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**COUNSEL TO INDEPENDENT CO-EXECUTORS TO  
THE ESTATE OF DOROTHY COLLINS TORBERT**

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>Northwest Senior Housing Corporation,</b>	§	<b>Case No. 22-30659 (MVL)</b>
<b><i>et al.</i>,</b>	§	
	§	<b>(Jointly Administered)</b>
<b>Debtors.<sup>1</sup></b>	§	

**INDEPENDENT CO-EXECUTORS'  
MOTION FOR AN ORDER DIRECTING  
THE TRUSTEE OF THE RESIDENTS TRUST TO DISTRIBUTE  
AMOUNTS OWED TO THE ESTATE OF DOROTHY COLLINS TORBERT**

**NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, ROOM 1254, DALLAS, TEXAS 75242-1496 BEFORE CLOSE OF BUSINESS ON DECEMBER 11, 2023, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF. ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY. IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2699).



Michael James Collins, Nancy Collins Fisher, and Stuart Maryman Bumpas, as Independent Co-Executors to the Estate of Dorothy Collins Torbert (such co-executors, collectively, the “**Co-Executors**” and such estate, the “**DCT Estate**”), file this motion (the “**Motion**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), directing the Trustee (as defined below) to promptly distribute the Refundable Resident Deposit (as defined below) to any of the Co-Executors on account of the Trust Interests (as defined below) and granting related relief. In support of this Motion, the Co-Executors would respectfully show the Court as follows:

### **JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**Court**”) has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicate for the relief requested herein is section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9013 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 9007-1 and 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “**Local Bankruptcy Rules**”).

### **BACKGROUND**

4. Dorothy “Dee” Collins Torbert (“**Mrs. Torbert**”) was a long-time resident of the Community<sup>2</sup> prior to her death at the age of 99 on June 13, 2021.

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the *Fourth Amended Chapter 11 Plan of the Plan Sponsors Dated February 17, 2023* [Docket No. 1241] (the “**Plan**”).

5. Per the terms of the *Letters of Testamentary Independent Co-Executors* issued on September 22, 2021, by the State of Texas Probate Court No. 3, a copy of which is attached hereto as **Exhibit B**, the Co-Executors were appointed Independent Co-Executors to the DCT Estate.

6. Per the terms of that certain *Lifecare Agreement*, dated October 2007, between Mrs. Torbert and Northwest Senior Housing Corporation, a copy of which is attached hereto as **Exhibit C** (the “*Lifecare Agreement*”), any refundable portion of the resident deposit thereunder shall be refunded to the DCT Estate within 10 days of vacating and releasing the residential unit. Notwithstanding that Mrs. Torbert’s former residential unit was vacated and released promptly following her death, the DCT Estate did not receive the corresponding refund of the residential deposit set forth in the Lifecare Agreement.

7. On April 14, 2022, each of the debtors in the above-captioned case (collectively, the “*Debtors*”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

8. On June 8, 2022, the Court entered the *Order (I) Establishing Bar Dates, (II) Approving Form and Manner of Notice Thereof, and (III) Approving Procedures for Filing Proofs of Claim* [Docket No. 386], setting July 21, 2022, as the date by which all proofs of claim must be properly filed (except as otherwise set forth therein).

9. On June 28, 2022, the DCT Estate received notice from KCC, LLC, the claim agent acting on behalf of the Debtors, that Debtor Northwest Senior Housing Corporation scheduled “Resident 1719” as holding an unsecured claim in the amount of \$626,310, on account of an “Entrance Fee Refund” (such claim, the “*Refundable Resident Deposit*”). See Schedule E/F [Docket No. 240], Line No. 3.427. We have been advised that Resident 1719 was Mrs. Torbert.

10. On July 12, 2022, a proof of claim was filed on behalf of the DCT Estate, which asserted a claim against Debtor Northwest Senior Housing Corporation for the Refundable

Resident Deposit. *See* Claim No. 88. In accordance with Rule 3001(f) of the Bankruptcy Rules, such proof of claim constitutes prima facie evidence of the validity and amount asserted thereby and, as of the filing of this Motion, such proof of claim has not been challenged.

11. On August 11, 2022, the Co-Executors determined that the receivable on account of the Refundable Resident Deposit was an asset that could be distributed to the beneficiaries of the DCT Estate per the terms of the Last Will and Testament of Mrs. Torbert. Those beneficiaries are Mrs. Torbert's two surviving children, Michael James Collins and Nancy Collins Fisher, and the children of her pre-deceased daughter, Dorothy Christina Weaver Vest and David AB Weaver (collectively, the "***DCT Estate Beneficiaries***").

12. On November 15, 2022, in accordance with Rule 3001 of the Bankruptcy Rules, the requisite claim transfer paperwork was filed with the Court to effectuate the partial transfers of the Refundable Resident Deposit claim to the DCT Estate Beneficiaries. [Docket Nos. 785, 786, 787, 788]. As of the filing of this Motion, these transfers have not been challenged.

13. On April 7, 2023, the Court entered *Findings of Fact, Conclusions of Law, and Order Confirming Chapter 11 Plan of Plan Sponsors* [Docket Nos. 1393, 1394] (the "***Confirmation Order***"), confirming the Plan. The Plan Effective Date was June 13, 2023.

14. The Plan provided holders of Allowed Refund Claims with beneficial interests in the Residents Trust established thereby (the "***Trust***" and such beneficial interests, the "***Trust Interests***"). Per the terms of the Plan, a holder of a Class 5 Participating Former Resident Refund Claim who did not opt out of the Lifespace Settlement and the releases under Section 8 of the Plan would receive payment from the Trust of an amount equal to their claim.

15. The Residents Trust Agreement (the "***Trust Agreement***") provides that the Bankruptcy Court shall have exclusive jurisdiction to determine resolution of conflicting claims

or demands made or asserted with respect to a Class 5 Claim, a Trust Interest, or a distribution from the Trust. *See* Trust Agreement, § 2.1. The Trust Agreement further provides that the Trust Interests are not transferable or assignable except by will, intestate succession, or operation of law. *See* Trust Agreement, § 2.4(a).

16. On August 15, 2023, the Community provided the DCT Estate with a copy of a purported Addendum to the Lifecare Agreement, dated June 2, 2021, a copy of which is attached hereto as **Exhibit D** (the “*Addendum*”), which provided that the Refundable Resident Deposit should be refunded to the Dorothy Collins Torbert 2011 Revocable Trust (the “*2011 Revocable Trust*”), as opposed to the DCT Estate as set forth in the Lifecare Agreement. No member of Mrs. Torbert’s family was aware of this purported Addendum until learning about it on August 15, 2023, in connection with these chapter 11 cases.

17. Notably, the Addendum was signed by Barbara Chalmers (“*Chalmers*”) acting “as agent and Attorney-in-fact for Dorothy Collins Torbert” a mere 11 days prior to the death of Mrs. Torbert, at a time when Mrs. Torbert was rarely conscious and almost never coherent. Chalmers had long been the bookkeeper for the Collins family and after Mrs. Torbert’s death the family discovered Chalmers had made countless false representations, abused trust for decades, and stolen millions of dollars from the family and related family entities and charitable foundations. On December 29, 2022, Chalmers pled guilty in the Eastern District of Texas for a scheme to embezzle at least \$29 million from the Collins family.

18. That certain *Dorothy Collins Torbert 2011 Revocable Trust Agreement*, a copy of which is attached hereto as **Exhibit E** (the “*2011 Revocable Trust Agreement*”), identifies the beneficiaries of the 2011 Revocable Trust as (i) Mrs. Torbert, during her lifetime, and (ii) Michael James Collins, Dorothy Collins Weaver (who pre-deceased Mrs. Torbert), and Nancy Collins

Fisher, and their descendants (collectively, the “**2011 Revocable Trust Beneficiaries**”), following Mrs. Torbert’s death.

19. Pursuant to that certain *Revocation of Revocable Trust*, a copy of which is attached hereto as **Exhibit F**, the 2011 Revocable Trust was revoked on March 13, 2017, more than four years prior to the execution of the Addendum.

20. On September 21, 2023, the Court entered the *Order to Resolve Conflicting Demands, for Interpretation of the Residency Agreements, and to Ensure Trust Distributions are Accomplished Pursuant to the Plan* [Docket No. 1715] (the “**Trust Distribution Order**”). Pursuant to the Trust Distribution Order, Stephen McCartin, in his capacity as trustee of the Trust (the “**Trustee**”), was authorized to honor properly filed Addendums to Residency Agreements for the purposes of Trust distributions.

21. During September and October of 2023, via numerous telephonic and electronic communications, the Co-Executors and other representatives of the DCT Estate informed the Trustee of several salient facts, including that: (i) Chalmers had pled guilty to embezzlement with respect to the assets of the Collins family; (ii) no family member of Mrs. Torbert authorized Chalmers to transfer the Refundable Resident Deposit proceeds to anything but the DCT Estate; and (iii) the 2011 Revocable Trust that was purported to be beneficiary pursuant to the Addendum does not currently exist and, crucially, did not exist on the date the Addendum was executed.

22. The Trustee has informed the DCT Estate that he would need an order from the Court to make any distribution from the Trust to the DCT Estate Beneficiaries and/or the Co-Executors in light of the terms of the Trust Distribution Order, which authorizes distributions from the Trust to holders of Trust Interests, which, according to the Trust Distribution Order, is the 2011 Revocable Trust.

### **REQUEST AND BASIS FOR RELIEF**

23. The DCT Estate is the proper holder of the Trust Interests and the Co-Executors are entitled to distribution of the Refundable Resident Deposit given that the Addendum is invalid. The Co-Executors asserts that the Addendum is invalid, both due to (i) the literal deathbed signing of the Addendum by Chalmers, an admitted felon who abused the trust of Mrs. Torbert and embezzled millions from the Collins family, on behalf of Mrs. Torbert when she was unconscious days before her death, and (ii) the fact that the 2011 Revocable Trust that was to replace the DCT Estate as recipient of the Refundable Resident Deposit did not exist and was clearly revoked by Mrs. Torbert when she was of sound body and mind in 2017. As such, the Addendum should be disregarded, the DCT Estate should be recognized as the proper holder of Trust Interests in accordance with the Trust Distribution Order, and the DCT Estate Beneficiaries should be recognized as the proper recipients of funds on account of the Refundable Resident Deposit.

24. To the extent the Court finds that the Addendum is valid, the Co-Executors asserts that it is still the proper holder of the Trust Interests given that the 2011 Revocable Trust Agreement was properly revoked by Mrs. Torbert in 2017, and any residual 2011 Revocable Trust rights would go to the DCT Estate. Moreover, given that Mrs. Torbert, as the settlor of the 2011 Revocable Trust, is currently deceased and can therefore no longer create a new 2011 Revocable Trust and related bank accounts to receive any distributions, it is unclear to the Co-Executors how else it can move forward with any alternate interpretation of its claim that only the DCT Estate Beneficiaries are the proper recipient(s) of funds on account of the Refundable Resident Deposit.

25. Assuming, *arguendo*, that the 2011 Revocable Trust Agreement was not properly revoked in 2017, the result would not change and the DCT Estate Beneficiaries would still be the

proper recipients of the funds on account of the Refundable Resident Deposit in their capacity as the 2011 Revocable Trust Beneficiaries following the death of Mrs. Torbert.

26. The family of Mrs. Torbert lost a beloved mother and grandmother. They then found out that her and their trust had been abused by Chalmers in many instances, including the matter in front of the Court. The properly filed proof of claim and subsequent claim transfers to the DCT Estate Beneficiaries remain unchallenged. Notwithstanding pursuing all proper channels, including providing the Trustee with all the facts set forth herein, the Co-Executors find themselves, more than two years after Mrs. Torbert's unit at the Community was vacated and seven months after the Confirmation Order was entered, in a legal no-man's-land where a non-existent trust that cannot be recreated is purported to be the holder of the Trust Interests and recipient of the Refundable Resident Deposit.

27. For the foregoing reasons, the Co-Executors respectfully request that the Court direct the Trustee to promptly distribute the Refundable Resident Deposit to any of the Co-Executors.

### **CONCLUSION**

28. The Co-Executors respectfully request entry of the Proposed Order granting the relief requested in this Motion, and such other and further relief as the Court may deem just and appropriate.

### **NOTICE**

29. Notice of this Motion will be provided to the following parties in accordance with Local Bankruptcy Rule 9007-1(b): (i) the Debtors and counsel to the Debtors; (ii) counsel to the Official Committee of Unsecured Creditors; (iii) the United States Trustee; (iv) the Trustee and



counsel to the Trust; (v) counsel to Barbara Chalmers; and (vi) any parties requesting notice pursuant to Local Rule 2002--(j). The Co-Executors submit that no other further notice is required.

