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BOOK 78 PAGE 229

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**THE VAN CLEAVE FAMILY  
REVOCABLE LIVING TRUST AGREEMENT**

BK 78 PG 229  
W.E. DAVIS CH. CLK.

This Agreement, entered into this 29<sup>th</sup> day of June, 1994, by and between JAMES EWING VAN CLEAVE and LILLIAN GRACE VAN CLEAVE of Desoto County, Mississippi, as Grantors and LILLIAN GRACE VAN CLEAVE as Trustee.

**ARTICLE I**

A. Trust Estate. The Grantors, hereby transfer to the Trustee the property identified in the attached Schedule A. That property, any property added to the Trust in accordance with the provisions of this Agreement, and all investments and reinvestments thereof (collectively the "Trust Property"), shall be held IN TRUST upon the terms set out below. By execution of this Agreement, the Trustee acknowledges acceptance of the duties of Trustee and hereby agrees to administer the Trust created by this Agreement according to its terms.

B. Name of Trust. For convenience this Trust shall be known and referred to as **THE VAN CLEAVE FAMILY LIVING TRUST**, and shall be referred to in this Agreement as the "Trust." For purposes of formal correspondence, transfer of assets to the Trust, and for beneficiary designations, this Trust may be referred to as follows:

LILLIAN GRACE VAN CLEAVE, Trustee, or her successors in trust, under **THE VAN CLEAVE FAMILY LIVING TRUST** dated June 29, 1994, and any amendments to such Trust.

C. Family. The Grantors have one child, **JAMES POWELL VAN CLEAVE** referred to as "Child."

D. Successor Trustee. LILLIAN GRACE VAN CLEAVE is the sole initial Trustee. Upon resignation, or disability of the Trustee during her lifetime, then the son of the Grantors JAMES POWELL VAN CLEAVE, shall serve as Successor Trustee. In the event he is unwilling or unable to serve as Successor Trustee, then the grandson of the Grantors, THOMAS MARK VAN CLEAVE, shall serve as Successor Trustee.

Upon the death of the Trustee, JAMES POWELL VAN CLEAVE, shall serve as Trustee. In the event he is unwilling or unable to serve as Trustee, then THOMAS MARK VAN CLEAVE, shall serve as Trustee.

## ARTICLE II

### REVOCABILITY

A. The Grantors can revoke or amend all or any part of this Trust at any time during their lifetime by delivering to any Trustee a written instrument signed by both Grantors specifying the intended amendment or revocation. The Trustee's consent is not required to amend or revoke the Trust, but no Trustee's duties, powers or liabilities can be changed without the Trustee's consent. A revocation or amendment is effective on the day it is delivered to any Trustee. When the Trust is completely revoked, the Trustee shall transfer all of the trust funds to the Grantors. If one of the Grantors becomes disabled, then the Trust may be amended or revoked by the other Grantor. If both of the Grantors become disabled, then the Grantors may not revoke or amend this Trust during the disability of both Grantors, but if the disability ceases for one Grantor, that Grantor may revoke or amend this Trust after any such disability has ceased. To the extent necessary to carry out these provisions, a durable power of attorney is hereby granted by each Grantor

to the other Grantor. The existence and cessation of disability shall be determined as provided in Article III.

B. Upon the death of the first Grantor, hereinafter called the "Deceased Spouse", the then surviving Grantor, hereinafter called the "Surviving Spouse", shall have the power to amend, revoke and/or terminate TRUST A (the marital deduction trust) only, and TRUST B (the exemption equivalent trust), hereinafter established, may not be amended, revoked or terminated. On revocation of TRUST A, all of its assets shall be delivered to the Surviving Spouse. Revocation and amendment shall be made by written instrument filed with the Trustee.

### ARTICLE III

#### DURING LIFE TIME OF GRANTORS

A. Payment of Expenses; Distributions to Grantors. During their life, the Trustee will pay any taxes, commissions or other expenses incurred with respect to the Trust, and distribute to the Grantors all of the Trust's net income at least quarterly, or more frequently if they so direct, and so much of its principal (including all or none) as they shall request from time to time or the Trustee deems appropriate for their comfort and care.

