

## THE HAMILTON FAMILY TRUST

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I - ESTABLISHMENT OF TRUST .....	1
1.1. General Name of Trust .....	1
1.2. Initial Assets of Trust .....	1
1.3. Amendability and Revocability of Trust .....	2
(a) Amendability and Revocable Period of Trust .....	2
(b) Irrevocable Period of Trust .....	2
1.4. Retention of Property Character .....	2
1.5. Appointment of Trustees .....	2
(a) Designation and References to Trustees .....	3
(b) Settlor's Power to Appoint Additional Trustees .....	3
1.6. Distributions During Joint Lifetimes of Settlor's .....	3
(a) Distributions of Income and Principal .....	3
(b) Transfers to Trust by Children or Agents .....	3
(c) Indemnification of Trustee and Third Parties .....	3
1.7. General Testamentary Power of Appointment by Settlor Husband .....	4
1.8. General Testamentary Power of Appointment by Settlor Wife .....	4
ARTICLE II - PROVISIONS REGARDING THE DIVISION OF THE FAMILY TRUST INTO SEPARATE TRUSTS .....	5
2.1. Division Date for Family Trust .....	5
2.2. Creation and Funding of Trust A .....	5
(a) Life Insurance and Employee Benefit Plans .....	5
(b) Surviving Settlor's Community and Other Separate Property .....	5
(c) Additional Property of the Surviving Settlor .....	6
2.3. Creation and Funding of Trust B .....	6
2.4. Creation and Funding of Trust C .....	6
ARTICLE III - TRUST A PROVISIONS .....	7
3.1. Beneficiary of Trust A .....	7
3.2. Income and Principal Distributions .....	7
3.3. Special Provisions for Surviving Settlor .....	7

(a)	Power to Withdraw Income and Principal .....	7
(b)	Special Lifetime Power of Appointment .....	8
3.4.	Termination of Trust A and Distributions of Remaining Trust Estate .....	8
(a)	General Testamentary Power of Appointment .....	8
(b)	Alternative Distribution to Trust C .....	8
ARTICLE IV - TRUST B PROVISIONS .....		9
4.1.	Beneficiary of Trust B .....	9
4.2.	Mandatory Distributions of Income .....	9
4.3.	Discretionary Distributions of Principal .....	9
4.4.	Termination of Trust B and Distributions of Remaining Trust Estate .....	10
(a)	General Testamentary Power of Appointment Over Undistributed Income .....	10
(b)	Distribution to Trust C .....	10
ARTICLE V - TRUST C PROVISIONS .....		11
5.1.	Beneficiaries of Trust C .....	11
5.2.	General Guide for Trustee .....	11
5.3.	Discretionary Income and Principal Distributions .....	12
5.4.	Termination of Trust C and Distribution of Remaining Trust Estate .....	13
(a)	Division of Trust C Estate Into Separate Shares .....	13
(b)	Distribution of Separate Shares .....	13
5.6.	Continuation of Trust for Descendants Under Twenty-One (21) Years .....	14
ARTICLE VI - INCORPORATION OF STANDARD TRUST PROVISIONS AND MISCELLANEOUS TRUST PROVISIONS .....		15
6.1.	Incorporation by Reference of Standard Trust Provisions .....	15
6.2.	Powers Cumulative .....	15
6.3.	Related Trustees Restricted to Fiduciary Capacity .....	15
SIGNATURE PAGE .....		16
NOTARY .....		16

# TRUST AGREEMENT

THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

This Agreement of Trust is executed by and between ALFRED HAMILTON ("Settlor Husband") and MAURINE P. HAMILTON ("Settlor Wife") (collectively referred to at times in this Agreement as "Settlor" or "Settlers") and ALFRED HAMILTON and MAURINE P. HAMILTON (collectively referred to at times in this Agreement as "Trustee" or "Trustees"), in order to amend The Alfred Hamilton and Maurine P. Hamilton Revocable Living Trust Agreement dated December 18, 1996, and restate and rename said Trust in its entirety on the terms, conditions and provisions as set forth below in this Trust Agreement.