*[Remainder of Page Intentionally Left Blank]*

Dated: November 20, 2023

Respectfully submitted,

/s/ Bradley R. Foxman

**VINSON & ELKINS LLP**

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**COUNSEL TO INDEPENDENT CO-  
EXECUTORS TO THE ESTATE OF  
DOROTHY COLLINS TORBERT**

**CERTIFICATE OF SERVICE**

I certify that on November 20, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas, by regular mail on the parties on the Debtors' Limited Service List [Docket No. 1627] where an email is not listed and believed to not be served by the Electronic Case Filing System, by email on the DCT Estate Beneficiaries, and by email on counsel to Barbara Chalmers.

/s/ Bradley R. Foxman

One of Counsel

**CERTIFICATE OF CONFERENCE**

The undersigned counsel hereby certifies that counsel for the Estate of Dorothy Collins Torbert conferred with counsel for the Trustee of the Residents Trust regarding the relief requested in the Motion. Counsel for the Trustee of the Residents Trust consents to the relief requested in the Motion.

/s/ Bradley R. Foxman

One of Counsel

**EXHIBIT A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>Northwest Senior Housing Corporation,</b>	§	<b>Case No. 22-30659 (MVL)</b>
<b><i>et al.,</i></b>	§	
	§	<b>(Jointly Administered)</b>
<b>Debtors.<sup>1</sup></b>	§	

**ORDER DIRECTING THE TRUSTEE  
OF THE RESIDENTS TRUST TO DISTRIBUTE  
AMOUNTS OWED TO THE ESTATE OF DOROTHY COLLINS TORBERT**

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Upon consideration of the motion (the “***Motion***”)<sup>2</sup> filed by Michael James Collins, Nancy Collins Fisher, and Stuart Maryman Bumpas, as Independent Co-Executors to the Estate of Dorothy Collins Torbert (such co-executors, collectively, the “***Co-Executors***” and such estate, the “***DCT Estate***”), seeking entry of an order (the “***Order***”): directing the Trustee to promptly distribute the Refundable Resident Deposit to any of the Co-Executors on account of the Trust

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2699).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Interests and granting related relief; and the Court having found that it has jurisdiction to consider the Motion and the relief requested therein pursuant to sections 105(a) of the Bankruptcy Code; and the Court having found that consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that venue of this proceeding in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion as set forth therein is sufficient under the circumstances; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. The DCT Estate is the proper holder of the Trust Interests on account of the refundable resident deposit in an amount equal to \$626,310.00 (the “***Refundable Resident Deposit***”).
3. The Trustee is authorized and directed to promptly, and in no event later than 30 days following the entry of this Order, distribute the Refundable Resident Deposit to any of the Co-Executors, in accordance with the terms of this Order and the Residents Trust Agreement.
4. The Trustee, DCT Estate, the Co-Executors, and DCT Estate Beneficiaries are authorized to take any and all actions necessary and proper to implement and effectuate the relief granted in this Order in accordance with the Motion.
5. Adequate notice and opportunity for a hearing on the Motion has been provided and such notice satisfies the requirements of the Bankruptcy Rules and Local Bankruptcy Rules.
6. This Order is immediately valid and fully effective upon its entry and the 14 day stay pursuant to Bankruptcy Rule 4001(a) is hereby waived.
7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**

**EXHIBIT B**

**Letters of Testamentary Independent Co-Executors**





**LETTERS TESTAMENTARY  
INDEPENDENT CO - EXECUTORS**

THE STATE OF TEXAS  
Probate Court No. 3

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CAUSE NO. PR-21-02507-3

I, **JOHN F. WARREN**, County Clerk and Clerk of the County and Probate Courts, in and for said County, do hereby certify that on the *13th day of September, 2021*

**MICHAEL JAMES COLLINS, NANCY COLLINS FISHER & STUART MARYMAN BUMPAS**  
were appointed Independent Co - Executors, without bond, of the Will and Estate of:

**DOROTHY COLLINS TORBERT, Deceased,**

and that said appointees are fully and legally authorized and empowered to act as the Independent Co - Executors, without bond, of the Will and of the above named estate, having qualified by filing the oath on the *15th day of September, 2021*

I further certify that said appointment is still in full force and effect.

WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE, this *22nd day of September, 2021*.



**JOHN F. WARREN**, County Clerk  
Dallas County, Texas

*Cebi Medelkin*



**EXHIBIT C**

**Lifecare Agreement**

**EDGEMERE**  
**LIFECARE AGREEMENT**

EDGEMERE  
LIFECARE AGREEMENT

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# EDGEMERE

## LIFECARE AGREEMENT

### NOTICES

- A. You may cancel this contract at any time prior to midnight of the seventh day after the date on which you sign this contract or you receive the Edgemere disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice, and you will be entitled to receive a refund of all assets transferred (without interest), subject to the terms and conditions contained in this contract, other than the periodic charges applicable to your occupancy of a living unit.
- B. This document, if executed, constitutes a legal and binding contract between you and Edgemere. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding.
- C. You shall not be required to move into Edgemere before the expiration of the seven (7) calendar day period.

### TERMS OF OCCUPANCY

This Lifecare Agreement ("Agreement") is entered into by Mrs. Dorothy Torbert

(individually and/or collectively "you" or "Resident") and Northwest Senior Housing Corporation, a Texas not-for-profit corporation, which owns and operates Edgemere located in Dallas, Texas. The term "Sponsor" is used throughout this Agreement to denote Northwest Senior Housing Corporation. The term "Edgemere" will refer to the community. The term "we" or "our" is also used in lieu of Northwest Senior Housing Corporation.

Edgemere seeks to provide quality residential housing for retirement age men and women along with an array of personal services and amenities outlined in this Agreement, including certain assisted living and nursing services, all as deemed appropriate by our Medical Director. Subject to the conditions contained in this Agreement, we agree to make available to you, an unfurnished apartment home ("Apartment Home") in Edgemere described as follows:

APARTMENT HOME NUMBER: 9303

APARTMENT STYLE: 2 Bed Signature

(the "Apartment Home") and to provide you with the general services and amenities described in this Agreement.

1. **RESERVATION OF APARTMENT**

Resident reserves the Apartment Home identified above located within Edgemere and has paid a deposit equal to 10% of the Resident Deposit Amount or \$ 69,590<sup>00</sup> (the "Reservation Deposit") to reserve the Apartment Home.

1.1 **Conditions of Occupancy**

Conditions of occupancy of the Apartment Home are that Resident shall: (i) meet the health and financial conditions of acceptance into Edgemere; (ii) execute a Lifecare Agreement; (iii) pay in full the 90% balance of the Resident Deposit Amount ("Resident Amount Balance") and (iv) pay the appropriate ongoing Monthly Service Fee(s).

1.2 **Refund of Reservation Deposit for Involuntary Termination**

The Reservation Deposit shall be refunded in full to Resident within 30 days of termination of this Reservation Agreement under the following circumstances: (i) Sponsor's failure to meet its obligations hereunder; (ii) death or serious illness of Resident prior to occupancy; or (iii) other circumstances beyond the control of Resident that equitably entitle Resident to a refund. If Resident's health status changes after Resident is accepted for Residency by Sponsor so that at the time of occupancy Resident is precluded from independent living for health reasons and certified by a licensed physician, the entire Reservation Deposit shall be refunded to Resident; provided, however, Resident may elect not to terminate this Agreement and may elect direct admission into the Health Care Center at the appropriate level of care, as determined by Sponsor.

1.3 **Refund of Reservation Deposit for Voluntary Termination**

If Resident terminates this Agreement after seven (7) days from the date it is executed other than for reasons in paragraph 1.2, above, Sponsor shall refund the entire Reservation Deposit less a processing fee equal to \$500.

1.4 **Disclosures**

Resident acknowledges that Resident has received a copy of the Disclosure Statement and other information which may be material to Resident's decision whether to occupy the Apartment Home. Resident understands that Resident may not occupy the Apartment Home and is not entitled to any services or benefits of this Lifecare Agreement until the Resident Deposit Amount has been paid in full.

## 2. **GENERAL SERVICES AND FACILITIES**

- 2.1 Basic Agreement.** In consideration of payment of a Resident Deposit in the amount stated in Section 5.2 and payment of the appropriate Monthly Service Fee, initially in the amount stated in Section 5.3, you will be entitled to occupy the Apartment Home indicated above and to receive the services and use of the facilities described in this Agreement according to the provisions of this Agreement.

Your right to occupy the Apartment Home or such other care facility to which you may be transferred in accordance with this Agreement shall continue for your lifetime unless sooner terminated as provided herein.

The right to occupy the Apartment Home and receive services under this Agreement shall apply exclusively to the named Resident hereunder, and to no other individual(s). No person other than the Resident entering into this Agreement shall be permitted to occupy the Apartment Home without the express written permission of Edgemere as hereinafter provided.

- 2.2 Apartment Furnishings.** Your Apartment Home will be furnished at our expense with carpeting, self-defrosting refrigerator and freezer with ice maker, range and oven, dishwasher, microwave oven, garbage disposal, washer/dryer, an emergency call system and fire sprinkler system.
- 2.3 Parking.** Surface parking areas will be provided for you and for guests of Edgemere. One secured underground parking space will be provided for each apartment home at the request of the Resident and in conformance with our parking policy as defined in the Resident Handbook, when available.
- 2.4 Community Areas.** You will have use of Edgemere community areas in accordance with the rules and policies of Edgemere. Community areas include:
- a. Main Dining Room
  - b. Performing Arts Center
  - c. Private Dining Rooms
  - d. Living Rooms
  - e. Library
  - f. Card Room
  - g. Game Room
  - h. Creative Arts Center

- i. Beauty & Barber Shop
- j. Business Center
- k. Wellness and Fitness Center
- l. Convenience Store
- m. Swimming Pool

**2.5 Included General Services.** So long as you are in compliance with your obligations hereunder, we will provide you with the following services covered by the Monthly Service Fee and Resident Deposit:

- a. **Food Service.** We will offer table service in our main dining room. You are entitled to one meal credit per person for each day of the month (for example, 30 meal credits for June and 31 meal credits for July). You may purchase guest meals or use accumulated meal credits for guests at any time during the month for your meals. Any unused meal credits for any month will be forfeited and may not be applied as a credit against meal charges for any other period. If you are absent from Edgemere for more than fourteen (14) consecutive days, you will receive a meal credit allowance in conformance with our meal credit policy, provided you give us written notice of your intended absence at least two weeks in advance. For health-related absences, no prior notice is required.
- b. **Housekeeping.** We will provide weekly scheduled housekeeping of your Apartment Home, including vacuuming, dusting, cleaning, and changing of bed linens.
- c. **Utilities.** We will provide sewer, water, waste disposal, electricity, heat, air-conditioning and basic cable television service for your Apartment Home. Your apartment home will be centrally wired for cable television and telephone hook-up. You will pay for all telephone and premium cable television charges.
- d. **Security and Emergency Alert System.** Each apartment home will be equipped with smoke detectors, sprinkler system and emergency alert system. We will monitor the emergency alert systems and coordinate twenty-four hour emergency responses as appropriate. Security personnel will be employed and exterior entrances will have secured access.
- e. **Laundry.** We will provide scheduled weekly laundry service for your bed linens and towels.

- f. **Maintenance.** We will maintain all community areas and grounds and will be responsible for providing repair, maintenance and replacement of furnishings we provide in your Apartment Home, provided such repairs are not required as a result of your negligence.
- g. **Mail.** A U.S. mailbox will be provided in a central location for each apartment home.
- h. **Transportation.** We will provide local transportation to designated shopping, medical facilities, and other local destinations on a regularly scheduled basis.
- i. **Social and Recreational Programs.** A full-time Social and Recreational Programs Director will coordinate a variety of social, recreational, educational and cultural programs for those Residents wishing to participate. Specific programs will be based on Residents' interest.
- j. **Property Taxes and Insurance.** Edgemere will pay for real property taxes or payments in lieu of taxes except for those assessed on your personal property. Edgemere will also obtain property and casualty insurance coverage on the buildings and grounds. Such coverage will not insure against loss or damage to your personal property or damage or injury to others caused by you. We recommend that you purchase appropriate comprehensive insurance.
- k. **Storage Area.** An individual storage locker located in Edgemere will be assigned and available for your use.
- l. **Wellness Programming.** We will coordinate educational and screening programs promoting wellness and preventive health maintenance. Participation in these activities is voluntary.
- m. **Medical Director.** Edgemere will retain the services of a qualified physician ("Medical Director") to be responsible for the quality and appropriateness of all medical services and medically related activities provided by Edgemere.
- n. **Home Health Care Services.** Home health care services may be provided under contract by a certified home health care agency, as defined by and to the extent reimbursable under the Medicare program, to Residents of an



Apartment Home. Such services are intermittent and short-term in nature, typically rendered following an acute care illness. Residents who need assistance with the activities of daily living on a continuing basis will transfer to Assisted Living to receive such services. Any resident needing home care services in connection with a temporary condition beyond that covered by Medicare is responsible for the cost of such services and can receive such services while residing in an Apartment Home upon approval of the Medical Director. You have the option to select the home health care agency of your choice. If requested, we will assist you in choosing an appropriate agency.

