

## Section 16.07 Definitions

For purposes of this agreement, the following terms have the following meanings:

### (a) Adopted and Afterborn Persons

A legally adopted person in any generation and his or her descendants, including adopted descendants, has the same rights and shall be treated in the same manner under this agreement as natural children of the adopting parent, provided such person is legally adopted prior to attaining the age of 18 years. A person is deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred. A fetus in utero that is later born alive shall be considered a person in being during the period of gestation.

### (b) Agreement

The term “this agreement” means this trust agreement and includes all trusts created under the terms of this agreement.

### (c) Descendants

The term “descendants” shall include a person’s lineal descendants of all generations.

### (d) Education

The term “education” is intended to be an ascertainable standard in accordance with Section 2041 and Section 2514 of the Internal Revenue Code and shall include, but not be limited to:

Enrollment at private elementary, junior and senior high school including boarding school;

Undergraduate and graduate study in any field at a college or university;

Specialized, vocational or professional training or instruction at any institution, including private instruction; and

Any other curriculum or activity that my Trustee may deem useful for developing the abilities and interests of a beneficiary including, without limitation, athletic training, musical instruction, theatrical training, the arts and travel. The term “education” shall also include distributions made by my Trustee for expenses such as tuition, room and board, fees, books and supplies, tutoring and transportation and a reasonable allowance for living expenses.

(e) Grantor

The term “Grantor” has the same legal meaning as “Settlor,” “Trustor” or any other term referring to the maker of a trust.

(f) Incapacity

Except as otherwise provided in this agreement, a person is deemed incapacitated in any one of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual shall be deemed incapacitated whenever, in the written opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual shall be deemed restored to capacity whenever the individual’s personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

## (2) Court Determination

An individual is deemed incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

## (3) Detention, Disappearance or Absence

An individual is deemed incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance or absence or detention under duress may be established by an affidavit of my Trustee, or, if no Trustee is serving, by the affidavit of any beneficiary. The affidavit shall describe the circumstances of the individual's disappearance, absence or detention and may be relied upon by any third party dealing in good faith with my Trustee in reliance upon the affidavit.

## (g) Income Beneficiary

The term "income beneficiary" means any beneficiary who is then entitled to receive distributions of the net income of the trust, whether mandatory or discretionary.

Unless otherwise provided in this agreement, the phrase "majority of the income beneficiaries" means any combination of income beneficiaries who, if all accrued net income were distributed

on the day of a vote by the beneficiaries, would receive more than 50% of the accrued net income. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income are deemed to receive the income in equal shares.

References to a “majority” refer to a majority of the entire trust collectively until my Trustee allocates property to separate trusts or trust shares. After the allocation of property to separate trusts or trust shares, references to a “majority” refer to a majority of each separate trust or trust share.

#### (h) Income in Respect of a Decedent (IRD)

The term “income in respect of a decedent” or “IRD” means income received after a decedent’s death that would have been taxable to the decedent if the income had been received by the decedent during the decedent’s lifetime. For example, payments under qualified retirement plans and other deferred compensation arrangements are IRD. For purposes of this agreement, IRD means any income that would be classified as IRD under Section 691(a) of the Internal Revenue Code.

#### (i) Independent Trustee

The term “Independent Trustee” means a Trustee who is not an Interested Trustee as defined in subsection (j) and includes an Independent Special Trustee appointed under the provisions of Section 3.08. Whenever (1) a power is granted exclusively to an Independent Trustee or (2) the phrase “other than an Interested Trustee” is used, then the power or discretion may be exercised only by an Independent Trustee. Whenever this agreement specifically prohibits an Interested Trustee from exercising discretion or performing an act, then only an Independent Trustee may exercise that discretion or perform that act.

#### (j) Interested Trustee

The term “Interested Trustee” means a Trustee who (1) is a transferor or beneficiary; (2) is related or subordinate to a transferor or beneficiary; (3) can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor; or

(4) can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.

For purposes of this subsection, (1) “transferor” means a person who transferred property to the trust, including a person whose disclaimer resulted in property passing to the trust; (2) “beneficiary” means a person who is or in the future may be eligible to receive income or principal from the trust pursuant to the terms of the trust, even if such person has only a remote contingent remainder interest in the trust, but not if the person’s only interest is as a potential appointee under a power of appointment; and (3) “related or subordinate” means related or subordinate within the meaning of Section 672(c) of the Internal Revenue Code.

#### (k) Internal Revenue Code and Treasury Regulations

References to the “Internal Revenue Code” or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the “Treasury Regulations,” are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this agreement. The same rule shall apply to references to the Treasury Regulations.

#### (l) Legal Representative or Personal Representative

As used in this agreement, the term “legal representative” or “Personal Representative” means a person’s guardian, conservator, executor, administrator, Trustee, or any other person or entity personally representing a person or the person’s estate.

#### (m) Per Capita at Each Generation

Whenever a distribution is to be made to a designated person’s descendants “per capita at each generation,” the distribution shall be divided into as many equal shares as there are, at the time, descendants in the nearest degree of kinship to the designated ancestor and then deceased descendants in the same degree who left then living descendants, each then living descendant in the nearest degree receiving one share. The remaining shares, if any, are combined and then divided in the same manner among the then living descendants of the deceased descendants as if

the then living descendants who received a share, and their descendants, had predeceased the date of distribution.

(n) Permissible Distributee

“Permissible Distributee” means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

(o) Primary Beneficiary

The primary beneficiary of a trust created under this agreement is the oldest income beneficiary of that trust unless some other individual is specifically designated as the primary beneficiary of that separate trust.

(p) Qualified Beneficiary

“Qualified Beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined:

(1) is a distributee or Permissible Distributee of trust

income or principal;

(2) would be a distributee or Permissible Distributee of

trust income or principal if the interests of the

distributees described in subparagraph (1) terminated

on that date; or

(3) would be a distributee or Permissible Distributee of

trust income or principal if the trust terminated on that

date.

(q) Qualified Retirement Plan

The term “qualified retirement plan” means a plan qualified under Section 401 of the Internal Revenue Code, an individual retirement arrangement under Section 408 or Section 408A or a tax-sheltered annuity under Section 403. The term “qualified retirement benefits” means the amounts held in or distributed pursuant to a plan qualified under Section 401, an

individual retirement arrangement under Section 408 or Section 408A, a tax-sheltered annuity under Section 403 or any other benefit subject to the distribution rules of Section 401(a)(9).

(r) Shall and May

Unless otherwise specifically provided in this agreement or by the context in which used, I use the word “shall” in this agreement to command, direct or require, and the word “may” to allow or permit, but not require. In the context of my Trustee, when I use the word “may” I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in this agreement.

(s) Trust

The terms “this trust” or “this trust agreement” shall refer to this agreement and all trusts created under the terms of this agreement.

(t) Trustee

The term “my Trustee” or “Trustee” refers to the Trustee named in Article One and to any successor, substitute, replacement or additional person, corporation or other entity that is from time to time acting as the Trustee of any trust created under the terms of this agreement. The term “Trustee” refers to singular or plural as the context may require.

(u) Trust Property

The phrase “trust property” shall be construed to mean all property held by my Trustee under this agreement, including all property that my Trustee may acquire from any source.