## ARTICLE I

### ESTABLISHMENT OF TRUST

1.1. General Name of Trust. The general name of the Trust shall be THE HAMILTON FAMILY TRUST. For convenience, it will be referred to at times in this Agreement as the "Trust" unless a more specific Trust is indicated.

1.2. Initial Assets of Trust. The initial assets of the Trust shall consist of those assets described in the attached Exhibit "B" which is hereby incorporated by reference for all purposes of this Trust Agreement.

All references in this Trust Agreement to the "Trust Estate" shall be interpreted to mean all of the assets, properties, debts and liabilities of the Trust (whether consisting of the initial Trust assets or assets hereafter received at any time by the Trustee to be held as a part of this Trust), whether real, personal, or mixed, and whether tangible, intangible, or inchoate property rights.

1.3. Amendability and Revocability of Trust. This Trust shall either be revocable or irrevocable pursuant to the following applicable provisions:

(a) Amendability and Revocable Period of Trust. Settlor (including appointed agents or appointed representatives) expressly reserve the power to amend or revoke this Agreement at any time during their joint lifetimes by delivering to the Trustee any writing which sets forth the terms of the amendment or revocation.

(b) Irrevocable Period of Trust. This Trust shall become irrevocable and shall not thereafter be subject to amendment or revocation upon the death of either Settlor.

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1.4. Retention of Property Character. Any property transferred to this Trust by either Settlor, whether at the date of execution hereof or later, which is the separate property of that Settlor, shall retain its separate property character after its transfer.

1.5. Appointment of Trustees. The initial Co-Trustees of this Trust shall be ALFRED HAMILTON and MAURINE P. HAMILTON. Either or both initial Trustees shall have the right to delegate authority to additional individuals to have signatory authority on Trust accounts.

In the event either of the named Trustees shall for any reason fail or refuse to qualify, or, having qualified as Trustee, fails to complete his or her duties as Trustee, then the remaining Trustee shall serve alone in such capacity. In the event both of the initial Trustees shall for any reason fail or refuse to qualify, or, having qualified as Trustee, fail to complete their duties as Trustee, then ALAN L. HAMILTON and SYLVIA L. HAMILTON shall serve as Co-Trustees. In the event either ALAN L. HAMILTON or SYLVIA L. HAMILTON shall for any reason fail or refuse to qualify, or, having qualified as Trustee, fails to complete his or her duties as Trustee, then the remaining Trustee shall serve alone in such capacity.

(a) Designation and References to Trustees. Any specific reference in this Trust Agreement to a "Related Trustee" shall mean Settlor or any Beneficiary in their capacity as a Trustee of the Trust. Any specific reference to an "Independent Trustee" shall be in reference to a Trustee who is not a Settlor or Beneficiary, and shall include, for example, any corporate Trustee of the Trust and its respective successors. Otherwise, any general reference to "Trustee" or "Trustees" shall include all trustees which may be serving at that time.

(b) Settlors' Power to Appoint Additional Trustees. Settlor reserve the power during either of their lifetimes to appoint additional Trustees of this Trust. Settlor may exercise this power by delivering a written instrument or letter to all other then serving Trustees (if any) which evidences not only the appointment but the additional Trustees acceptance of the terms, provisions and conditions of this Trust Agreement.

1.6. Distributions During Joint Lifetimes of Settlor. The following provisions shall become applicable in the event any property (other than a minimum initial asset to fund the Trust or the mere inchoate right of the Trust to receive the proceeds of any insurance policy or employee benefit plan) is transferred to the Trust during the joint lifetimes of Settlor to be held in accordance with the terms of this Agreement.