- o. Assisted Living and Health Center.** If it is determined that you require assisted living or nursing care in the future, we will provide you with assisted living services available in our assisted living center ("Assisted Living") or nursing services that are available in our nursing center ("Health Center"), as described below and subject to changes in law.

- (i) Admission.** When a determination is made by your physician and approved by the Medical Director that you need assisted living or nursing care, or that you must be transferred as provided in Section 4, we will admit you to the Assisted Living or Health Center or, under the conditions set forth in the following paragraph, to another facility.

In the rare event that space for you, for any reason, is not available in Assisted Living or the Health Center upon determination that a permanent transfer is required. Edgemere will arrange and pay for your temporary care in your Apartment Home by a certified Home Health Care Agency if medically possible until space at the Assisted Living or Health Center becomes available. If Home Health Care is not medically possible, Edgemere will arrange and pay for your temporary care in another facility of Edgemere's choice that can provide the same care that would otherwise have been provided by Edgemere until space becomes available.

- (ii) Assisted Living.** We will provide to you, in a Traditional Assisted Living Apartment, services which are approved by our Medical Director and designed to assist with the activities of daily living in accordance with applicable Texas Statutes. Services included are assistance with dressing, bathing, and medication administration.

- (iii) **Nursing.** We will provide to you, in a Traditional Private Room, licensed nursing care when approved by our Medical Director. The care provided will cover the Traditional Private Nursing Room rate then in effect.
- (iv) **Fees and Charges.** Edgemere will pay for care to the extent that it is not covered by your insurance, Medicare or any other governmental programs or entitlements which you are required to maintain under this Agreement subject to:

**Effect on Monthly Service Fee.**

a. **Temporary Transfers**

Should you have a temporary need for Assisted Living or Nursing Care while you are still occupying your Apartment Home, you will be required to pay both the current Monthly Service Fee for your Apartment Home and the applicable daily rate for Assisted Living or nursing care services. By "temporary" we mean a temporary transfer as defined in Section 4.3 below.

b. **Permanent Transfers**

1. **Single Occupancy**

Upon permanent transfer to the Health Center or Assisted Living and release of your Apartment Home under section 4.4 below, your Monthly Service Fee will be adjusted to the then current Monthly Service Fee for a Two Bedroom Classic Apartment Home.

2. **Double Occupancy**

- In the event of a permanent transfer of one Resident from the Apartment Home, the Monthly Service Fee will remain the same;
- In the event of a permanent transfer of both Residents and release of the Apartment Home under Section 4.4 below, the Monthly Service Fee will be adjusted to the then current Monthly Service Fee for a

**Two Bedroom Classic Apartment Home,  
plus the then current second person  
Monthly Service Fee.**

**Additional Charges.** Residents will be responsible for all costs and charges associated with Assisted Living or the Health Center which are not covered by the basic room rates for such care then in effect. If you require the Memory Support Deluxe Assisted Living, you will be responsible for the difference between the then-current Monthly Service Fee for a Traditional Assisted Living Apartment and the Memory Support Alcove Room . If you require Memory Support Nursing Care, you will be responsible for the then-current difference in daily rates between a Traditional Private Room in Nursing Care and a Memory Support Nursing Care Private Room.

- (v) **Reassignment.** If the single occupant Resident of an Apartment Home is admitted temporarily to Edgemere's Assisted Living Facility or Health Center with a medical prognosis of recovery and returns to the Apartment Home, the Resident shall retain possession of his or her Apartment Home for the purpose of resuming residency in the Apartment Home. However, if transfer to Edgemere's Assisted Living or Health Center is projected to exceed three (3) months, and, if within such three (3) month period, there is not medical prognosis of recovery and, if in the opinion of the Sponsor's Medical Director, in consultation with the Resident's family, it is determined that the Resident will not resume residency in the Apartment Home, the Sponsor will have the right to take possession of and reassign the Apartment Home to a new Resident in accordance with Section 4.4 of this agreement. If the Apartment Home is occupied by two (2) Residents, the permanent transfer of one (1) Resident does not affect the rights and privileges under this Agreement of the remaining Resident. If the Resident's Apartment Home is reassigned and should the Resident subsequently recover sufficiently to maintain himself in an Apartment Home, Resident shall receive the next available Apartment Home similar to the one relinquished. While the Resident is in the Assisted Living or Health Center, the Monthly Service Fee will continue to be due and payable as herein described.

**2.6 Additional Services.** The following Additional Services may be available on a fee-for-service basis:

- a. Guest Meals
- b. Catering for Special Occasions
- c. Barber and Beauty Services
- d. Tray Service when Medically Advisable
- e. Additional Resident Meals
- f. Additional Parking, subject to availability
- g. Additional Housekeeping Services
- h. Laundry Services for Personal Items
- i. Usage of the Guest Suites

Charges for these Additional Services and others that may be offered will be made in accordance with our Additional Services Fee Schedule then in effect and will be billed to you monthly.

**2.7 Alteration to Apartment Home.** You may make alterations to your Apartment Home at your cost, subject to Edgemere policies and with the Sponsor's prior written approval. Any approved alteration will be performed by our maintenance staff or by a contractor we approve. Any alterations of a permanent nature become the property of Edgemere. For your safety, you agree not to replace or add any locking devices to your Apartment Home. The sponsor reserves the right to restore the apartment home to the pre-altered state upon vacancy of the apartment by the resident. The cost of the restoration is the responsibility of the resident and may be withheld from any refund due.

**2.8 Advance Notice for Changes in Scope of Services.** The Sponsor will provide at least sixty (60) days advance notice before any change in the scope of care or services becomes effective. This includes charges for additional services.

### **3. RESIDENT'S OBLIGATIONS**

**3.1 Health Insurance.** Sponsor will provide the Resident with the services described in this Agreement, as appropriate. During the term of this Agreement, you shall obtain and maintain in force Medicare Parts A and B and any future program that may be offered by Medicare. You shall also maintain in effect supplemental insurance coverage acceptable to us, and furnish evidence of such insurance coverage upon our request. If you are not qualified for Medicare coverage because of age, you will be required to maintain comprehensive health coverage satisfactory

to us. You agree to provide evidence of such insurance to us upon request. You also agree to execute all necessary forms to obtain payment of benefits which are or may be payable in the future for health care services provided hereunder to you.

You will be responsible for paying separately for all health care services that are not covered by Medicare (or an equivalent substitute policy approved by Edgemere), Medicare supplemental insurance, or by Edgemere as set forth in this Agreement. If you have any questions about such coverage, Edgemere will assist you in obtaining answers.

- 3.2 Power of Attorney, Guardianship.** You acknowledge that at some future time you may be unable by reason of mental or physical disability to properly handle your own affairs and that it may be in your best interest to have an attorney in fact or a guardian appointed to handle his affairs. Therefore, you agree to designate in writing, prior to or at the time of entrance, person(s) who will have authority to act on your behalf in the event you should at any time become unable to properly handle your own affairs. If you should thereafter become either physically or mentally unable to properly administer your own affairs, this designated person shall either commence handling your affairs pursuant to the terms of a durable power of attorney or file a petition in a Court of competent jurisdiction to have a guardian or conservator appointed to handle your affairs. If the designated person(s) are unable or unwilling to file such a petition, we are empowered to do so at your expense.
- 3.3 Cost of Physicians, Medicines, Etc.** You acknowledge and agree that any and all expenses or charges which may be incurred by or on behalf of you for costs not covered by this Agreement, including, but not limited to, physicians, therapists, podiatrists, diagnostic services, mental health, medicines, prescription drugs, medical supplies, vitamins, crutches, braces, walkers, wheelchairs, special duty nursing, hospitalization, care and treatment of eyes, ears and teeth, and any and all other personal medical expenses shall be your sole and exclusive responsibility. You shall be entitled to treatment by the physician of your choice at your expense.
- 3.4 Resident Handbook.** We will establish and adopt policies, procedures and rules and regulations ("Rules") for occupancy, and orderly operation and management of Edgemere. These Rules will be drafted to provide for the safety, welfare, peace and comfort of all Residents consistent with the provisions of the Residency Agreement. These Rules will be published in writing in the Resident Handbook and may be amended from time to time. You agree to abide by and observe such Rules and all amendments and additions thereto. These Rules, as amended from time to time, are

hereby incorporated by reference. In the event that the terms of this Agreement conflict with the Rules, the terms of this Agreement shall control.

- 3.5 Non-Impairment of Financial Responsibility.** After execution of this Agreement, you agree not to impair your ability to meet your financial obligations under this Agreement and cause any act such that you would no longer meet the financial qualifications as set by Edgemere for your Apartment Home. You may undertake or execute any financial transaction you choose, without approval, as long as the transaction does not compromise your ability to meet the financial qualifications of your Apartment Home.

#### **4. TRANSFERS AND READMISSION**

There may come a time when you must move to Assisted Living or the Health Center or to another facility which provides services not available at Edgemere. Edgemere is aware that this is a critical transition and will follow the following procedures during any transfer or reassignment.

- 4.1 Consultations.** Except in case of emergency, Edgemere agrees not to transfer you from your Apartment Home to Assisted Living or the Health Center, or to a care facility or hospital which is not on the campus of Edgemere, for health-related or other reasons unless it has consulted with you and your physician, or with anyone else you designate as a primary contact. Such a decision shall be made in the best interests of the Resident, and the decision of Edgemere shall be final and binding. In the case of an emergency transfer, the consultations described above will be scheduled by Edgemere within five (5) days after transfer.

Circumstances in which it is in the best interest of the Resident to be transferred include, but are not limited to, the following:

- a. A determination that the Resident can no longer function in an independent manner in an Apartment Home, and the Resident requires additional assistance in activities of daily living or nursing care;
- b. A determination that the Resident is unable to remain ambulatory (for purposes of this document, the term "ambulatory" is used to describe a person who is capable of demonstrating the mental competence and physical

ability to leave a building without human assistance or supervision in case of emergency); or,

- c. A determination that the continued residency of the Resident at Edgemere would be harmful to either the Resident, other Residents or staff of Edgemere.

If we determine, after consultation, that your health requires that you be transferred (a) from the Apartment Home covered by this Agreement to the Assisted Living or the Health Center or (b) to a care facility or hospital which provides services which Edgemere does not provide or is not licensed to provide, you agree to be relocated in accordance with the decision.

- 4.2 **Consents.** When Edgemere determines, after consultations as described above, to transfer you to Assisted Living, the Health Center, or to a suitable care facility or hospital for health care or other health-related services, Edgemere shall be authorized to transfer you without having to obtain your further consent.

Sponsor shall not be responsible for the cost of any services rendered to a Resident who is transferred from Edgemere to another facility, except as specifically provided otherwise hereunder.

- 4.3 **Temporary Transfer.** When Edgemere determines that the condition which requires your transfer has the potential to be resolved in a manner which may allow you to return to your Apartment Home within ninety days, the Apartment Home will be held for your return.

- 4.4 **Availability of Apartment Home Upon Permanent Transfer.** If Sponsor determines that following a transfer from your Apartment Home that it is unlikely that you will return to it, such that the transfer is permanent in nature, your Apartment Home shall be released and made available by Sponsor to a new Resident. In such event, the Sponsor may enter into a new Residency Agreement for occupancy of the Apartment Home with another Resident. Resident grants Sponsor the right to remove Resident's personal property from the Apartment Home and to store it at the Resident's expense. If, after a Permanent Transfer, you again meet the qualifications for entrance to Independent Living, you will be given priority admission status for an Apartment Home.

5. **RESIDENT DEPOSIT AND FEES**

5.1 **Occupancy Date.** The day you receive keys to your Apartment Home is the occupancy date. You shall not be required to move into Edgemere before seven (7) days following the date you executed this Agreement and made the Reservation Deposit.

5.2 **Resident Deposit.** You agree to make a non-transferable, non-interest bearing Resident Deposit in the total amount of \$ 1695,900. The Reservation Deposit of \$ 109,590 is due at the time you execute this Agreement. The remaining balance of your Resident Deposit, being \$ 1,626,310, is due on or before the Occupancy Date, unless otherwise previously agreed in writing. Once paid, this Resident Deposit will not be increased or changed during the duration of this Agreement. The Resident Deposit shall in no way be considered or interpreted to be a security deposit.

The Resident Deposit shall be the property of the Sponsor for use in accordance with the terms of this Agreement, and shall not be subject to the claims of creditors of the Resident. The Resident Deposit shall be refundable in accordance with Section 7.4.

5.3 **Monthly Service Fees and Changes in Fees.** Your Monthly Service Fee will be initially \$ 14365<sup>00</sup> per month for one person and an additional \$ 995<sup>00</sup> per month for the second person. The Monthly Service Fee shall be due beginning on the Occupancy Date and will be prorated, if necessary, on a daily basis for the first and last months of occupancy. We may increase the Monthly Service Fee, upon sixty (60) days' written notice to you if we, in our sole discretion, deem it necessary to meet the financial, service and contractual obligations of Edgemere. It is our intention to make any adjustments to the Monthly Service Fee only once per year. The Monthly Service Fee shall be billed in advance to the Resident on or before the first day of each month, and shall be paid on or before the fifth (5th) day of the month.

