other security.

6.2 Spendthrift Provision. Each beneficiary of each trust established herein is hereby restrained from anticipating, encumbering, alienating or in any other manner assigning or disposing of his or her interest in either principal or income of such trust estate and is without power to do so; nor shall such interest be subject to his or her liabilities or obligations or to judgment, garnishment or other legal process, or bankruptcy proceedings, or any claims of creditors or other parties.

6.3 Restrictions on Powers of Certain Trustees. The Grantor intends that all powers granted to any Trustee shall be exercised solely in a manner which will ensure that the assets of any trust established under this agreement will be excluded from the taxable estate of such Trustee and from the taxable estate of any individual who might make contributions to this trust. In that respect, each Trustee is hereby prohibited from exercising any power or authority which would cause such inclusion. Without limiting the foregoing, no individual Trustee shall have the power to make a distribution or participate in making the decision to make a distribution that would discharge a legal or contractual obligation of such fiduciary (in his or her individual capacity).

6.4 Maximum Term of Trusts. Anything in this trust agreement to the contrary notwithstanding, no trust established herein (either directly or indirectly by exercise of any power of appointment granted herein, other than any exercise that commences a new period for the applicable rule against perpetuities) shall continue beyond twenty-one years after the death of the last to die of the respective descendants of the [Name of Child]’s respective maternal and paternal grandparents who were living at the time of the execution of this trust agreement; and upon the expiration of such period, all trusts shall terminate and the assets of each trust shall be distributed outright to such persons as are then entitled to the income therefrom and in the same proportions; but if no person is then entitled to a specific portion of income, then in equal portions to the then living income beneficiaries.

6.5 Limitation of Liability of Trustee. No Trustee shall be liable or responsible for any loss to the trust estate that may occur by reason of depreciation in value of the property at any time belonging to the trust estate, nor for any other loss that may occur, except to the extent such loss is caused by the Trustee's gross negligence or willful misconduct.

6.6 Accountings. Upon written request of a beneficiary who is entitled or permitted to receive current distributions from the trust or who would at the time of the request receive a distribution from the trust if terminated (a "Distribution Beneficiary"), the Trustee shall deliver an accounting. The accounting shall be deemed correct and binding on any beneficiary one year after receipt, and the Trustee shall thereafter be released from any liability for the accounting. A Distribution Beneficiary may approve the Trustee's accounting with the same effect as the approval of the accounting by a court of competent jurisdiction. Any person who is not a Distribution Beneficiary (a "Non-Distribution Beneficiary") shall not be entitled to demand or receive an accounting from the Trustee.

6.7 Duty to Inform. Any common law duty of the Trustee to keep beneficiaries reasonably informed concerning the administration of the trust is hereby waived as to any Distribution Beneficiary who is under age 25 and as to any Non-Distribution Beneficiary.

**Article VII**

**Successor Trustees**

7.1 Appointment of Successor Trustee. If [Name of Trustee] ceases or fails to serve as Trustee, one of the following shall serve as successor Trustee of the trust, in the order named, successively and not jointly:

A. [Name of First Alternate Trustee]; then

B. [Name of Second Alternate Trustee]; and then

C. [Name of Third Alternate Trustee];

with all of the powers and privileges as if appointed in the first instance. Each of the Trustees named above is to serve only if the predecessor has ceased or failed to serve as Trustee.

7.2 Failure or Resignation of Last Appointed Trustee. If the trust established under this agreement fails to designate a successor in office to the then serving Trustee or if the last appointed Trustee has ceased or failed to serve, [Name of Child] shall have the power to appoint a successor Trustee if [Name of Child] is at least 18 years of age at such time. If [Name of Child] is not at least 18 years of age at such time, then his or her natural or legal guardian shall have the power to appoint a successor Trustee. A successor Trustee under this paragraph may be any individual who has attained at least 40 years of age or any corporate fiduciary. Such power shall be exercised in an affidavit which identifies this power, identifies the successor Trustee, and identifies the effective time and date of such succession.

7.3 Replacement of Trustee. The current adult permissible income beneficiary or beneficiaries of a trust shall have the authority to remove, and name a successor to, the then serving Trustee as Trustee of the trust. In order to qualify as a successor Trustee under this paragraph, the successor Trustee must be a corporate fiduciary, with assets under management in excess of $100 million. The substitution of a successor Trustee may be obtained by the following:

 A. A written statement signed by the proposed successor Trustee stating its willingness to serve as successor Trustee; and

 B. A written request signed by all of the current adult permissible income beneficiaries of the trust filed with the then serving Trustee stating a desire to make such substitution, which shall be effective ninety days after the receipt of such notice by the then serving Trustee.