B. Payments Upon Disability. If one of the Grantors becomes disabled, as defined below, the Trustee may distribute to that Grantor or for his or her benefit, or to any one or more of his or her attorneys-in-fact, so much of the Trust income and principal as Trustee shall determine in its uncontrolled discretion to be necessary and appropriate for the purposes set out below:

1. To provide for his or her health, maintenance and support, including but not limited to the payment of his or her medical, dental, hospital, home health and nursing care expenses;
2. For the discharge of any obligation that is, in the Trustee's opinion, legally enforceable against the Grantor;
3. To fulfill any other purpose or purposes that the Trustee believes to be directly beneficial to the Grantor; and
4. To make such distributions to the Grantor or to any one or more of his or her attorneys-in-fact from the Trust Property as are necessary for the Grantor or his or her attorneys-in-fact, acting in his or her behalf, to carry out any plan or pattern of gifts that had previously apparently been established or clearly contemplated by the Grantor, including the making of additions to any then-existing trust or trusts, whether created by the Grantor or others.

C. Definition of Disability. A Grantor will be considered "disabled" and unable to serve as a Trustee whenever any person or institution that would become Successor Trustee upon his or her disability receives written certifications from two physicians familiar with his or her physical and mental condition, and not related to him or her, stating that he or she is unable for any reason to transact ordinary business rationally and prudently. The Successor Trustee shall then immediately assume all the rights, powers, responsibilities, privileges and immunities of Trustee hereunder, and no judicial determination of incapacity shall be required.

D. Resignation; Resumption of Duties. The Trustee may also resign from her duties as Trustee if she feels unable to carry out the duties of Trustee or desires to resign for any reason, and she shall provide written notice of such resignation to the Successor Trustee. If, after she has resigned or been determined disabled, she should advise the Successor Trustee that in his opinion his disability has ceased and she wishes to serve again as Trustee, and the Successor Trustee shall receive written certifications from the persons (or their successors) set out above that the former Trustee is no longer incapacitated and is again able to manage her own personal and financial affairs, the Successor Trustee shall resign in his favor, and the Successor Trustee shall be entitled to its usual fees and expenses, if any in connection with the transfer of the assets and responsibilities. If the Successor Trustee shall serve as such only temporarily, this shall have no effect on the Trustee serving again upon the Trustee's subsequent disability or death.

E. Reliance Upon Certificates. No Trustee is liable to anyone, including the Grantors, for removing the Trustee from her position as Trustee, if the Trustee relied in good faith upon the certificates described above. No one else is liable to a Grantor or any other person for dealing with a Trustee other than the initial Trustee after the initial Trustee's removal upon good faith reliance upon such certificates.

F. Tax Protection Upon Disability. During any period that both Grantors are disabled, as defined above, unless or until a court determines otherwise, any attempt by the disabled Grantors to exercise the reserved rights of revocation and amendment set out in ARTICLE II of this Agreement shall be void and without effect, and this Trust shall be irrevocable and not capable of amendment by the disabled Grantors during such time. The

Grantors do not intend that any taxable gift or other transfer for income tax purposes be deemed to be made by reason of such irrevocability. The Grantors therefore at all times shall have the power to appoint to any person who is designated in any way in this Agreement as a present or contingent beneficiary any and all Trust Property contained in this Trust at the time of their death, such power being exercisable only by a specific reference to such power in their will or a codicil duly proved for probate. The Trustee then acting under this Agreement in their capacity as the Grantors' attorney-in-fact, as appointed herein shall succeed to the Grantors' reserved power of revocation, if any, when they cease to have such power as a result of the provisions of this paragraph. The Grantors' attorney-in-fact shall exercise or not exercise its reserved power of revocation in whole or in part as it shall determine the Grantors would wish in carrying out what appears to them to have been their intention in creating and maintaining this Trust, recognizing that unless the dispositive provisions of their wills have been changed since the date of this Agreement, any such revocation will not substantially affect the ultimate beneficial interests of any beneficiary hereunder.

G. Appointment of Attorneys-In-Fact. The Grantors hereby appoint the Trustee at any time acting under this Agreement as their true and lawful attorney-in-fact (and, if more than one Trustee is then serving, they may act together or any one of them may act alone), and the Grantors authorize and empower each such attorney-in-fact to do and perform the following duties for them and in their name, place and stead:

1. To make, verify, sign and file federal, state and local income, gift and other tax returns of all kinds, claims for refunds, requests for extension of time, petitions

to the Tax Court and other courts regarding tax matters, and any and all other tax related documents, including receipts, offers, waivers, consents, powers of attorney, closing agreements, etc., and generally with respect to all tax matters of all kinds and for all periods to perform any and all acts that the Grantors can perform and represent them before any and all offices and officers of the Internal Revenue Service and any other taxing authority, including receipt of confidential information and refund checks (and to endorse the same) and to cause them to be represented in any and all such proceedings;

2. To make any and all kinds of gifts and other transfers in their behalf to the extent described in this Agreement; and

3. To revoke this Trust in whole or in part to the extent set out in this Agreement.

This power of attorney shall not be affected by the Grantors disability, incompetence or incapacity, nor by lapse of time, and such power of attorney as to one or more Trustees may be revoked only by my amendment or revocation of this Agreement in the manner provided in ARTICLE II.