Fees for additional services will be charged in accordance with the Additional Services Fee Schedule we establish and will be on file in the management office. Charges for additional services shall be billed on the first day of each month, and shall be paid on or before the fifth (5th) day of each month.

5.4 **Late Fee.** We will reserve the right to assess you a late fee of 5% (or the maximum amount allowed by applicable law, if less) of the amount due if the Monthly Service



Fee or Additional Services Fees are not paid in full on or before the fifth day of the calendar month in which they are due.

- 5.5 Changes in Occupancy.** If your Apartment Home is occupied by two Residents and one Resident surrenders possession of the Apartment Home to the other, other than by death or by a transfer covered by Section 4, the obligations of the Resident remaining in the Apartment Home under this Agreement remain in legal force and effect, except that the Monthly Service Fee will be adjusted to reflect the single occupancy rate then in effect for the Apartment Home. The Resident not remaining in the Apartment Home will receive no services or benefits under this Agreement but will continue to be jointly and severally liable for the obligations of the Resident remaining in the Apartment Home. No refund of the Resident Deposit will be made until the remaining Resident leaves and all conditions of Section 7.4 are met.

In the event the joint occupants of an Apartment Home desire separate living accommodations at Edgemere, and one Resident remains in the Apartment Home designated hereunder, no refund of the Resident Deposit shall be made until the conditions of Section 7.4 are met and the Monthly Service Fee shall be adjusted to reflect the single occupancy rate then in effect for the Apartment Home. Upon occupancy of the second apartment by the departing joint occupant, a new Lifecare Agreement must be executed and submitted for approval by Sponsor, accompanied by the then current Resident Deposit, for the second living accommodations.

In the event of the marriage of a Resident to another Resident, they may: (a) continue to maintain two Apartment Homes and pay the applicable Monthly Service Fee for single occupancy then in effect; or (b) release either Apartment Home occupied by them, and pay the applicable Monthly Service Fee for first and second person occupancy then in effect, or (c) release both Apartment Homes and select another apartment home in accordance with Section 7.7 and pay the applicable Monthly Service Fee for first and second person occupancy then in effect. There shall be no refund of the Resident Deposit to either Resident, and all benefits provided in each Lifecare Agreement shall remain and continue in effect.

If you and a non-Resident (including a new spouse) desire to share the Apartment Home, the non-Resident may become a Resident and live in the Apartment Home only if he/she meets the qualifications for entrance set forth in Section 6 and both persons execute a new Lifecare Agreement. In such event, the Monthly Service Fee shall be adjusted to reflect the additional charge per month for a second person, and the non-Resident may be required to make a Resident Deposit in accordance with the then current policies established by Sponsor.

In the event you marry an individual while at Edgemere who does not meet the residency requirements for Edgemere, the Sponsor, at its sole discretion, may allow such person to reside at Edgemere. However, this person would not have any rights, privileges or protection under this Agreement.

**5.6 Liability for Charges.** Each person who is designated as Resident in this Agreement is jointly and severally liable for the payment of the Monthly Service Fee, Additional Service Fees and all other amounts required to be paid to the Sponsor, pursuant to the provisions of this Agreement. In the event it is necessary for us to institute legal action or other proceedings to recover amounts payable to the Sponsor under this Agreement, we also will be entitled to recover legal fees and costs incurred in connection with all such proceedings. This provision will survive any termination of this Agreement.

**5.7 Residents Who Become Unable to Pay.** It is Edgemere's policy that this Agreement will not be terminated solely because of your financial inability to continue to pay the Monthly Service Fee or other charges payable under the terms of this Agreement by reason of circumstances beyond your control; provided, however, this policy shall not be construed to qualify or limit Edgemere's right to terminate this Agreement in accordance with its terms. If you present facts which, in the opinion of Edgemere, justify special financial consideration, Edgemere will give careful consideration to subsidizing in part or in whole the Monthly Service Fee and other charges payable by you under the terms of this Agreement so long as such subsidy can be made without impairing the ability of Edgemere to attain its objectives while operating on a sound financial basis. Any determination by Edgemere with regard to the granting of financial assistance shall be within the sole discretion of Edgemere, and any decision to provide such financial assistance shall continue in effect only so long as Edgemere, in its sole discretion, determines that it can continue to operate for the benefit of all Residents on a sound basis.

As a means of providing financial assistance to Residents, Edgemere intends to establish an endowment fund for donations from Residents. Income from the endowment fund may be used to provide financial assistance in accordance with the subsidy policy described above.

In the event the Sponsor determines to provide you with any financial assistance or subsidy, you agree we may charge such amounts, plus interest, against the refund of your Resident Deposit. Furthermore, we may require you to move to a smaller or less expensive Apartment Home.

The cost of any such financial assistance provided shall be accrued and remain an obligation of the Resident and his or her estate.

**6. APPLICATION AND ACCEPTANCE FOR ADMISSION.**

The obligations of the Sponsor to provide services and facilities hereunder are conditioned upon acceptance of the Resident for admission to Edgemere in accordance with this paragraph. The decision to accept a Resident for admission to Edgemere shall be within the sole discretion of the Sponsor.

**6.1 Requirements for Acceptance for Admission.**

**6.1.1 Confidential Data Profile.** Resident shall complete and submit a Confidential Data Profile provided by Sponsor prior to or concurrent with the execution of this Agreement. Resident hereby certifies to the Sponsor that all information reflected on such Confidential Data Profile, which is hereby incorporated by reference and made a part of this Agreement, including all personal financial data, is complete and accurate.

**6.1.2 Confidential Medical Profile Report.** Resident shall submit a Confidential Medical Profile Report prepared by Resident's personal physician.

**6.1.3 Age.** To be accepted for admission at Edgemere, applicants must be at least sixty-two (62) years of age.

**6.2 Notification of Decision.** Within thirty (30) days of satisfaction by Resident of all of the requirements set forth in Section 6.1, Sponsor shall notify Resident in writing of its decision concerning acceptance of the Resident for admission to Edgemere. In the event you are not accepted for residency at Edgemere, your first installment of the Resident Deposit specified in Section 5.2 and tendered upon execution of this Agreement shall be refunded within ten (10) days of the date of the written notification to you of non-acceptance for admission, and the parties shall have no further obligations to one another under this Agreement.

**6.3 Acceptance for Admission Conditional Upon No Material Changes Prior to Occupancy.** Acceptance of a Resident for admission to Edgemere shall be conditioned upon no material change in the matters covered by the Confidential Data Profile prior to the Resident's Occupancy Date. In the event of any such material change prior to the Occupancy Date, Sponsor may request additional

information, tests or examinations, to be provided or performed, at the expense of Resident. In the event of the existence of a material change in condition, Sponsor may revoke its acceptance of Resident for admission to Edgemere at any time prior to the Occupancy Date by written notification to Resident, and your installment of the Resident Deposit specified in Section 5.2 shall be refunded within ten (10) days of the date of such notification.

- 6.4 Duty of Resident to Notify Sponsor.** Resident acknowledges and agrees that Sponsor has relied upon all of the information contained in Resident's Confidential Data Profile to make its decision regarding acceptance of Resident for admission to Edgemere. Any misrepresentation or omission by the Resident shall render this Agreement null and void at the option of the Sponsor. Resident agrees to notify the Sponsor prior to the Occupancy Date of any material change in any of the matters covered by, or reflected on, the Confidential Data Profile or, if applicable, the Confidential Medical Profile Report.

## **7. TERMINATION AND REFUNDS**

### **7.1 Termination Prior to Occupancy.**

- a. You will be entitled to full reimbursement of any monies paid to us within thirty (30) days, including interest earned to date accrued at the prevailing rate of interest earned by Edgemere, non-compounded, of our receiving your written termination of this Agreement (except no interest shall be paid upon termination during the seven day rescission period), and will be released from liability to pay to us any other amount under this Agreement under any one of the following conditions:
- (i) If you terminate this Agreement within seven (7) days from the date on which you signed the Agreement and paid the initial installment of the Resident Deposit; or,
  - (ii) If we terminate this Agreement by:
    - a) terminating our intention to build Edgemere; or,

**b) the Apartment Home not being available for occupancy within three years after the date of execution of this Agreement.**

- b. If you die before occupying your Apartment Home at Edgemere, or if, because of illness, injury, or incapacity, you would be precluded from occupying your Apartment Home consistent with the representations made by you in the Confidential Data Profile, this Agreement will be automatically canceled, and you or your legal representative will be entitled to a full refund as provided in section 7.1(a), above.
- c. If you terminate this Agreement prior to the date you occupy your Apartment Home for reasons or conditions other than those described above, you will be entitled to a reimbursement of any monies paid, less a processing fee of \$500. Thereupon, you shall be relieved of further liability to pay a Resident Deposit or Monthly Service Fees under this Agreement. We will pay the refund due to you under this paragraph (b) within thirty (30) days after the date we have received your written notice of termination of this Agreement.

**7.2 Termination of Residency After Occupancy.** After you have assumed occupancy of your Apartment Home, this Agreement is subject to termination as follows:

- a. By you at any time upon thirty (30) days' prior written notice to the Sponsor.
- b. The Sponsor may terminate this Agreement after the Occupancy Date for nonmedical reasons. If any of the following events occur, we may give you thirty (30) days' prior written notice of the reason for the proposed termination, which shall reasonably describe the conduct warranting termination, and shall set a time, place and date for a meeting between you and the Sponsor's representative no later than twenty (20) days after the notice of termination. At this meeting, or at any time prior to the date of termination, you may avoid termination by demonstrating to the Sponsor's reasonable satisfaction that the conduct has been cured.

The following nonmedical reasons shall give rise to the Sponsor's right to terminate this Agreement:

- (i) A material misrepresentation or omission by the Resident in the Confidential Data Profile or related materials, which, if such

information had been accurately provided, would have been material to the decision whether or not to accept the Resident for admission;

- (ii) If you fail to comply with the rules and regulations of Edgemere or create a situation detrimental to the health, safety or quiet enjoyment of the facility of other Residents or the staff;
  - (iii) If you make any disposition of your assets, which, in our reasonable judgment, materially impairs your ability to pay the Monthly Service Fee or other costs;
  - (iv) If you fail to pay the Monthly Service Fee or other amounts due us when due unless other mutually satisfactory arrangements have been made, provided however, it is our policy that this Agreement shall not be terminated solely because of your financial inability to pay the fees to the extent that: (1) your inability to pay is not the result of your willful action; and (2) in the judgment of our Board of Directors, the ability of Edgemere to operate on a sound financial basis will not be impaired.
  - (v) Material breach by the Resident of the terms and conditions of this Agreement; and,
  - (vi) The Apartment Home is no longer fit for occupancy and Edgemere elects not to restore the Apartment Home to habitable condition.
- c. The Sponsor may terminate this Agreement subsequent to occupancy date for medical reasons. If it is determined by the Medical Director (after consultation "to the extent feasible" with you, your personal physician, and your family) that:
- (i) You have developed a dangerous or contagious disease or mental illness;
  - (ii) You are in need of drug or alcoholic rehabilitation or any other condition for which we are not licensed or for which care cannot be provided by us without a significant and unique expenditure; or,
  - (iii) You are or have become mentally or emotionally disturbed to a degree that your continued presence in Edgemere is determined to be

detrimental to the health, safety and welfare of other Residents or staff.

Therefore, should any of these situations occur, we are expressly authorized (after consultation with the Medical Director, your personal physician and/or your representative to the extent feasible) to transfer you, at your expense, to an appropriate hospital facility or alternative care facility.

If the Sponsor seeks to terminate this Agreement and your occupancy, Edgemere shall give you sixty (60) days' prior written notice of termination which shall reasonably describe the conduct alleged to warrant the termination of the Agreement and shall set the time, place and date for a meeting between you and the Sponsor's representatives, which shall not be earlier than thirty (30) days nor later than forty-five (45) days after the notice of termination. At this meeting you may avoid termination upon your showing to the Sponsor's reasonable satisfaction that you have cured the conduct alleged to warrant the termination.