(a) Distributions of Income and Principal. The Trustee shall distribute to or for the benefit of Settlor (during their joint lifetimes) so much of the net income and/or principal of the Trust as shall be appropriate or necessary to provide for their respective health, maintenance and support (broadly construed). In addition, the Trustee shall distribute to or for the benefit of Settlor so much or all of the income and/or principal of the Trust as either Settlor shall direct in writing. These distributions may be made directly to or for the benefit of Settlor (or either of them) without the intervention of any legal guardian.

(b) Transfers to Trust by Children or Agents. The transfer of any property to this Trust for the benefit of Settlor may be made by a majority of the then living and competent children of Settlor who are above the age of eighteen (18) years (with or without any formal written instrument designating them as agents) or by a duly appointed or designated agent under a power of attorney.

(c) Indemnification of Trustee and Third Parties. The Trustee is fully protected in accepting transfers to the Trust pursuant to these provisions, and shall have no liability whatsoever in relying upon such written instructions, directions, or transfers. Settlor hereby indemnify and hold harmless any third party who

accepts and acts under this direction against any and all claims, demands, losses, damages, actions and causes of action, including expenses, costs and reasonable attorneys' fees, which such third party may incur in connection with such third party's reliance on this direction to transfer any and all of Settlor's property to this Trust.

1.7. General Testamentary Power of Appointment by Settlor Husband. Settlor Husband shall have the power to appoint his separate property in this Trust as well as his community one-half interest in the property in this Trust to any persons, entities, corporations, creditors, and/or to his estate, pursuant to a clause in his Last Will and Testament. Settlor Husband must, however, exercise this general testamentary power of appointment by making specific reference to this Section 1.7 of this Trust Agreement, and must further designate the beneficiaries of this Trust Estate and the shares, proportions and amounts to which each shall be entitled, and whether such appointment is in trust for, or is directly to, such beneficiaries.

1.8. General Testamentary Power of Appointment by Settlor Wife. Settlor Wife shall have the power to appoint her separate property in this Trust as well as her community one-half interest in the property in this Trust to any persons, entities, corporations, creditors, and/or to her estate, pursuant to a clause in her Last Will and Testament. Settlor Wife must, however, exercise this general testamentary power of appointment by making specific reference to this Section 1.8 of this Trust Agreement, and must further designate the beneficiaries of this Trust Estate and the shares, proportions and amounts to which each shall be entitled, and whether such appointment is in trust for, or is directly to, such beneficiaries.

## ARTICLE II

### PROVISIONS REGARDING THE DIVISION OF THE FAMILY TRUST INTO SEPARATE TRUSTS

The Trustee shall divide the Trust Estate into separate trusts pursuant to the terms, provisions and conditions of this Article II of the Trust Agreement.

2.1. Division Date for Family Trust. The Trustee shall divide the Trust Estate of the Family Trust into the separate trusts, discussed below, as of the date of death of the predeceasing Settlor, irrespective of which Settlor dies first. The actual or presumed survivor as between Settlers shall be referred to in this Trust Agreement as the "Surviving Settlor."

2.2. Creation and Funding of Trust A. The Trustee shall establish a separate Trust for the benefit of the Surviving Settlor, and shall designate such Trust as "Trust A." The Trustee shall allocate assets of the Trust Estate to Trust A pursuant to the following applicable provisions:

(a) Life Insurance and Employee Benefit Plans. The Trustee shall allocate to Trust A those policies or proceeds of life insurance and employee benefit plans payable by reason of the death of the first Settlor of which the Trustee is the designated beneficiary to the following extent only: (1) all to the extent that these proceeds represent the Surviving Settlor's separate property ownership in the underlying policy or plan; and (2) one-half ( $\frac{1}{2}$ ) to the extent that these proceeds represent the community property ownership of the Surviving Settlor in the underlying policy or plan. To the extent, however, that any employee benefit plan proceeds, when received, are exempt from federal estate taxes imposed by reason of the death of the first Settlor and also exempt from federal gift taxes if a disposition of the Surviving Settlor's interest in the proceeds is made to Trust C, none of these proceeds shall be allocated to Trust A notwithstanding the community property ownership in the policy or plan.