7.4 Resignation of Trustee. Any person or entity serving as a Trustee shall have the right to resign, with or without cause, from office as Trustee. At least thirty days prior to the date of such resignation or such lesser period of time to which every continuing and immediate successor Trustee may consent, the resigning Trustee shall give written notice thereof by certified mail, return receipt requested, to the successor Trustee, and to those adult individuals, if any, who could receive income distributions from the trust from which such Trustee is resigning. Notice shall be deemed to be sufficiently given if it specifies the effective time and date of resignation and is in a form that could be recorded in the deed records of the county in which such Trustee is residing. If no successor Trustee is designated and no one has the power to appoint a successor Trustee of such trust at such time, the resigning Trustee shall make application to a court of competent jurisdiction to appoint a successor Trustee and allow the then serving Trustee to resign. Upon any resignation, the resigning Trustee shall render an accounting to the successor Trustee.

7.5 Manner of Succession. Except as otherwise provided herein, each successor Trustee may assume his or her duties as Trustee upon placing an affidavit reciting the facts establishing his or her right to serve as successor Trustee in the files of the trust. Any party dealing with such Trustee shall be entitled to rely conclusively upon the facts stated in such affidavit. No successor Trustee shall be required to make application to any court to accept the office of Trustee.

7.6 Successor’s Authority and Responsibility. A successor Trustee shall possess and exercise all powers and authorities herein conferred on the original Trustee. A successor Trustee may accept and rely upon the accounting furnished by the predecessor Trustee unless such successor Trustee has actual knowledge that such accounting is materially in error, or unless a majority of the adult beneficiaries, or if there are none, the guardians of a majority of the minor beneficiaries, request the Trustee to verify, audit or contest such accounting.

**Article VIII**

**Trustee Compensation**

8.1 Individual Trustee. No individual shall be entitled to receive compensation for serving as Trustee of a trust established under this agreement.

8.2 Corporate Trustee. Any corporate fiduciary shall be allowed and paid for its services for serving as Trustee of a trust provided for in this instrument, the usual fees customarily charged by it for similar services in other trusts; provided, however, that in no event will any additional management or administration fee be charged in connection with investments in proprietary mutual funds managed by the fiduciary or an affiliate of the fiduciary.

8.3 Expenses. Any Trustee of a trust provided for herein shall be reimbursed for all reasonable expenses, including attorney’s or accountant’s fees made or incurred in administration of the trust.

**Article IX**

**Miscellaneous**

9.1 Situs. The interpretation of this agreement shall be governed by the laws of the State of Texas. The original situs and original place of administration of each trust shall also be Texas, but the situs and place of administration of any trust may be transferred at any time to any place the Trustee determines to be for the best interests of the trust beneficiaries.

9.2 Survival. A requirement that a beneficiary “survive” a person’s death or some other event or be “surviving” or “living” shall be interpreted to mean “survival by at least thirty days.” This thirty day period shall begin at 12:01 a.m. of the day immediately following the death or event and shall end at 12:00 o’clock midnight of the thirtieth day. A child in gestation on the date any allocation or distribution is to be made shall be deemed to be living on such date if such child is subsequently born alive and then lives for at least such thirty day period.

9.3 Children and Descendants. Except as otherwise provided herein, a “child” of an individual means a child determined in accordance with Section 160.201 of the Texas Family Code, as it may be amended from time to time. An adopted person shall be a child of the adopting parent(s), but only if legally adopted before attaining age eighteen. A posthumous child who survives birth shall be treated as living at the death of his or her parent. An individual’s “descendants” means the individual’s children, the children of those children, and so on, determined in accordance with the preceding.

9.4 Per Stirpes. Whenever a distribution of property is to be made "per stirpes" to the descendants of any person, the property shall be divided into as many shares as there are then living children of the person plus any deceased children of the person who left descendants who are then living. One share shall be distributed to each living child and the share for each deceased child shall be divided among his or her then living descendants in the same manner.

9.5 Consolidation or Merger of Corporate Fiduciary. If any bank, trust company or trust corporation ever succeeds to the trust business of any corporate fiduciary named or serving herein, by means of merger, consolidation, change of name, or any other form of reorganization or transfer, then such successor bank, trust company or trust corporation shall succeed the named or then serving corporate fiduciary in the capacity designated herein.

9.6 Gender and Number. Pronouns, nouns and terms as used in this instrument shall include the masculine, feminine, neuter, singular and plural forms thereof wherever appropriate to the context.

9.7 Headings. The headings employed are for reference purposes only and shall not in any way affect the meaning or interpretation of the provisions of this trust.

**Article X**

**Acceptance of Trust**

The Trustee, by joining in the execution of this instrument, signifies acceptance of this trust and acknowledges receipt of the assets described on the attached Schedule “A”. The Trustee agrees to hold such assets and any other assets that may at any time be added to this trust for the use and purposes provided herein, and upon termination of this trust to distribute the assets then remaining in the trust to the parties entitled to receive them according to the terms and provisions of this agreement.

**Article IX**

**Duplicate Originals**

This instrument is made in duplicate, each of which is an original, but together shall be deemed one and the same instrument.

Executed to be effective the \_\_\_\_ day of \_\_\_\_\_\_\_\_, 2022.

Grantor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trustee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Schedule “A”**