- 7.3 Effect of Double Occupancy.** If your Apartment Home is occupied by two Residents and one dies, this Agreement will continue in full legal force and effect as to the surviving Resident, except the Monthly Service Fee will be adjusted to reflect the then applicable single occupancy rate payable for the type of Apartment Home occupied by Resident. No refund of the Resident Deposit will occur until the surviving Resident leaves and all conditions of Section 7.4 are met. In the event the Sponsor terminates this Agreement in accordance with section 7.2, the Resident Deposit refund due to the resident will be the same as if the Resident provided notice in accordance with section 7.2 (a) of this Agreement.
- 7.4 Refund of Resident Deposit.** After termination of this Agreement, in accordance with Sections 7.2 or 7.7 as applicable, or in the event of your death, or in the case of double occupancy, both occupants' deaths, we will refund 90% of the Resident Deposit (without interest) you paid for your Apartment Home at Edgemere, on the later of the date of termination of this Agreement or the date a new Resident Deposit has been received from a new Resident and the new Resident has taken occupancy of your Apartment Home. After assuming occupancy, the refund amount will be ninety percent (90%) of the Resident Deposit paid for the Apartment Home. In the event the Sponsor terminates this Agreement for just cause in accordance with section 7.2 of this Agreement, Sponsor shall pay to the Resident within 45 days of vacating the apartment home any refund due, less a reasonable amount to cover the

anticipated cost of utilities, telephone, or other obligations if applicable and documented by Sponsor.

- 7.5 Use of Resident Deposit.** The purpose of the Resident Deposit is to generate investment income to contribute to the operating income of Edgemere and to help pay for operating and capital costs. As such, interest income generated from the investment of the Resident Deposit will be paid to the Sponsor. In addition, at the sole discretion of the Sponsor, Resident Deposits may also be used to pay for project development costs, start-up deficits, debt service, early retirement of debt, costs of future expansions and other purposes deemed appropriate by the Sponsor. No reserve funding will be established pertaining to the Resident Deposit. In order to obtain permanent financing and to secure the lender or other party or parties who provide financing, the Sponsor has pledged the receipts and revenues of Edgemere, including the Resident Deposits to the extent allowable by the Texas Statutes.
- 7.6 Right of Off-Set; Other Rights.** We reserve the right to off-set against the refund of the Resident Deposit any fees or amounts payable to us under this Agreement including any charges deferred or unpaid or financial assistance provided under Section 5.7. Termination of this Agreement for whatever reason will not affect or impair the exercise of any right or remedy granted to us or you under this Agreement for any claim or cause of action occurring prior to the date of such termination.
- 7.7 Relocation.** You may elect to move to another Apartment Home, subject to availability. In such event, the Agreement will be amended to reflect the change in Apartment Home status.
- a. **Relocation to a less expensive Apartment Home.** You will receive a refund of the refundable portion of the Resident Deposit in excess of the refundable portion for the new Apartment Home in accordance with section 7.4. No additional 10% non refundable portion will be required. You will pay the then current Monthly Service Fee for the new Apartment Home. All moving costs will be at your expense.
  - b. **Relocation to a more expensive Apartment Home.** You will be required to pay the difference between the initial Resident Deposit and the Resident Deposit for the new Apartment Home selected. A portion of the additional Resident Deposit will be nonrefundable. You will pay the then current Monthly Service Fee for the new Apartment Home. All moving costs will be at your expense.



## 8. MISCELLANEOUS

**8.1 Resident's Interest.** You do not have any proprietary interest in Edgemere, its assets or properties, by virtue of this Agreement.

**8.2 Responsibility for Protection of Resident's Property.** We shall not be responsible for damage or loss to any personal property belonging to you caused by fire, flooding or other casualty, or by leaking of water, bursting of pipes, theft or any other cause. You shall be solely responsible, at your own expense, for insuring against property damage or loss and personal liability to others. In the event of your death or transfer from Edgemere, we will exercise ordinary care in temporarily safekeeping your personal property. If such property is not removed from Edgemere premises within sixty (60) days after termination of this Agreement, we reserve the right to have such property placed in a commercial bonded warehouse at the expense and risk of you or your estate.

**8.3 Injury or Accident While Away from Edgemere**

If the Resident is injured in an accident or becomes ill while away from Edgemere, the Resident shall make every reasonable effort to notify the Sponsor as soon as possible, and the Resident shall arrange to return to Edgemere as soon as reasonably possible if continued medical care is required. Sponsor shall not be responsible for or assume the cost of medical care for illness or injury incurred by the Resident while away from Edgemere. At such time as the Resident returns to Edgemere, Sponsor shall assume the responsibility for Assisted Living or Health Center services thereafter rendered as provided in this agreement.

**8.4 Injury Caused by Third Party**

In the event of an accident or injury to the Resident caused by a third party, for which such third party may be liable for the cost of any medical, surgical, nursing or additional care for Resident resulting therefrom, Resident or Resident's personal representative shall notify Sponsor promptly and Resident or Resident's personal representative shall pursue diligently any claim for damages which may be due from such third party for the injury. Sponsor is not required to bear the cost of care to the Resident for which a third party is liable. Resident agrees to indemnify Sponsor for any expenses incurred by Sponsor in providing care to Resident for which a third party is liable.

Sponsor may limit its actions as provided above to claims for recovery of the costs and expenses incurred by it, and in such event, Sponsor shall not be obliged to assert

any claim on behalf of the Resident arising out of such accident or injury beyond the costs and expenses incurred by Sponsor.

- 8.5 Indemnification for Negligence.** You hereby agree to indemnify, protect and hold us harmless from any loss, damage, injury or expense incurred by Edgemere as a result of your negligent or willful acts or the acts of your invitees or guests.
- 8.6 Right of Entry.** You hereby authorize our employees and agents to enter your Apartment Home to provide services, repairs, maintenance, alterations, pest control and inspection, and to respond to perceived medical or other emergency.
- 8.7 Guests.** Occupancy of the Apartment Home and use of the community facilities is limited to you and your guests. Guests may not occupy your Apartment Home for more than fourteen (14) days without the prior written approval of the Sponsor. You will be responsible for the conduct of your guests and for payment of any charges incurred by your guests.
- 8.8 Absence from Edgemere.** You agree to notify the Sponsor in advance of any contemplated overnight absence from Edgemere.
- 8.9 Damage to Apartment.** The resident is responsible for excessive wear and or damage to the apartment home caused by resident action or neglect . The cost of repair due to damage or neglect is the responsibility of the resident and may be withheld from any refund due.

If your Apartment Home is damaged by fire, flood, storm or other casualty or cause and we elect not to terminate this Agreement, we will, at our expense, proceed diligently to repair and restore your Apartment Home. If your Apartment Home is uninhabitable during the repair, we will relocate you to a comparable type Apartment Home at Edgemere, if available, or, if not, we will try to relocate you temporarily to any other available apartment at Edgemere and the Monthly Service Fee will be adjusted for the type of Apartment Home you temporarily occupy.

- 8.10 Entire Agreement.** This Agreement constitutes the entire Agreement between us with regard to your residence and care. We will not be liable for, or bound by, any statements, representations or promises made to you by any person representing or purporting to represent us unless such statements, representations or promises are expressly set forth and endorsed by both parties in writing, and attached to this Agreement.

- 8.11 Binding Effect.** This Agreement is binding upon our successors and assigns and your heirs and personal representatives. The provisions of this Agreement are not assignable or transferable in whole or in part by you, and you will have no right to sublet the Apartment Home.
- 8.12 Severability.** Each provision of this Agreement will be deemed separate from each other provision and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the balance of the Agreement.
- 8.13 Subordination.** Your rights under this Agreement will be subordinate to any mortgage, security interest, pledge, or other lien that now encumbers all or any part of the Sponsor's assets and shall be further subordinate to any mortgage, security interest, pledge, or other lien hereafter placed on all or any part of the Sponsor's assets, and you agree to execute, acknowledge and deliver such subordination agreements as any lender or future lender shall reasonably require in order to establish the priority of any such lien.
- 8.14 Nondiscrimination.** Edgemere will be operated on a non-discriminatory basis, and will provide the facilities and services described in this Agreement to individuals regardless of race, color, sex, marital status, religion, creed, handicap or national origin.
- 8.15 Notices.** Any notice to the Sponsor or Edgemere by you will be given in writing and mailed or delivered to Edgemere at the administrative office or at such other address as we may designate in writing. Any notice to you by us will be given in writing and mailed or delivered to your Apartment Home or at such other address as you may designate to the Sponsor or Edgemere in writing.
- 8.17 Potential Tax Benefit.** You may be eligible for a medical expense tax deduction one time for a portion of the Entrance Fee (in the first year of occupancy) and annually for a portion of the Monthly Service Fee paid to Edgemere in that tax year. Edgemere will provide a statement prepared by its auditors each year for your use in tax preparation. You are advised to seek tax advice on this issue from your personal accountant, lawyer or other tax advisor.
- 8.18 Choice of Law.** This Agreement will be interpreted according to the laws of the State of Texas.
- 8.19 Change of Condition.** You agree to notify us of any material change in any of your physical, financial or mental conditions prior to residency.

- 8.20 Authorized Agent Signature.** This Agreement has been executed on behalf of the Sponsor by its duly authorized agent and no officer, director, agent or employee of the Sponsor shall have any personal liability hereunder to you under any circumstances.
- 8.21 Third Party Rights.** No other persons or entities other than the Sponsor and the Resident have any rights or obligations under this Agreement.
- 8.22 Failure to Act.** Failure or delay of any party to exercise any right, power, or privilege under this Agreement will not operate as a waiver of such right, power, or privilege.
- 8.23 Right of Subrogation.** Should you be injured by a third-party and such injury requires Edgemere to provide health care services under this Agreement, Edgemere shall be subrogated, to the extent allowed by Texas law, to your rights against such other third-party to the extent necessary to reimburse Edgemere for the costs incurred in providing care services under this Agreement.

To the extent allowed under Texas law, this right of subrogation authorizes Edgemere to institute legal action in your name; provided, however, that such action shall not cause or result in a compromise, waiver or release of any causes of action that you may have against such third-party for such injuries.

IN WITNESS WHEREOF, THE NORTHWEST SENIOR HOUSING CORPORATION and the Resident have signed this Agreement on this 5 day of October, 2007.

**RESIDENT(S):**

Signature: *[Signature]*

Print Name: DOROTHY C. TORBERT

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

*[Signature]*  
Edgemere Marketing Representative

Northwest Senior Housing Corporation,  
a Texas Not-For-Profit Corporation

By: *[Signature]*

Its: MARABINO DUSCUM



**EXHIBIT D**

**Addendum**

*Addendum to the Lifecare Agreement between*

DOROTHY COLLINS TORBERT (aka Dee Torbert)

[Name of Resident(s)]

*and Northwest Senior Housing Corporation*

I (we) direct the refundable portion of the resident deposit to be refunded to:

The Estate of \_\_\_\_\_ ☐

or

THE DOROTHY COLLINS TORBERT 2011 REVOCABLE TRUST ☒

Contact person and mailing address for refund:

Barbara R. Chalmers



IN WITNESS WHEREOF, THE NORTHWEST SENIOR HOUSING CORPORATION and  
the Resident have signed this Agreement on this 2nd day of June, 2021.

RESIDENT(S):

Signature: \_\_\_\_\_

Print Name: Barbara Chalmers as agent and Attorney-in-fact  
for Dorothy Collins Torbert

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Northwest Senior Housing Corporation,  
a Texas Not-For-Profit Corporation

Edgemere Representative

Title

Associate Executive Director

6/7/21

**EXHIBIT E**

**Dorothy Collins Torbert 2011 Revocable Trust Agreement**



**AMENDED AND RESTATED TRUST AGREEMENT FOR  
THE DOROTHY COLLINS TORBERT DECEMBER 1997 REVOCABLE TRUST  
TO BE KNOWN AS  
"THE DOROTHY COLLINS TORBERT 2011 REVOCABLE TRUST AGREEMENT"**

DOROTHY COLLINS TORBERT of Dallas, Dallas County, Texas, being the Settlor of The Dorothy Collins Torbert December 1997 Revocable Trust made and entered into the 12th day of December, 1997, and heretofore amended on March 31, 1998, and on July 11, 2001, by written trust agreement between herself as Settlor and as Trustee, pursuant to the power of amendment reserved to her in Article II of the trust agreement hereby amends and restates The Dorothy Collins Torbert December 1997 Revocable Trust Agreement in its entirety below.

THIS AMENDED AND RESTATED AGREEMENT OF TRUST by and between DOROTHY COLLINS TORBERT of Dallas, Dallas County, Texas, hereinafter referred to as Settlor, and DOROTHY COLLINS TORBERT, hereinafter referred to as Trustee, of this trust known as THE DOROTHY COLLINS TORBERT 2011 REVOCABLE TRUST dated the 26<sup>th</sup> day of January, 2011, is entered into in consideration of the mutual covenants of the parties.

**ARTICLE I**  
**Trust Estate**

Settlor has conveyed, transferred and assigned unto the Trustee certain assets and properties. Such assets and properties and all assets and properties hereafter subject to this trust shall constitute the trust estate and shall be held, administered and distributed as a revocable trust for the uses and purposes hereinafter set forth.

Settlor or any other person or persons may, by instrument in writing, by will, by naming the Trustee as beneficiary of life insurance, or in any other manner, deliver to the Trustee at any time and from time to time additional assets and properties acceptable to the Trustee, which additional assets and properties shall become part of the trust estate and shall be held, administered and distributed pursuant to this trust

agreement. Any assets added to this trust during Settlor's lifetime shall, unless the instrument by which the assets are conveyed to the trust provides otherwise, be allocated on the books and records of the trust in equal shares to the accounts hereinafter created which are designated by the names of Settlor's children. The Trustee shall maintain books and records to appropriately identify such property and all income therefrom and mutations thereof.