H. Special Provisions For Gifts During Grantors' Life. The Grantors intend that all gift transfers made from the Trust Property during the Grantors' life, if made by a Trustee other than the Grantors, be first distributed to the Grantors and then transferred by the Grantors or their attorney or attorneys-in-fact to the donee. If Trust Property should be transferred directly from the Trust or its nominee into the names of the donee to avoid the expense and delay of retitling, such transfer is intended to be treated for all purposes as first a distribution of the property by the Trustee to the Grantors or to their attorney or

attorneys-in-fact, followed by a gift transfer of the Trust Property to the donee by the Grantors as donors, acting individually or through one or more of their attorneys-in-fact, whether appointed under this ARTICLE III or otherwise.

#### ARTICLE IV

##### AT THE DEATH OF A DECEASED SPOUSE

A. Division at Death of Deceased Spouse. Upon the death of the Deceased Spouse, the Trustee shall divide the trust estate, including any additions made to the trust by reason of the Deceased Spouse's death, such as from the Deceased Spouse's Will or life insurance policies on the Deceased Spouse's life, into two (2) separate trusts, designated as TRUST A and TRUST B. The date of allocation may be no later than six (6) months from the date of death of the Deceased Spouse.

1. TRUST B Assets. There shall be placed in TRUST B that amount of the trust property included in the trust estate which is the largest amount, if any, which, if allocated to Trust B would result in no increase in federal estate tax payable at the death of the Deceased Spouse by reason of taking into account the unified credit (as defined in Sec. 2010 of the Internal Revenue Code of 1986 as amended) and the credit for state death taxes (but only if use of the state death tax credit does not require an increase in the state death taxes, including Mississippi inheritance or other death taxes, paid which are computed by reference to that state death tax credit. However, if the Deceased Spouse's interest in the trust estate which is included in or would be includable in the Federal Estate Tax return for the Deceased Spouse, is less than such exemption equivalent amount, then the Deceased Spouse's entire said interest shall be placed in TRUST B. The assets placed in TRUST B

shall not be subject to an election to be treated as qualified terminable interest property and no person shall have any power to make such an election.

2. TRUST A Assets. There shall be placed in TRUST A the balance, if any, of the property included in the trust estate;

3. Distribution of Assets into Trusts. The Trustee shall designate, in its sole discretion, the assets which shall constitute each trust. The Trustee shall satisfy the amounts determined to be distributed to each trust in cash or in kind, or partly in cash and partly in kind, and the assets allocated in kind shall be determined to satisfy the amounts on the basis of their value at the date or dates of distribution to the respective trusts. The power of the Trustee to make distributions in kind shall include the power to make non-pro rata distributions in kind without regard to the income tax basis of assets so distributed. However, no allocation of assets shall be made to TRUST A which do not qualify for the marital deduction.

4. Vested Interest. Regardless of the date of allocation of assets into TRUST A and TRUST B by the Trustee, the interest of the Surviving Spouse in each trust shall be vested immediately upon the death of the Deceased Spouse and the Surviving Spouse shall be immediately entitled to such income from the trusts as is hereinafter set forth and may appoint his or her TRUST A share as provided in ARTICLE V B.

5. Payment of Debts of Deceased Spouse. On the death of the Deceased Spouse, the Trustee may, in the Trustee's discretion, pay, out of the trust, debts of the Deceased Spouse the estate and inheritance taxes, including interest and penalties, arising because of the Deceased Spouse's death; the last illness and funeral expenses of the

Deceased Spouse; attorneys' fees and other costs incurred in administering the Deceased Spouse's estate. The Trustee may pay any such taxes directly or, alternatively, in the sole discretion of the Trustee, distribute such sums to the Executor of the estate of the Deceased Spouse as shall be necessary to pay all or any portion of such taxes.

**B. TRUST A.**

1. **Distribution of Income and Principal.** During the life of the Surviving Spouse, the Trustee shall pay to or apply for the benefit of such Surviving Spouse the entire net income of the trust in quarter-annual or more frequent intervals. Additionally, the Trustee may distribute such portion of the principal of TRUST A, up to and including the whole thereof, as the Trustee deems to be in the best interest of the Surviving Spouse.

2. **Appointment Exercisable During Life.** During the life of the Surviving Spouse, such Surviving Spouse may, by a written instrument filed with the Trustee and signed by the Surviving Spouse, direct the Trustee to distribute any amount of income and/or principal of TRUST A, up to and including the whole thereof, to himself or herself, or to his or her estate, his or her creditors, or the creditors of his or her estate, or to any other individual designated by such Surviving Spouse.