(b) Surviving Settlor's Community and Other Separate Property. The Trustee shall allocate to Trust A one-half ( $\frac{1}{2}$ ) of all other community property of Settlers and all other separate property of the Surviving Settlor which was added to the Trust Estate during the joint lifetimes of Settlers.



(c) Additional Property of the Surviving Settlor. The Trustee shall allocate to Trust A the following additional property of the Surviving Settlor: (1) any interest of the Surviving Settlor in the community property of Settlers which shall become a part of the Trust Estate pursuant to the election of the Surviving Settlor to have his or her interest in the community property pass under the Will of the first Settlor to die, or because of his or her decision to add any (or all) of his or her interests in their community property to Trust A, or for any other reason; and (2) any interest of the Surviving Settlor in his or her separate property which he or she decides to transfer to Trust A.

The children of the Surviving Settlor, as well as a designated or appointed agent of the Surviving Settlor, shall have the power to effectuate such transfers to Trust A, and the Trustee shall be fully protected and shall not be held liable for accepting such property of the Surviving Settlor pursuant to the actions of the children or such agent.

2.3. Creation and Funding of Trust B. The Trustee shall establish a separate Trust, to be designated as Trust "B," and shall allocate assets of the Trust Estate to Trust B under a pecuniary formula marital deduction. This pecuniary formula marital deduction shall be calculated and funded (if any) pursuant to and expressly conditioned upon the terms and provisions regarding this bequest to Trust B as outlined in the attached Exhibit "A" (STANDARD TRUST PROVISIONS) regarding the calculations and conditions of this marital deduction.

In the event the computational conditions produce a pecuniary formula marital deduction of zero, then the Trustee shall not establish nor fund Trust B.

2.4. Creation and Funding of Trust C. The Trustee shall establish a separate Trust, to be designated as Trust "C," and shall allocate all of the remaining assets of the Trust Estate (including any assets disclaimed by the Surviving Settlor) to Trust C.

## ARTICLE III

### TRUST A PROVISIONS (The Surviving Settlor's Trust)

The Trustee shall hold, manage, invest and reinvest the principal of Trust A (if established), and shall hold and dispose of the income and principal of Trust A, as provided by this Article III of the Trust Agreement.

3.1. Beneficiary of Trust A. The Surviving Settlor shall be the sole Beneficiary of Trust A for so long as he or she lives.

3.2. Income and Principal Distributions. The Trustee may distribute at convenient intervals so much of the net income and/or principal of Trust A to or for the benefit of the Surviving Settlor for so long as he or she lives for any reason, at any time, and for any purpose, specifically including distributions as are necessary or appropriate for the Surviving Settlor's health, maintenance and support, in accordance with the standards of living maintained by him or her at that time. It is Settlor's expressed intent that the income and principal of Trust A should be consumed entirely before invading the principal of Trust B (if established) and/or the income and principal of Trust C for the benefit of the Surviving Settlor if, of course, such order of invasions is advisable.

3.3. Special Provisions for Surviving Settlor. The Surviving Settlor shall have the following additional special powers over the income and principal of Trust A.

(a) Power to Withdraw Income and Principal. The Surviving Settlor shall, during his or her lifetime, have the unlimited power from time to time and at any time to require the Trustee to distribute all or any portion of the income and/or principal of Trust A to the Surviving Settlor if he or she delivers a written letter or instrument to the Trustee which specifies the amount of such withdrawal.

(b) Special Lifetime Power of Appointment. The Surviving Settlor shall have the additional limited power to appoint any portion of the principal of Trust A to any person, entity, charity, trust, or association. This special lifetime power of appointment may be exercised by the Surviving Settlor by delivering to the Trustee at any time and from time to time a written letter or instrument which makes specific reference to this special lifetime power of appointment, and which further specifies to whom and the extent to which the Surviving Settlor is exercising this limited power.