## ARTICLE II REVOCABILITY AND AMENDABILITY OF TRUST

This trust is revocable during Settlor's life. Settlor shall have the power and right to amend, modify or revoke, in whole or in part, this trust agreement or any terms or provisions hereof by notice in writing delivered to the Trustee. Such amendment, modification or revocation shall be effective immediately upon delivery to the Trustee, except that changes with respect to the Trustee's duties, liabilities or compensation shall not be effective without the Trustee's consent. Settlor shall further have the power and right to require and direct the Trustee to distribute to Settlor any property or properties held by the Trustee hereunder. After the death of Settlor, this trust shall be irrevocable.

## ARTICLE III IDENTIFICATION OF BENEFICIARIES

The beneficiary of this trust is Settlor, DOROTHY COLLINS TORBERT, during her lifetime. After Settlor's death and pursuant to the terms of this instrument, the trust shall continue for the benefit of the children of Settlor, who are MICHAEL JAMES COLLINS, DOROTHY COLLINS WEAVER, and NANCY COLLINS FISHER (hereinafter sometimes collectively referred to as the "Children" and individually as a "Child"), and their descendants.

## ARTICLE IV ADMINISTRATION DURING LIFETIME OF SETTLOR

### A. Division of Trust Assets into Separate Accounts.

1. The Trustee shall divide the trust assets into four separate accounts on the books and records of the trust effective as of January 1, 1994. The assets and values allocated to each such account shall be initially determined by the Trustee in her sole and absolute discretion. Each of three such accounts shall be of equal value and shall be designated by the name of a Child and the fourth such account shall be undesignated. All income, revenue, gain, or loss arising from, and all changes, exchanges, investments, reinvestments, and mutations of the assets in each account shall be allocated on the books and records of the trust to the particular account. Similarly, all expenses, including, for example, third-party management fees, and brokerage fees, attributable to the assets in each account shall be allocated on the books and records of the trust to the particular account. The Trustee shall, in her sole

discretion, have the right, at any time and from time to time, to add assets from the undesignated account to the designated accounts, in equal or unequal amounts among such designated accounts. The assets in each account at any particular time shall be determined by reference to the books and records of the trust, which shall be absolutely determinative for this purpose.

2. In making determinations and taking action with respect to any and all investments of any separate account designated by the name of a Child, any and all purchases and sales of assets, any and all loans, any and all changes in investments and any and all details of management of the assets in the account, including the making of leases and other contracts affecting any property, the handling of rentals, the borrowing and lending of money, and the making and changing of improvements on trust property and the voting of corporate stock held in the account, the Trustee shall be guided by the judgment, advice, and directions of the Child whose name designates the account. The Children shall communicate investment directions to the Trustee and the Trustee shall then give to third parties, such as brokers, bankers, and/or investment partnerships, any instructions necessary to carry out the directions of the Children.

3. The Trustee shall make any and all investment decisions with respect to the assets in the undesignated account.

4. All of the taxable income of the trust will be taxed to Settlor. The investment decisions which each Child makes with respect to his or her designated account will impact taxable income of the trust and consequently Settlor's income tax liability. The income tax situation will be handled as follows:

a. Settlor's income tax liability for a year will be determined from her income tax return as filed.

b. The amount of such tax liability attributable to the income from the undesignated accounts in this trust and from the undesignated account in the Dorothy Dann Collins Trust established under Article II of the Last Will and Testament of James M. Collins and the First and Second Codicils thereto (the "Marital Trust") will be deducted from such total tax liability.

c. The balance of Settlor's tax liability will be charged to the three designated accounts of the trust in the proportions that the taxable income of each of the six designated accounts (three in this trust and three in the Marital Trust) bears to such balance of Settlor's tax liability. Thus, the charges attributable to the two accounts designated by the name of a Child in the two trusts will be made against the Child's designated account in this trust. No charges will be made to the three designated accounts in the Marital Trust.

d. If either the account in this trust or the account in the Marital Trust designated by the name of a particular Child recognizes a capital loss in any tax year and if either such account recognizes a capital gain in a tax year subsequent to the loss year and would have been able to utilize all or a portion of such capital loss but for its prior utilization by one or more of the accounts designated by the name of another Child, such account(s) utilizing all or a portion of such capital loss shall reimburse the account(s) designated by the name of the Child which recognized such loss to the extent of any tax savings or tax reduction. This paragraph shall be construed to apply to the two accounts designated by the name of a Child as if they were a separate taxpayer.

e. Any subsequent adjustments because of tax audits and/or amended tax returns shall be appropriately reflected by corresponding adjustments to the appropriate designated account or accounts.

f. If doubt exists, or if a question is raised, as to how any item or items should be charged or as to any aspect of these calculations and determinations, the decision of the Certified Public Accountant for the trusts shall be final and conclusive for all purposes.

5. Notwithstanding the division of the trust into separate accounts on the books and records of the trust, the Trustee shall continue to administer the trust as provided herein for the exclusive benefit of Settlor during her lifetime. The division into separate accounts is solely to permit each Child to make investment decisions with respect to the assets in a designated account and neither the Child nor his or her descendants shall have any vested interest in a designated account except as may be left to or for such Child (or descendant) after Settlor's death.

6. The Trustee shall have the unilateral right at any time and from time to time to alter, amend, or terminate this investment arrangement. In the event of such a termination of this arrangement by the Trustee, separate accounts may, but need not, continue to be maintained by the Trustee on the books and records of the trust.

7. The Trustee shall incur no liability to anyone, individually or in his or her capacity as Trustee, as a result of or growing out of or in any way connected with any action or inaction which results from dividing the trust assets into separate accounts and following the judgment, advice, and directions of the Children or any of them with respect to the investment of the assets in the accounts, and/or for allowing a Child to direct the investment of trust assets into an investment partnership or other vehicle such as, for example, Collins Capital or Fisher Capital, and/or leaving to or for each Child (or his descendants) the assets in his or her designated account, and/or for not leaving such assets to or

for the benefit of such Child or his or her descendants, including, without limitation, any liability for negligence, breach of fiduciary duty, fraud, bad faith, contribution, reimbursement, or for any other loss, expense, actual damages, punitive damages, interest, attorneys' fees, and/or detriment, of any kind or character whatsoever.

8. The provisions of this paragraph A shall take precedence over any contrary provisions contained elsewhere in this trust agreement.

B. Distributions During Settlor's Lifetime.

1. So long as Settlor shall live, the Trustee shall distribute to or for the benefit of Settlor so much of the trust income and/or corpus as Settlor shall from time to time direct in writing. Initially and until further written notice from Settlor, the Trustee shall distribute the net income, at least monthly, to Settlor. The Trustee shall make any corpus distributions to Settlor, to the extent not made from the undesignated account and to the extent practicable, equally from the accounts designated by the Children's names; provided that the Trustee reserves the right to make disparate distributions from each account if the Trustee deems such to be advisable, and in such event the Trustee may or may not as it deems advisable eliminate any such differences by future disparate allocations or withdrawals.

2. In the event of Settlor's incapacity, then, notwithstanding any prior written instructions to the contrary, the Trustee may distribute to or for the benefit of Settlor so much of the trust income and corpus as the Trustee shall determine to be necessary and appropriate to provide for the health, maintenance, and support of Settlor. For purposes of this Article, the determination of Settlor's incapacity shall be made by a physician selected by the Trustee or, if Settlor is then a Trustee, selected by any individual serving as a co-Trustee or named as a successor Trustee. Preferably, the physician selected shall be Settlor's family physician or, if he or she is unable or unwilling to make such a determination, another competent physician who is specialized in fields of medicine pertinent to the determination of mental competency and, if possible, who has had prior personal knowledge of Settlor. No judicial determination shall be required and the Trustee shall incur no liability to any person whomsoever for making distributions to or for the benefit of Settlor upon the Trustee's determination of Settlor's incapacity.

3. Any income not distributed by the Trustee shall be added to and become a part of the corpus of the trust and to the appropriate account.

ARTICLE V  
DISPOSITION UPON DEATH OF SETTLOR

A. Assets Added to Designated Accounts.

The assets in the undesignated account remaining in the trust at the time of Settlor's death shall be allocated in equal shares to the accounts designated by the Children's names. Any assets added to this trust at the time of Settlor's death from Settlor's estate or other-wise shall, unless the instrument by which the assets are conveyed to the trust provides otherwise, be allocated in equal shares to the accounts designated by the Children's names.

B. Grandchildren's Trusts.

Upon the death of Settlor, interests in assets which total an amount which is equal to Settlor's available GST exemption from the federal generation-skipping transfer tax shall be divided into as many equal shares as there are living grandchildren of Settlor and deceased grandchildren of Settlor who have descendants then living and shall be held by the Trustee named in Article VI. The assets that fund these shares shall come equally from the accounts designated by the Children's names regardless of any differences in the number of descendants that each Child for whom a share is created may have and shall be free of any estate or inheritance taxes on Settlor's estate. Each share shall be a separate and distinct trust designated by the name of the grandchild of Settlor for or on account of whom the share was created and shall be held, delivered or distributed as follows:

1. Share for Grandchild of Settlor. The Trustee shall hold as a separate and distinct trust the entire share designated by the name of a grandchild of Settlor who is living at Settlor's death. The Trustee shall pay to or for the benefit of the grandchild whose name designates the particular share all or such portion of the net income and/or corpus of the share at such times and in such amounts and manner as the Trustee may determine to be necessary or appropriate for the education, health, maintenance and support of the grandchild. Any undistributed income shall be accumulated and added to the corpus of the share.

Upon the death of the grandchild whose name designates the particular share, the Trustee shall hold the then remaining trust assets of such share for the then living descendants (in separate shares, per stirpes) of such grandchild in accordance with the provisions of subparagraph 2 below.

If no descendants of the grandchild whose name designates the particular share are living at the death of such grandchild, the Trustee shall distribute, subject to the terms of subparagraph 3 below, the then remaining trust assets of the share as follows:

a. To the grandchild's then living siblings and descendants of deceased siblings, per stirpes; or, if none,

b. To Settlor's then living grandchildren and more remote descendants, per stirpes; or, if none,

c. To Settlor's then living descendants, per stirpes; or, if none,

d. To Settlor's contingent beneficiaries pursuant to paragraph D.

2. Share for Descendants of Deceased Grandchild. If a grandchild of Settlor who has predeceased Settlor shall leave one or more descendants living at Settlor's death (or if a grandchild of Settlor who was living at Settlor's death shall thereafter die before receiving all of the assets of his or her share), the Trustee shall divide the remaining trust assets of the grandchild's share, or the share created on account of such grandchild, as the case may be, into separate shares, per stirpes, for the then living descendants of such deceased grandchild.

The Trustee shall pay to or for the benefit of the beneficiary whose name designates such a particular share all or such portion of the net income and/or corpus of the share at such times and in such amounts and manner as the Trustee may determine to be necessary or appropriate for the education, health, maintenance and support of such beneficiary. Any undistributed income shall be accumulated and added to the corpus of the share for such beneficiary.

Upon the later of (i) five (5) years after the death of the grandchild of Settlor who is the ancestor of the beneficiary, or (ii) the thirty-fifth (35th) birthday of the beneficiary, the trust of the share for such beneficiary shall terminate and the Trustee shall distribute to such beneficiary, if such beneficiary is then living, the then remaining corpus and undistributed income of such share.

If a beneficiary dies before becoming entitled to receive all of the corpus and undistributed income of the share designated by his or her name, the Trustee shall distribute the then remaining corpus and undistributed income to the then living descendants, per stirpes, of such beneficiary; provided, however, that the share for a descendant of the beneficiary who is under the age of thirty-five (35) years shall not be distributed outright to such descendant but shall instead be held by the Trustee in a separate trust for the descendant in accordance with the provisions of this subparagraph.

If no descendants of the beneficiary whose name designates the particular share are living at the death of such beneficiary, the Trustee shall distribute, subject to the terms of subparagraph 3 below, the then remaining corpus and undistributed income of the particular share as follows:

a. To the beneficiary's then living siblings and descendants of deceased siblings, per stirpes; or, if none,

b. To the then living descendants, per stirpes, of the grandchild of Settlor who is the ancestor of the beneficiary; or, if none,

c. To the then living descendants, per stirpes of the Child of Settlor who is the ancestor of the beneficiary; or, if none,

d. To Settlor's then living descendants, per stirpes; or, if none,

e. To Settlor's contingent beneficiaries pursuant to paragraph D.

3. Certain Distribution to be Held in Trust. Any distribution directed to be made under the provisions of this paragraph B to a descendant of Settlor for whom another share is then being held in trust under the provisions of this paragraph B shall not be distributed outright to such descendant but instead shall be added to the corpus of the share being held in trust for such descendant and shall be administered as a part of the corpus thereof.