3. **Appointment Exercisable at Death.** Upon the death of the Surviving Spouse, the Trustee shall distribute the principal of TRUST A and any accrued or undistributed net income thereon to such person or persons, including the estate, the creditors, or the creditors of the estate of the Surviving Spouse, outright or in trust, or upon such conditions and estates, and with such powers, in such manner and at such time or times, as appointed and directed by the last unrevoked written instrument executed by the Surviving Spouse and

on file with the Trustee at the date of death of the Surviving Spouse or, if no such written instrument exists, as appointed and directed by such Surviving Spouse's Last Will, with such Will specifically referring to this power of appointment. Unless within ninety (90) days after the death of the Surviving Spouse the Trustee has actual notice of the existence of such a written instrument or Will, it shall be deemed for all purposes hereunder that such power of appointment was not exercised (but the provisions of this paragraph shall not affect any right which an appointee or beneficiary in default of appointment may have against any distributee).

4. **Distribution of TRUST A in Lieu of Appointment.** After the death of the Surviving Spouse, to the extent that the Surviving Spouse does not exercise this power of appointment, the principal of TRUST A and any accrued or undistributed net income thereon, after payment of any estate or inheritance taxes, debts and expenses, shall be added to and commingled with TRUST B and shall be held, administered and distributed, in whole or in part, as if it had been an original part of TRUST B.

5. **Payment of Expenses of Surviving Spouse's Estate.** After the death of the Surviving Spouse, the Trustee may, in the sole discretion of the Trustee, pay the estate and inheritance taxes and any debts and expenses of the Surviving Spouse from TRUST A.

C. **TRUST B.**

1. **Distribution of Income.** On the death of the deceased Spouse, the Trustee shall pay to or apply for the benefit of the Surviving Spouse the net income of TRUST B in quarter-annual or more frequent intervals.

2. **Invasion of Principal.**

(a) The Trustee may, in the Trustee's sole discretion, pay to or apply for the use and benefit of the Surviving Spouse such part of the principal of TRUST B, up to and including the whole thereof, as is necessary for such reasonable health, support and maintenance.

(b) Additionally, the Trustee may pay to the Surviving Spouse such part of the principal of TRUST B as such Surviving Spouse shall request in writing from time to time; provided, however, that the amount distributed to such Surviving Spouse during a calendar year shall not exceed the greater of Five Thousand Dollars (\$5,000.00) or Five Percent (5%) of the value of the trust, and such right of withdrawal shall not be cumulative, but shall lapse at the end of each calendar year not so exercised.

#### ARTICLE V

##### DISPOSITIVE PROVISIONS AFTER DEATH OF SURVIVING SPOUSE

A. Payment of Expenses. Upon the death of the Surviving Spouse, the Trustee shall pay or reserve sufficient funds to pay all expenses of management and administration of the trust estate, including the compensation of the Trustee and the attorney, all or any part of which shall be charged, in the Trustee's discretion, to income and /or principal of the trust estate. The remaining income shall be and is hereinafter referred to as "net income".

B. Distribution of Remainder of Trust Estate. Upon the death of the Surviving Spouse, the Trustee shall, after paying or reserving for all amounts payable, as provided above distribute the remainder of the trust estate, including the assets of TRUST B and any and all property added to TRUST B from TRUST A pursuant to ARTICLE IV B. 4.

hereinabove, out right and free of trust to JAMES POWELL VAN CLEAVE, one hundred percent (100%)

C. Distribution of Deceased Beneficiary's Share. In the event the that JAMES POWELL VAN CLEAVE is not then living, the remainder of such trust estate shall be distributed to his then living issue per stirpes.

D. Power to Hold for Beneficiaries Under 21. Whenever pursuant to the provisions of this Trust, all or any part of the principal shall vest in absolute ownership in a beneficiary under age 21, the Trustee is authorized and empowered in the Trustee's discretion, to hold the property so vested in such Beneficiary, or any part thereof, in a separate fund for the benefit of such beneficiary, and to invest and reinvest the same, to collect the income therefrom, and, to apply so much of the net income and the principal thereof to the support, education, health and maintenance of such beneficiary as my Trustee shall see fit, and to accumulate, invest and reinvest the balance of such income until such beneficiary attains the age of twenty-one (21) and upon reaching the age of twenty-one (21) to pay over the unexpended principal, together with any accumulated income, to such beneficiary. If such beneficiary dies before attaining such age, such principal and income shall be paid over to the other issue of my Child per stirpes. With respect to the administration of any such property, my Trustee shall have all the powers vested in it under the provisions of this Trust.