3.4. Termination of Trust A and Distributions of Remaining Trust Estate.

Trust A shall terminate upon the death of the Surviving Settlor. The Trustee shall distribute the remaining Trust Estate of Trust A pursuant to the following applicable provisions:

(a) General Testamentary Power of Appointment. The Surviving Settlor shall have the power to appoint the remaining Trust Estate of Trust A to any persons, entities, corporations, creditors, and/or to his or her estate, pursuant to a clause in his or her Last Will and Testament. The Surviving Settlor must, however, exercise this general testamentary power of appointment by making specific reference to this paragraph (a) of Section 3.4 of the Trust Agreement, and must further designate the beneficiaries of this Trust A Estate and the shares, proportions and amounts that each shall be entitled to, and whether such appointment is in trust for or is directly to such Beneficiaries.

(b) Alternative Distribution to Trust C. In the event that Surviving Settlor fails to exercise the above general testamentary power of appointment (in whole or in part), then the Trustee shall distribute the remaining Trust A estate to the Trustee, and its successors, of Trust C, to have and to hold as part of Trust C. The Trustee shall distribute the remaining Trust A Estate to Trust C within a reasonable period of time following the death of the Surviving Settlor, taking into account, however, the period of administration of the Surviving Settlor's Estate.

## ARTICLE IV

### TRUST B PROVISIONS (The Marital Deduction Trust)

The Trustee shall hold, manage, invest and reinvest the principal of Trust B (if established), and shall hold and dispose of the income and principal of Trust B, as provided by this Article IV of the Trust Agreement.

4.1. Beneficiary of Trust B. The Surviving Settlor shall be the sole Beneficiary of Trust B (if established) for so long as he or she lives.

4.2. Mandatory Distributions of Income. The Trustee shall distribute at convenient intervals, but at least as often as quarterly, all of the net income from Trust B to or for the benefit of the Surviving Settlor for so long as he or she lives.

4.3. Discretionary Distributions of Principal. The Trustee may also distribute so much or all of the principal of Trust B to or for the benefit of the Surviving Settlor as is necessary or appropriate for his or her health, maintenance and support. The Independent Trustee (only) may also distribute so much or all of the principal of Trust B to or for the benefit of the Surviving Settlor at any time and from time to time when the Independent Trustee, in its sole and absolute discretion, determines that such a distribution or distributions is advisable or appropriate for any purpose and for any reason.

Settlors hereby direct the Trustees to at least consider the availability of the Surviving Settlor's other sources of funds, specifically including funds in Trust A but specifically excluding any funds in Trust C. In an effort to reduce the amount of estate taxes that may be imposed upon the Surviving Settlor's Estate, the Trustee should make an effort to first utilize the income and principal of Trust A, and then the income and principal of this Trust B, before ever

invading the income and principal of Trust C for the benefit of the Surviving Settlor, if such order of invasion is advisable at that time and from time to time.

Settlors want to further provide, however, that this suggested order of invasion is not a direction but rather a suggestion, and the Trustee should not, therefore, hesitate to invade the principal of this Trust B for the Surviving Settlor if advisable or appropriate under the circumstances that exist at such time.

4.4. Termination of Trust B and Distributions of Remaining Trust Estate. Trust B shall terminate upon the death of the Surviving Settlor. The Trustee shall distribute the remaining Trust Estate of Trust B upon termination pursuant to the following provisions:

(a) General Testamentary Power of Appointment Over Undistributed Income. The Surviving Settlor shall have the power to appoint any accumulated, undistributed income of Trust B to any persons, entities, corporations, creditors, and/or his or her estate, pursuant to a clause in his or her Last Will and Testament. The Surviving Settlor must, however, exercise this general testamentary power of appointment by making specific reference to this paragraph (a) of Section 4.4 of the Trust Agreement, and must further designate the beneficiaries of such amounts (if any) and the shares, proportions and amounts that each shall be entitled to, and directly to such beneficiaries. In the event the Surviving Settlor fails to exercise this general testamentary power of appointment (in whole or in part), then any accumulated, undistributed income shall be distributed in accordance with paragraph (b) of this Section.