C. Trusts for Descendants.

Upon the death of Settlor, the balance of the then remaining assets and undistributed income of each account designated by the name of a Child (after the establishment of the Grandchildren's Trusts provided for in paragraph B above) shall be held by the Trustee named in Article VI as a separate trust designated by the name of the Child of Settlor whose name designates the account. Each such separate trust shall be held, delivered or distributed as follows:

1. Share for Child of Settlor. The Trustee shall hold as a separate and distinct trust the entire share designated by the name of a Child of Settlor who is living at Settlor's death. The Trustee shall pay to or for the benefit of the Child whose name designates the particular share and/or such Child's descendants all or such portion of the net income and/or corpus of the share at such times and in such amounts, manner, and proportions among them as the Trustee may determine to be necessary or appropriate for the education, health, maintenance, and support of the Child and/or his or her descendants. Any income not distributed shall be accumulated and added to corpus at year end. No distribution of corpus to a descendant of a Child of Settlor's shall be taken into account upon the termination and/or division into shares of the trust.

Upon the death of the Child whose name designates the particular share, the Trustee shall distribute the then remaining trust assets of the share as the Child directs by a clause in the Child's Last Will and Testament in which he or she specifically exercises this power of appointment by appointing any and all of



the trust assets of the share to or for the benefit of the Settlor's descendants, the Child's descendants or the creditors of the Child's estate, in such shares, proportions and amounts and upon such lawful trusts and for such lawful estates as the Child may determine.

If the Child fails to fully exercise the foregoing general power of appointment, then the Trustee shall hold the then remaining and unappointed trust assets of the share for the then living descendants (in separate shares, per stirpes) of such Child in accordance with the provisions of subparagraph 2 below.

If no descendants of the Child whose name designates the particular share are living at the death of such Child, the Trustee shall distribute, subject to the terms of subparagraph 3 below, the then remaining and unappointed trust assets of the share as follows:

- a. To Settlor's then living descendants, per stirpes; or, if none,
- b. To Settlor's contingent beneficiaries pursuant to paragraph D.

2. Share for Descendants of Deceased Child. If a Child of Settlor who has predeceased Settlor shall leave one or more descendants living at Settlor's death (or if a Child of Settlor who was living at Settlor's death shall thereafter die before receiving all of the assets of his or her share and has failed to fully appoint such assets), the Trustee shall divide the remaining and unappointed trust assets of the Child's share, or the share created on account of such Child, as the case may be, into separate shares, per stirpes, for the then living descendants of such deceased Child.

The Trustee shall pay to or for the benefit of the beneficiary whose name designates such a particular share all or such portion of the net income and/or corpus of the share at such times and in such amounts and manner as the Trustee may determine to be necessary or appropriate for the education, health, maintenance and support of such beneficiary. Any undistributed income shall be accumulated and added to the corpus of the share for such beneficiary.

Upon the later of (i) five (5) years after Settlor's death, (ii) five (5) years after the death of the Child of Settlor who is the ancestor of the beneficiary, or (iii) the thirty-fifth (35th) birthday of the beneficiary, the trust of the share for such beneficiary shall terminate and the Trustee shall distribute to such beneficiary, if such beneficiary is then living, the then remaining corpus and undistributed income of such share.

If a beneficiary dies before becoming entitled to receive all of the corpus and undistributed income of the share designated by his or her name, the Trustee shall distribute the then remaining corpus and undistributed income of the share as the beneficiary directs by a clause in his or her Last Will and

Testament in which he or she specifically exercises this power of appointment by appointing any and all of the trust assets of the share to or for the benefit of any person, including the beneficiary's estate, in such shares, proportions and amounts and upon such lawful trusts and for such lawful estates as the beneficiary may determine.

If the beneficiary fails to fully exercise the foregoing general power of appointment, the Trustee shall distribute the then remaining corpus and undistributed income to the then living descendants, per stirpes, of such beneficiary; provided, however, that the share for a descendant of the beneficiary who is under the age of thirty-five (35) years shall not be distributed outright to such descendant but shall instead be held by the Trustee in a separate trust for the descendant in accordance with the provisions of this subparagraph.

If no descendants of the beneficiary whose name designates the particular share are living at the death of such beneficiary, the Trustee shall distribute, subject to the terms of subparagraph 3 below, the then remaining corpus and undistributed income of the particular share as follows:

- a. To the beneficiary's then living siblings and descendants of deceased siblings, per stirpes; or, if none,
- b. To the then living descendants, per stirpes, of the Child of Settlor who is the ancestor of the beneficiary; or, if none,
- c. To Settlor's then living descendants, per stirpes; or, if none,
- d. To Settlor's contingent beneficiaries pursuant to paragraph D.

3. Certain Distributions to be Held in Trust. Any distribution directed to be made under the provisions of this paragraph C to a descendant of Settlor for whom another share is then being held in trust under the provisions of this paragraph C shall not be distributed outright to such descendant but instead shall be added to the corpus of the share being held in trust for such descendant and shall be administered as a part of the corpus thereof.

D. Contingent Beneficiaries.

If all of Settlor's descendants should die prior to the time of Settlor's death or prior to the termination of a trust or share as hereinabove provided, then upon the death of the last to die among Settlor and Settlor's descendants, the Trustee shall deliver the remaining unappointed trust corpus and undistributed income of this trust to Settlor's heirs determined as if Settlor had died at such time.

ARTICLE VI  
APPOINTMENT OF TRUSTEE

The following provisions shall, except as otherwise provided, apply to all trusts governed by this Agreement.

A. Appointment and Succession of Trustee.

1. Prior to Death of Settlor. The initial Trustee of the trust created by this instrument shall be DOROTHY COLLINS TORBERT. In case of her resignation, failure, refusal, inability or incapacity to serve as Trustee, for any reason other than her death, then MICHAEL JAMES COLLINS, DOROTHY COLLINS WEAVER and NANCY COLLINS FISHER shall serve jointly as substitute or successor Trustees, and they shall act by the majority decision of any two of them. If any of them shall fail or cease for any reason to serve as Trustee, then the others or other shall serve as successor Trustee. The last to serve of the Settlor's Children who are named above shall have the power by a written instrument, including a will, to designate one or more persons to serve as successor Trustee. Any such designation of a successor Trustee may be revoked or amended by the Trustee until such time as the designation has become effective by the successor(s) filling a trustee vacancy. If there is an unrevoked designation made during life and one made by will, the designation in the will shall control. The Trustee shall also have the right to grant to his or her designated successor(s) the same right to name a successor Trustee, and all successors shall have similar rights. Any Trustee who is serving as sole Trustee shall have the power by written instrument to appoint one or more persons to serve as an additional Trustee with the Trustee for so long as the Trustee is serving.

The foregoing provisions shall not apply after the death of Settlor.

2. After Death of Settlor. The initial Trustee of each trust governed by this instrument after Settlor's death shall be the Child of Settlor for whom, or for whose descendants, the trust was created. The Trustee of each trust shall have the power by a written instrument, including a will, to designate one or more (including a beneficiary of such trust) persons or institutions to serve as a successor Trustee in the event of the failure of the Trustee to serve for any reason. Any such designation of a successor Trustee may be revoked or amended by the Trustee until such time as the designation has become effective by the successor(s) filling a trustee vacancy. If there is an unrevoked designation made during life and one made by will, the designation in the will shall control. The Trustee shall also have the right to grant to his or her designated successor(s) the same right to name a successor Trustee, and all successors shall have similar rights. Any Trustee who is serving as sole Trustee shall have the power by written instrument to appoint one or more persons or

institutions to serve as an additional Trustee with the Trustee for so long as the Trustee is serving.

B. General Provisions.

Except as the context otherwise requires, all references in this instrument to "Trustee" are to the Trustee(s) then serving as such. If more than one Trustee is then serving, then all discretionary decisions made by the Trustee shall be made unanimously (if there are two Trustees) or by majority decision (if there are more than two Trustees); however, any Trustee may delegate ministerial duties to any other Trustee or to other persons or institutions.

C. Resignation of Trustee.

Any Trustee is authorized to resign by filing a written instrument duly acknowledged of record in the Deed Records of Dallas County, Texas, which filing shall immediately deprive the resigning Trustee of all powers as Trustee hereunder; provided, nevertheless, that at least thirty (30) days prior to filing the resigning Trustee shall give written notice thereof to the Co-Trustee, if any, and to successor trustee and to those persons who could in the discretion of the Trustee receive income from the trust estate and are at such time sui juris. No purchaser from or other person dealing with any Trustee is obligated to examine such Deed Records, and any such person shall be protected in all transactions with any Trustee whether or not any such resignation has taken place.

D. Appointment of Successor Trustee.

If any Trustee appointed or serving pursuant to this instrument dies, resigns or refuses, fails or ceases, for any reason, to serve as Trustee and no Trustee has been appointed pursuant to this instrument to serve as successor or if all Trustees named as successor have died, resigned or have failed or ceased to serve, then a majority of the trust beneficiaries who are then entitled to receive income distributions from the separate trust (any minor beneficiaries being represented by their parents or legal guardians) shall have the power to appoint as successor Trustee (i) any trust company or bank possessing trust powers with assets under administration valued at not less than Forty Million Dollars (\$40,000,000.00), or (ii) any individual who is not a beneficiary of the separate trust or who is not a spouse or former spouse of any descendant of Settlor. Such appointment shall be by written instrument duly executed and acknowledged by the appointing parties and by the successor Trustee and filed in the Deed Records of Dallas County, Texas. If a successor Trustee is not appointed as hereinabove provided, then any court or competent jurisdiction shall appoint a successor trustee with the qualifications set forth above.

E. Trustee Reorganization.

Any corporation that shall succeed (by purchase, merger, consolidation, or otherwise) to all or the greater part of the assets of any corporate Trustee shall succeed to all the rights, duties and powers of such corporate Trustee, as Trustee of all trusts created by this instrument.

ARTICLE VII  
GENERAL PROVISIONS RELATING TO TRUSTS

The following provisions shall be applicable to each trust created by this instrument:

A. Restrictions on the Exercise of Certain Powers.

Except with respect to distributions made by Settlor while serving as Trustee or by a Trustee to himself or herself that are subject to an ascertainable standard, no Trustee shall have the power to participate in the discretionary distribution of any portion of the net income and/or corpus of any trust created hereunder to himself or herself or to discharge a personal legal obligation of that Trustee, including a legal obligation of support or maintenance, and such power shall be exercisable solely by the other Trustee, if any (other than a Trustee similarly restricted or a Trustee appointed by the restricted Trustee). If no other Trustee (other than a Trustee similarly restricted or a Trustee appointed by the restricted Trustee) is then serving, such power shall be exercisable, in the capacity of a Special Trustee for that purpose only, by the next person(s) designated to serve as successor Trustee who are not so restricted.

B. Postponement of Trust Termination.

1. Except in the case of distributions pursuant to the exercise of a general power of appointment, the Trustee may postpone the required complete or partial termination of a trust if the Trustee determines, in the Trustee's discretion, that any one or more of the following conditions exists:

- a. The beneficiary is under age 21.
- b. The beneficiary is under legal disability.
- c. The beneficiary's personal circumstances present a compelling reason to postpone the distribution, such as a serious physical or mental disability, substance abuse, a pending divorce, a potential financial difficulty, or a serious tax disadvantage in making the distribution.
- d. The beneficiary has clearly manifested an inability to manage financial affairs.

e. The property to be distributed is subject to conflicting claims, tax deficiencies or liabilities, contingent or otherwise.

The good faith determination of the Trustee under subparagraph c, d, or e above shall be binding on all beneficiaries of the trust and shall not be open to question.

2. If the Trustee postpones the distribution of trust property, the Trustee shall continue to hold and administer the withheld trust estate for the beneficiary's benefit. Income of the beneficiary's trust shall be added to corpus, and the Trustee shall distribute as much of the beneficiary's trust as the Trustee, in the Trustee's discretion, deems necessary for the beneficiary's proper support, health, maintenance, and education.

3. When, in the Trustee's opinion, none of the above conditions exist, the Trustee shall distribute to the beneficiary the portion of his or her trust to which he or she was otherwise entitled. However, if the beneficiary dies before receiving the postponed distribution, the Trustee shall instead make the distribution to the beneficiary's estate. If the Trustee postpones a distribution under subparagraph c, d, or e of subparagraph 1 above for more than three years, the Trustee shall seek an order approving further postponement in a court of competent jurisdiction.

C. Compensation and Bond.

No individual serving hereunder and related to Settlor by blood or marriage shall be entitled to compensation for performance of duties as Trustee. Any other Trustee from time to time serving hereunder may receive fair, reasonable and customary compensation for services as Trustee. The regularly published fee schedule of any corporate fiduciary shall be taken into account in determining what is fair and reasonable compensation for its services. Any Trustee from time to time serving hereunder shall be reimbursed for any out-of-pocket expenses incurred while acting as a Trustee of any trust created pursuant to this instrument. No Trustee shall be required to furnish bond or any other security, and all rights, powers, authorities, privileges and discretions herein conferred upon the Trustee shall be exercised without the supervision of any court, it being intended that so far as can be legally provided, the Trustee shall be completely free of all court supervision of any kind, including the requirement of any accounting to a court.