E. Rule Against Perpetuities. Anything in this Trust to the contrary notwithstanding, no trust or share created hereunder shall continue in trust beyond twenty (20) years and eleven (11) months after the death of the last to die among a group

composed of those beneficiaries of my estate who were living at the time of my death, and upon the expiration of such period, all trusts shall terminate and the assets thereof shall be distributed outright to those beneficiaries, and in the same proportions, as are then receiving the income therefrom.

F. Spendthrift Provision. The interest of any beneficiary under any trust herein created shall not be subject to assignment, and such beneficiaries are hereby restrained from selling, transferring, hypothecating, assigning, or otherwise disposing of the principal of the trust or the income thereof before it comes into their hands, and such principal or income shall not be subject to execution or other legal process for any debt or liability, including the claims of any divorced spouse for alimony, any beneficiary may have contracted or may hereafter contract or be liable for in any manner.

#### ARTICLE V.

#### TRUST POWERS

In addition to those powers which the Trustee may have, either at law or in equity, the Grantors hereby expressly grant to it, and incorporate herein by reference, the fiduciary powers set forth in the Mississippi Code Annotated Section 91-9-107, as well as the following additional powers:

A. Power to Retain Trust Property and Comply with Existing Agreements. To continue to hold any property received in trust, including undivided interests in real property, and to operate any property or any business received in trust as long as the Trustee, in the Trustee's discretion, may deem advisable, notwithstanding the fact that any or all of the investments retained are of a character or size which, but for this express authority, would not be considered proper for the Trustee.

**B. Power to Manage Trust Property.** To manage, control, sell, convey, exchange, partition, divide, subdivide, improve and repair; to grant options and to sell upon deferred payments; to lease for terms within or extending beyond the duration of the trust, for my purpose, including exploration for and removal of oil, gas and other minerals; to enter into oil, gas and mineral leases, assignments, farmout, farmins and joint ventures; to purchase and sell gas, oil and mineral royalties, to create restrictions, easements, and other servitudes; to compromise, arbitrate, or otherwise adjust claims in favor of or against the trust; to institute, compromise and defend actions and proceedings; to construct, alter or demolish any buildings; and to carry such insurance as the Trustee may deem advisable.

**C. Power to Invest.** To invest and reinvest the principal and to purchase or acquire therewith every kind of property, real or personal, and every kind of investment, specifically including, but not by way of limitation, commodities of every nature, corporate obligations of every kind, precious metals such as gold or silver, and stocks, preferred or common, and to buy stocks, bonds, commodities and similar investments on margin or other leveraged accounts and to short sell such accounts, and to buy, sell and write stock and other security options, and to enter into commercial partnership as a partner, limited or general, and to operate any business as a sole proprietor. To open, operate and maintain a securities brokerage account wherein any securities may be bought and/or sold on margin, and to hypothecate, borrow upon, purchase and/or sell existing securities in such account as the Trustee may deem appropriate or useful.

**D. Power to Retain Trust Property without Diversification.** To retain, without liability for loss or depreciation resulting from such retention, original property, real or personal, at any time received by the Trustee, for such time as the Trustee shall deem best, even though such property may not be of the character prescribed by law or by the terms of this trust for the investment of trust funds, and although it may represent a large percentage of the total trust or estate property, and without being required to observe the principle of diversification of trust investments.

**E. Power to Retain Unproductive Property.** To retain uninvested all or any part of the trust estate from such time, and from time to time, as the Trustee may deem advisable.

**F. Power to Borrow.** To borrow money for any trust purpose upon such terms and conditions as the Trustee may deem proper, and to obligate the trust estate by mortgage, deed of trust, pledge, or otherwise, using such procedure to consummate the transaction as the Trustee may deem advisable and to pledge the assets of the trust estate to secure the guarantee by the Grantor of the debts of third parties.

**G. Power to Manage Securities.** To have, respecting securities, all the rights, powers and privileges of an owner, including the power to pay assessments and other sums deemed by the Trustee necessary for the protection of the trust estate; to participate in voting trusts, pooling agreements, foreclosures, recapitalizations, reorganizations, consolidations, mergers, and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscription or conversion rights, to accept and retain as an investment any securities or other property received through the exercise of the foregoing powers.

**H. Power to Partition, Allot and Distribute.** Upon any division or distribution of the trust estate, to partition, allot and distribute the trust estate in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee may deem necessary to make division or distribution. The power of the Trustee to make distributions in kind shall include the power to make non-pro rata distributions in kind without regard to the income tax basis of assets so distributed.