(b) Distribution to Trust C. The Trustee shall (subject to the provisions contained in Exhibit "A" regarding the reserves and withholding of an amount of property for taxes and expenses) distribute the remaining Trust B Estate to the Trustee, and its successors, of Trust C, to have and to hold as part of Trust C. The Trustee shall distribute the remaining Trust B Estate to Trust C within a reasonable period of time following the death of the Surviving Settlor, taking into account, however, the period of administration of the Surviving Settlor's Estate.

## ARTICLE V

### TRUST C PROVISIONS (The Trust for the Surviving Settlor and Descendants)

The Trustee shall hold, manage, invest and reinvest the principal of Trust C, and shall hold and dispose of the income and principal of Trust C, as provided by this Article V of the Trust Agreement.

5.1. Beneficiaries of Trust C. The Surviving Settlor as well as the descendants of Settlers shall be the Beneficiaries of Trust C (referred to for convenience as the "Beneficiary" or "Beneficiaries").

5.2. General Guide for Trustee. As a guide to the Trustee, but without intending to limit or control the Trustee's discretion, Settlers want to give the Trustee their general expressions of intent as to the purpose and general objectives of this Trust C. These expressions of intent will, for convenience, be stated in the first person.

Our primary objective is to provide for the relative needs of the Surviving Settlor for so long as he or she lives, while at the same time maximizing the benefits, both tax and otherwise, that can be realized through the execution of this Trust Agreement. Accordingly, we recommend, but do not require, that the Trustee make distributions of income and principal to the Surviving Settlor pursuant to its discretionary powers and in accordance with the applicable standards, out of Trust A and Trust B before making distributions to him or her out of this Trust C. Inasmuch as this procedure could generate substantial tax savings, we want our Trustee to make every possible effort to accomplish this objective, even to the extent of selling assets from Trust A and/or Trust B to Trust C, or borrowing money for Trust A and/or Trust B out of

Trust C, to generate sufficient funds to consume Trust A and Trust B prior to invading this Trust C for the benefit of the Surviving Settlor.

This procedure should facilitate our secondary objective, which is to provide for the health, maintenance, education and support of our children during the term of this Trust C. In the absence of competing circumstances, the Trustee should make an effort to provide equality of distributions among our children during the Surviving Settlor's lifetime. However, disparate needs may and probably will arise, particularly as to their health and medical expenses, and perhaps also as to their educational needs as well. The Trustee should not, therefore, hesitate to make unequal distributions to or for the benefit of our children if, in the Trustee's discretion, such disproportionate distributions are advisable or necessary.

Above all else, however, we want the Surviving Settlor to feel secure and happy. We therefore expect our Trustee to always consider his or her needs and situation in life prior to any other Beneficiaries to make sure the survivor is comfortable, secure and as happy as possible under the circumstances.

5.3. Discretionary Income and Principal Distributions. The Trustee may distribute so much or all of the net income and/or principal of Trust C to or for the benefit of the Beneficiaries as, when added to other sources of funds available to them at that time, is necessary or appropriate to provide for their respective health, education, maintenance and support in accordance with their respective standard of living maintained at that time. The Independent Trustee (only) may also distribute so much or all of the net income and principal of Trust C to or for the benefit of the Beneficiaries at any time and from time to time when the

Independent Trustee, in its sole discretion, determines that such a distribution or distribution is advisable or appropriate for any purpose and for any reason.

The Trustee is authorized to make payments to or for one or more of the Beneficiaries to the possible exclusion of one or more of them, and may, subsequent to the death of the first Settlor to die, completely exhaust the principal of this Trust for these purposes since it is not the primary concern of Settlers to leave a cash legacy for the Beneficiaries upon the natural termination of this Trust.

Distributions made to or for the benefit of a Beneficiary shall not be charged against the presumptive share, if any, of the particular Beneficiary, and the Trustee's decision and judgment concerning distributions will be binding upon all Beneficiaries, their heirs and respective successors (if any) in interest.