**I. Power to Determine Principal and Income.** Except as otherwise specifically provided in this Trust Agreement, the determination of all matters relating to principal and income and receipts and expenses shall be governed by the provisions of the Uniform Principal and Income Act or similar statute applicable in the State of Mississippi from time to time existing. Any such matter not provided for either in this instrument or in the Uniform Principal and Income Act or similar statute applicable in the State of Mississippi shall be determined by the

Trustee in the Trustee's discretion. The Trustee's powers shall be subject, at any time that a beneficiary shall be a Trustee hereunder, to the Trustee's duty to treat income and remainder beneficiaries equitably.

J. Power to Distribute Income. To make payments, if any, of the net income of the trust in quarterly or more frequent intervals as may be convenient to the Trustee. Upon the death of the income beneficiary of the trust during its continuance, any accumulated income which would have been paid to such beneficiary had he or she survived shall not be payable to his or her estate but shall be paid to his or her successors or successor in the interest in the trust as hereinabove provided.

K. Power to Employ Counsel. To employ counsel and corporate or other agents in the discharge of their duties and to pay them a reasonable compensation out of either income or principal, in the Trustee's discretion, and to rely upon the advice of counsel and to suffer no liability resulting from any action taken or withheld pursuant to such advice.

L. Power to Pay Taxes and Expenses Relative to Trust Property. To pay from time to time all taxes, assessments, including corporate assessments, and other charges levied or accruing against or on account of the trust property, and to pay all expenses of the trust, including reasonable compensation to the Trustee. To deduct all said taxes, assessments, charges and expenses from the income or principal of the trust as the Trustee may deem proper, giving consideration to whether it was income or principal or an allocation between them which gave rise to such taxes, charges and expenses.

M. Power to Hold Trust Property in the Name of a Nominee. To take title to any property in its name as Trustee hereunder or in its own name or in the name of a nominee without disclosing the trust, or, in the case of securities, to take and keep the same unregistered and to retain them in such manner that title may pass by delivery; or, in the case of real estate, to keep deeds unrecorded; or to deposit cash in a checking or savings account without indication of any fiduciary capacity.

N. Power to Distribute to or for the Benefit of Minor or Disabled Beneficiary. In any case in which a trust share is

distributable to a beneficiary who has not reached majority in the state of his or her residence, or in any case where mandatory or discretionary payments of income or principal are to be made to such a minor or other beneficiary under legal disability, the Trustee may, in its discretion, distribute income or principal directly to the beneficiary, to the guardian or parent of the beneficiary, to a bank account in trust, to a custodianship for the beneficiary or to a person with whom the beneficiary resides. The receipt of the beneficiary, guardian, parent or person shall discharge the Trustee from its responsibility for the proper expenditure of income or principal.

O. Power to Pay Taxes. To pay out of the trust shares or income interests giving rise to such taxes, all state, federal and local property taxes, income taxes and all other taxes relating to the trust estate.

P. Power to Lend. To lend money to any person, including the probate estate of either Co-Trustor, provided that any such loan shall be adequately secured and shall bear a reasonable rate of interest.

Q. Power to Insure. To carry insurance of such kinds and in such amounts as the Trustee deems advisable, at the expense of the trust, to protect the trust estate and the Trustee personally against hazard.

R. Power to Commence or Defend Litigation and to Compromise. To commence or defend, at the expense of the trust, such litigation with respect to the trust or any property of the trust estate as the Trustee may deem advisable, and to compromise or otherwise adjust claims or litigation against or in favor of the trust.

S. Power to Withhold Payment Pursuant to Conflicting Claims. To withhold from distribution, in the Trustee's discretion, at the time for distribution of any property in this trust, without the payment of interest, all or any part of the property, so long as the Trustee shall determine, in the Trustee's discretion, that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the trust estate. The Trustee is under no obligation to make such retentions and shall be under no liability whatever for the

exercise or the failure to exercise such discretion. The interests of the beneficiaries hereunder shall be vested regardless of whether or not such assets are so retained, and all income required to be distributed shall be payable to such beneficiaries in convenient intervals not less frequently than quarterly.

**T. Power to Adjust for Tax Consequences.** To take any action and to make any election, in the Trustee's discretion, in order to minimize the tax liabilities of this trust and its beneficiaries or to extend the time for payment of any tax liabilities. The Trustee shall allocate the benefits from such action or election among the various beneficiaries. The Trustee shall make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election, investment or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

**U. Power to Subject Trust Property to Probate.** It is the Grantor's intention to avoid probate through the use of this Trust Agreement. If, however, the Trustee of this trust and the Executor of the estate of Grantor shall mutually determine that it shall be in the best interests of the Beneficiaries of the trust, and the beneficial interests of the beneficiaries shall not thereby be altered, the Trustee may subject any asset to probate to accomplish a result unavailable without probate. This power shall be strictly construed and shall only be used to secure any tax or other benefit otherwise unavailable to trust.

**V. Power to delegate.** To perform or to delegate to any trustee or non-trustee any non-discretionary power, including the power to singularly or jointly open, close or transfer any type of bank account and savings and loan association account, sign checks, drafts, withdrawal slips or other documents, give instructions for the receipt or delivery of securities or other property, give instructions for the payment or the receipt of money and, singularly or with others, have access to any safe deposit box or other place containing property of this trust.

The Grantors hereby relieve the Trustee, herein named, from the obligation of giving bond or other security for the faithful performance of its duties as such, and the

Grantors specifically authorize any such Trustee to waive the requirement of any interim or final accounting or settlement by the Grantors' Personal Representatives and to execute and file with any court having proper jurisdiction any appropriate statement acknowledging proper distribution by the Grantors' Personal Representatives. The Grantors further waive on behalf of any Trustee under any trust herein created, responsibility for obtaining periodic formal appraisals with respect to the value of any real properties constituting a part of the corpus of any trust estate.

#### ARTICLE VI

##### CHANGE OR REGISTRATION OF TRUSTEE

In the event that a Trustee other than a named Trustee herein is serving as Trustee of any Trust created herein, the sole beneficiary or, if applicable, a majority of the adult beneficiaries of any such trust may change Trustees so long as any successor trustee is a bank or trust company with trust powers. Any such designation shall be in writing, signed by the applicable beneficiary or beneficiaries acknowledged and filed with the original and successor Trustees. The Grantors direct that insofar as is permitted by law, no Trustee appointed in accordance with these provisions shall be required to furnish any bond or other security in any state or jurisdiction for the faithful performance of its duties.

Notwithstanding the foregoing, any acting Trustee may resign at any time by giving thirty (30) days written notice to that effect to the beneficiary or, if applicable, the adult beneficiaries of the affected trust, in which event such beneficiary or, if applicable, a majority of such beneficiaries shall have the right to appoint a successor Trustee having the qualifications herein above set forth, and if they shall fail to appoint within said thirty (30)

day period, the Trustee shall have the right to petition a court of competent jurisdiction to appoint such successor Trustee under the terms hereof. Promptly after receiving notice of the appointment of a successor Trustee, the Trustee acting hereunder shall render a final accounting to the beneficiaries of the affected trust and shall transfer and deliver to such Trustee all trust assets then held by it, whereupon it shall have full and complete acquittance for all assets so delivered and shall have no further duties hereunder.

No Trustee appointed in accordance with these provisions shall be required to post any bond or other security for the faithful performance of its duties as such.

#### ARTICLE VII.

#### MISCELLANEOUS

B. Termination of Trusts. The Trustee may, in the Trustee's absolute discretion, terminate any Trust created in this Agreement when, in the Trustee's determination, the principal amount in Trust does not warrant the cost of continuing such Trust, or its administration would be otherwise impractical. Upon such termination, the Trustee shall pay over the principal and undistributed income of such Trust to the beneficiary then living to whom income payments could be made under such Trust immediately prior to its termination.

C. Mississippi Law. This Trust shall be governed by and construed according to the laws of the State of Mississippi.

D. Definitions. Whenever the context of this Trust requires, the masculine gender includes the feminine or neuter, and vice versa, and a singular number includes the plural

and vice versa. Whenever herein the term "Trustee" is used, it shall also refer to Co-Trustee as applicable.

References to "descendants" or "issue" means those naturally born to or legally adopted by their parents.

Agreed to by LILLIAN GRACE VAN CLEAVE and JAMES EWING VAN CLEAVE, as Grantors, and LILLIAN GRACE VAN CLEAVE, Trustee, on June 29, 1994.

GRANTORS:

Lillian Grace Van Cleave  
LILLIAN GRACE VAN CLEAVE

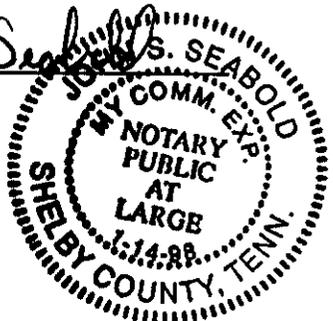
James Ewing Van Cleave  
JAMES EWING VAN CLEAVE

TRUSTEE:

Lillian Grace Van Cleave  
LILLIAN GRACE VAN CLEAVE

STATE OF TENNESSEE  
COUNTY OF SHELBY

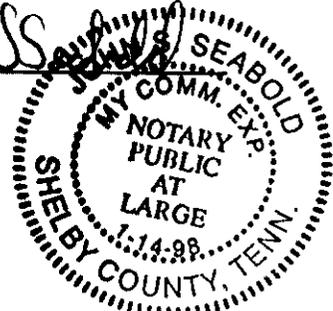
On this 29<sup>th</sup> day of June, 1994, before me personally appeared LILLIAN GRACE VAN CLEAVE, as Grantor, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Notary Public John S. Seabold  


My Commission Expires:  
1/14/98

STATE OF TENNESSEE  
COUNTY OF SHELBY

On this 29<sup>th</sup> day of June, 1994, before me personally appeared JAMES EWING VAN CLEAVE, as Grantor, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

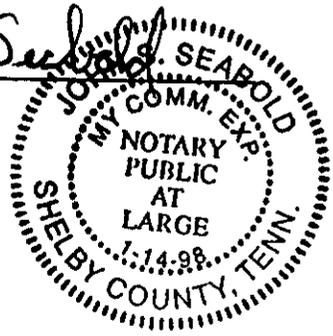
Notary Public John S. Seabold  


My Commission Expires:  
1/14/98

STATE OF TENNESSEE  
COUNTY OF SHELBY

On this 29<sup>th</sup> day of June, 1994, before me personally appeared **LILLIAN GRACE VAN CLEAVE**, as Trustee, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

John S. Seabold  
Notary Public



My Commission Expires:  
1/14/98

SCHEDULE A  
DESCRIPTION OF TRUST PROPERTY

All of my tangible personal property, including clothing, jewelry, personal effects, furniture and furnishings, household effects, linens, china, silver, crystal, art work, and automobiles, including all insurance thereon.

**DEED OF GIFT AND  
DECLARATION OF TRUST OWNERSHIP  
AS TO PERSONAL ARTICLES**

We, **JAMES EWING VAN CLEAVE** and **LILLIAN GRACE VAN CLEAVE**, declare that the following personal articles:

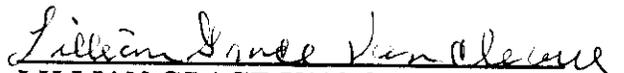
All of our tangible personal property, including clothing, jewelry, personal effects, furniture and furnishings, household effects, linens, china, silver, crystal, art work, and automobiles, including all insurance with respect thereto, which we presently own or hereafter acquire, regardless of the means by which acquired,

are hereby given and transferred to and the same shall be owned by **THE VAN CLEAVE FAMILY LIVING TRUST**, a revocable inter vivos trust existing under a certain trust agreement executed on even date herewith by us as grantors and by **LILLIAN GRACE VAN CLEAVE** as the initial Trustee.

This deed of gift and declaration of trust ownership is intended to be and shall be binding upon our heirs, personal representatives and assigns and shall be revocable and amendable only by written instrument executed by the Trustee of the referenced trust (with or without indicating such fiduciary capacity) with all of the same formalities as accompanied the execution of this instrument, provided, however, that this declaration may be terminated by us by written notice to the Trustee, but only as to articles acquired after the date of delivery of such notice.

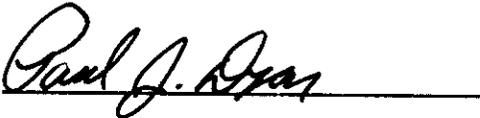
IN WITNESS WHEREOF, We have executed this instrument this 29<sup>th</sup> day of June, 1994.

  
\_\_\_\_\_  
**JAMES EWING VAN CLEAVE**

  
\_\_\_\_\_  
**LILLIAN GRACE VAN CLEAVE**

Witnesses:

  
\_\_\_\_\_

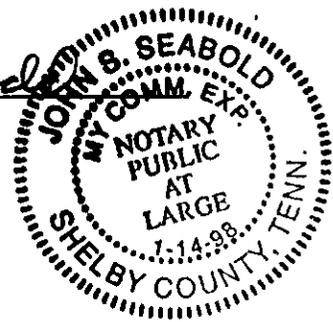
  
\_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF SHELBY

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of June, 1994  
by James Ewing VanCleave & Lillian Grace VanCleave

John S Seabold  
Notary Public

My Commission Expires:  
1/14/98



July 26, 1995

James P. Van Cleave  
7698 Rowan Lane  
Apartment 8  
Southaven, MS 38671

Dear Jim:

The purpose of this letter is to advise you that as of this date I am appointing you Trustee for The Van Cleave Family Living Trust.

Love,

*Lillian G. Van Cleave*

Lillian G. Van Cleave



*Aug. 16<sup>th</sup>, 1995*

*Vivian W. Arnett*

My Commission Expires Jan. 6, 1996