5.4. Termination of Trust C and Distribution of Remaining Trust Estate.

Trust C shall terminate on the last day of the month from and after the date of death of the Surviving Settlor. The Trustee shall distribute the remaining Trust Estate of Trust C upon termination (allowing time for preparation and filing of federal estate tax return, as well as settlement with the Internal Revenue Service, if necessary), or shall continue to administer all or part of the Trust C Estate, pursuant to the following provisions:

(a) Division of Trust C Estate into Separate Shares. The Trustee shall divide the remaining Trust C Estate into equal shares, one (1) share for each child of Settlers then living (specifically, ALAN L. HAMILTON and SYLVIA L. HAMILTON), and one (1) share for the then living descendants of each deceased child of Settlers, on a per stirpes basis. Provided, however, the share set aside for ALAN L. HAMILTON shall include the farm and property located at 9902 Childress Drive, Austin, Texas.

(b) Distribution of Separate Shares. Within a reasonable time after calculating the value of the various shares, the Trustee shall distribute such shares



to the children or descendants of Settlers (whichever the case may be) as indicated by paragraph (a) of this Section, subject, however, to the provisions regarding continued trust administration of a share (or shares) because of the incompetency or age of a Beneficiary, as outlined by other provisions of this Trust Agreement.

5.6. Continuation of Trust for Descendants Under Twenty-One (21) Years. If

any child of Settlers should die prior to or during the existence of this Trust (including any continuation Trust for his or her benefit), that deceased child's share may pass to his or her respective descendants pursuant to other provisions of this Trust Agreement. To avoid the problems of guardianship and property management for such descendants, Settlers want to likewise provide for the continuation of a respective descendant's share of the Trust should he or she be below the age of twenty-one (21) years.

Accordingly, if any descendant of a deceased child shall become entitled to a portion of the Trust, but shall not have attained the age of twenty-one (21) years at such time, the Trustee shall retain that descendant's respective share (or portion of a share) in Trust, as a separate Trust, for his or her benefit. The Trustee may distribute so much of the income and/or principal of each such separate trust to the beneficiary of such trust as the Trustee shall determine is appropriate for such beneficiary's health, education, maintenance, and support. Upon attaining such age, the Trustee shall distribute the remaining property of that share (or portion of a share) to such descendant.

ARTICLE VI

INCORPORATION OF STANDARD TRUST PROVISIONS  
AND MISCELLANEOUS TRUST PROVISIONS

6.1. Incorporation by Reference of Standard Trust Provisions. Settlers hereby incorporate by reference into the primary portion of this Trust Agreement all of the terms, provisions and conditions of the STANDARD TRUST PROVISIONS contained in the attached Exhibit "A" (STANDARD TRUST PROVISIONS). These terms, provisions and conditions shall be construed as a part of this Trust Agreement for all purposes as though included in the primary portion of this Agreement. In the event any of the provisions of the STANDARD TRUST PROVISIONS conflict or otherwise do not conform to the provisions contained in the primary portion, then the provisions of this primary portion of the Trust Agreement shall in all events control the administration of the Trust unless specifically provided otherwise.

6.2. Powers Cumulative. The Trustee shall have all of the rights, powers and privileges as set forth in the Texas Trust Code (or its successor statute) governing the powers and responsibilities of Trustees. In the event, however, that any provisions of such Code or regulations in any way conflict or otherwise do not conform to the terms of this Trust Agreement (including the STANDARD TRUST PROVISIONS), then the provisions of this Trust Agreement shall in all events control the administration of the Trust to the extent permitted by law.

6.3. Related Trustees Restricted to Fiduciary Capacity. Any Related Trustee serving hereunder shall only exercise its powers and duties in a fiduciary capacity. It shall not have any power or duty that will jeopardize the marital deduction, and/or estate tax deduction



**EXHIBIT "A"**

**TO**

**THE HAMILTON FAMILY TRUST**