D. Accounting.

During the Settlor's lifetime, the Trustee shall furnish an annual accounting to each living Child of such Child's designated account. Within 30 days after delivery of the accounting, or at such other reasonable time as the Trustee specifies in writing, each Child shall either sign a written instrument approving the accounting or notify the

Trustee in writing of any questions he or she has about the accounting. If a Child neither approves the accounting nor notifies the Trustee of any questioned matters within the applicable time period, the Child shall be deemed to have approved the accounting. The Trustee shall have no liability to any Child who approves or who is deemed to have approved an accounting or to any descendant of any such Child. After Settlor's death, the Trustee shall furnish an annual accounting to any beneficiary or guardian of any beneficiary upon reasonable demand made therefor.

If and to the extent required by a successor Trustee, an accounting for the administration of a trust created hereunder shall also be given to the successor Trustee. A successor Trustee shall be fully protected in relying upon such accounting and also in not requiring such an accounting from his predecessor.

E. Liabilities.

This instrument shall always be construed in favor of the validity of any act by or omission of any Trustee, and a Trustee shall not be liable for any act or omission except in the case of gross negligence, bad faith, or fraud.

F. Powers and Duties of Successor Trustee.

On the appointment and qualification of any successor Trustee, the same duties shall devolve on and the same rights, powers, authorities, privileges and discretions shall inure to such successor Trustee as to the initial Trustee. All such rights, powers, authorities, privileges, and discretions shall be exercised without the supervision of any court. No successor Trustee shall have any duty, responsibility, obligation, or liability whatsoever for the acts, defaults, or omissions of any predecessor Trustee.

G. Relinquishment of Powers.

Any Trustee may release or relinquish any one or more of any powers, rights or privileges which, in the Trustee's judgment, unless released or relinquished, might result in adverse consequences to the trust estate or any beneficiary. Any such release or relinquishment shall be made by written instrument acknowledged and filed in the Deed Records of Dallas County, Texas. After any power has been so released or relinquished it shall never again be exercised by the Trustee.

H. Spendthrift Provision.

No beneficiary shall have the right or power to anticipate, by assignment or otherwise, any income or corpus given to such beneficiary or any portion thereof; nor, in advance of actually receiving the same, shall any beneficiary have the right or power to sell, transfer, encumber or in anywise charge same; nor shall such income or corpus, or any portion of same, be subject to any divorce, execution, garnishment, attachment,

insolvency, bankruptcy or other legal proceeding of any character, or legal sequestration, levy or sale or in any event or manner be applicable or subject, voluntarily or involuntarily, to the payment of such beneficiary's taxes, debts or other obligations.

I. Small Trust Provision.

Any provision of this instrument to the contrary notwithstanding, any Trustee who is not a beneficiary of the trust shall have the discretionary power to terminate any separate trust (except any trust with a GST inclusion ratio of zero) created by this instrument whenever the continued management thereof is no longer economical because of the small size of such trust, taking into consideration financial or other special advantages to the beneficiary or beneficiaries of continuing the trust estate. Upon the termination of any trust estate, the then remaining corpus and undistributed income shall be distributed outright and free of trust to the beneficiaries thereof, to a custodian named for a beneficiary under a Uniform Gifts to Minors Act, or to the beneficiaries' legal representatives in proportion to their respective presumptive interests in the trust or share at the time of such termination. Upon such distribution and delivery, the said trust or share shall terminate and the Trustee shall not be liable or responsible to any person or persons whomsoever for its action. The Trustee shall not be liable for failing or refusing at any time to terminate the trust or a share thereof as authorized by this paragraph.

J. Merger of Trusts.

The Trustee may, in the Trustee's discretion, combine the assets of separate trusts under this instrument for the purpose of more convenient administration or investment for any period of time, preserving however the separate character of each separate trust, and may merge the assets of any trust hereunder with those of any other trust maintained for the same beneficiaries upon substantially the same terms; provided however that no trust with a GST inclusion ratio equal to zero shall be merged with a trust having a GST inclusion ratio of greater than zero.

K. Perpetuities Provision.

Notwithstanding anything in this instrument to the contrary, the portion and assets of any trust created hereunder attributable to Settlor's exercise of her general testamentary power of appointment over the assets of the Dorothy Dann Collins Trust established under Article II of the Last Will and Testament of James M. Collins, shall in all events terminate not later than 21 years after the death of the last survivor among Settlor and the descendants of James M. Collins who were living on the date of death of James M. Collins. The remainder of each other trust created hereunder shall in all events terminate not later than 21 years from and after the death of the last survivor among Settlor and all of Settlor's descendants living at the time of Settlor's death. Upon such termination, the assets and property of the trust, or of the terminated portion of the



trust, as the case may be, shall be delivered and distributed, outright and free of trust, to the person or persons to whom the income of the particular trust may be distributed at that time. If the income of a particular trust may be distributed to more than one person at that time, the Trustee shall divide the assets and properties among such persons in such proportions among them as the Trustee shall determine, in the Trustee's sole discretion, to best carry out Settlor's intentions as expressed in this instrument.

L. Fiduciary Obligation.

The powers herein conferred upon the Trustee shall always be exercised only in a fiduciary capacity.

M. Situs of Trust.

The situs of each trust shall be the State of Texas, and the laws of the State of Texas shall govern as to the interpretation, validity and administration of the trust; provided, however, that the laws of any other state in which trust property may be located shall govern to the extent necessary in managing such property. In addition, if the Trustee, in the Trustee's sole discretion, determines that a change of situs would be beneficial to the purposes of any separate trust established by this instrument, the Trustee shall have the discretion and authority to change the situs of any such trust to another state. Formal notice of any change of situs may be given by the Trustee by the filing of a written declaration in the Deed Records of Dallas County, Texas. If the situs of any such trust is changed to another state, then the trust shall, in all respects, be governed by the laws of the state which is the new situs. No such change of situs shall be authorized herein, however, which would result in a termination of the trust for federal tax purposes.

ARTICLE VIII  
POWERS OF TRUSTEE

The Trustee shall have and may exercise the following rights, powers and privileges with respect to each trust created by this instrument, unless specifically limited by other provisions of this instrument:

A. Distributions.

The Trustee shall have full power and authority to make, either in kind and/or by value, all partitions, divisions and distributions contemplated by any of the provisions of this instrument. Any partition, division, or distribution made by the Trustee in good faith shall be binding and conclusive on all interested parties.

B. Methods of Payment.

If a beneficiary shall, in the opinion of the Trustee, be incapacitated by reason of age, illness, or any other cause at the time of a distribution, the Trustee may apply the distribution for the benefit of such beneficiary in any manner that the Trustee may deem advisable, whether by payment of such beneficiary's expenses or to any such beneficiary, the legal or natural guardian, the person having custody of such beneficiary or any other person deemed suitable by the Trustee. If any property is distributable hereunder to a minor person, the Trustee may make the distribution to a custodian (who may be the Trustee) for the minor under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of Texas or any other state.

C. Conservation of Trust Properties.

The Trustee may hold, manage and conserve any and all properties transferred to the trust and may take any action that the Trustee may deem necessary or appropriate, including the exercise of all rights and powers that a prudent owner would exercise in managing and conserving properties of a like kind.

D. Investment in Securities.

The Trustee may buy, sell or trade any security of any nature (including stocks, stock rights, warrants, bonds, debentures, notes, certificates of interest, certificates of indebtedness and options) or any other things of value issued by any person, firm, association, trust, corporation or body politic whatsoever.

E. Investment in Real Estate and Personal Property.

The Trustee may, at such cost and upon such terms as the Trustee may deem advisable, purchase or otherwise acquire real estate and personal property of any kind and hold, manage and conserve the same in whatever manner the Trustee may deem best; lease such property under a lease or leases to commence at once or in the future and for any period of time, even though such period may extend beyond the duration of the trust; renew and extend leases; partition, exchange, release, convey or assign any right, title or interest of the trust in any real estate or personal property owned by the trust; plat real estate and lay out and dedicate streets, alleys and ways; and improve and erect buildings on any and all real property (in addition to or substitution for buildings at any time existing thereon).

F. Investment in Oil, Gas and Other Mineral Interests.

The Trustee may purchase or otherwise acquire oil, gas and other mineral interests, leases, royalties, overriding royalties, production payments, oil payments, gas payments, net profit overriding royalties, and net profit interests; grant, make and release oil, gas and other mineral leases, subleases and farmouts; enter into

development and drilling contracts, operating contracts and unitization agreements; make agreements for present or future pooling of any interest in oil, gas or other mineral properties and for secondary recovery projects, and exercise with respect to any and all oil, gas and other mineral properties all rights and powers that a prudent owner would have with respect to properties of a like kind.

G. Investment in Undivided Interests.

The Trustee may, for any trusts created under this instrument, jointly hold, manage and invest in one or more assets, properties or consolidated funds, in whole or in part, as the Trustee may determine. As to each asset, property or consolidated fund, division into the appropriate shares need be made only on the Trustee's books of account, in which each trust shall be allotted its proportionate part of the corpus and income of the asset, property or fund and charged with its proportionate part of the expenses thereof. No such holding shall, however, defer the vesting in possession of any estate created by this instrument.

H. Investment in Partnership.

The Trustee may purchase or otherwise acquire an interest in any partnership holding lawful investments or conducting a lawful business, transfer trust property to any partnership which will hold any lawful investment or conduct any lawful business, or become either a general or limited partner of any such partnership.

I. Power to Organize or Continue Business.

The Trustee may continue any business (whether a proprietorship, corporation, partnership, limited partnership or other business entity) which the trust may own or in which it may be financially interested for such time as the Trustee may deem to be in the best interests of the trust; employ in the conduct of any such business such capital out of the trust as the Trustee may deem proper; borrow money for use in any such business alone or with other persons financially interested in such business, and secure loans by a mortgage, pledge or any other manner of encumbrance of not only the trust's property and interest in such business but also such portion of the trust outside of such business as the Trustee may deem proper; organize, either alone or jointly with others, new corporations, partnerships, limited partnerships or other business entities and convey to it or them trust property or any part thereof; and generally exercise with respect to the continuance, management, sale or liquidation of any business which the trust may own or in which it may be financially interested, or of any new business or business interest, all the rights and powers which a prudent owner of any such business would have.

J. Selection and Retention of Investments.

Any property acquired by the Trustee and at any time constituting any part of the trust shall be deemed a proper investment, and the Trustee shall be under no obligation to dispose of or convert such property. Investments need not be diversified, may be of a wasting nature, and may be made or retained with a view to possible increase in value. The Trustee may invest all funds available for investment at any time that the Trustee may deem advisable in such investments as the Trustee may be permitted to make pursuant to the terms hereof. The Trustee, unless otherwise herein specifically prohibited, shall have as wide a latitude in the selection, retention and making of investments as an individual would have in retaining or investing his own funds and shall not be limited to nor bound or governed by any statute or regulation respecting investments.

K. Holding Title to Investments.

The Trustee may hold title to investments in the name of the Trustee or a nominee. If the trust owns assets located in a jurisdiction in which the Trustee cannot be authorized to act, then the Trustee may appoint any person or national bank authorized to act in such jurisdiction as trustee of such assets and confer on such trustee any power as may be necessary in the premises, but, in any event, such trustee shall account for all net income and/or net proceeds from the sale of such assets to the Trustee acting hereunder.

L. General Powers.

The Trustee may sell, exchange, alter, mortgage, pledge or otherwise dispose of trust property; borrow any sum believed by the Trustee to be necessary or desirable for protecting the trust or any part thereof, making any income or corpus payment or distribution, or for any other purpose which in the Trustee's opinion may be appropriate; pay all reasonable expenses; execute obligations, negotiable and nonnegotiable; join in, by deposit, pledge, or otherwise, any plan of reorganization or readjustment of any investments of the trust, and vest in a protective committee or other legal entity such power as in the Trustee's opinion may be desirable; and sell for cash and/or credit all or any part of the trust property.

M. Power to Make Loans.

The Trustee may make loans, secured or unsecured, in such amounts, upon such terms, at such reasonable rates of interest, and to such persons, firms or corporations as the Trustee may deem proper and appropriate; provided, however, that the Trustee shall not be empowered to make any loan to any person or corporation then serving as Trustee hereunder.

N. Power to Vote Stock.

The Trustee may vote shares of stock in person or by proxy, with or without power of substitution; exercise and perform any and all rights, privileges and powers inuring to the holder of any stock or security comprising at any time a part of the trust, and exercise by agent or attorney-in-fact any right appurtenant to any property or matter in which the trust may be interested.

O. Protection of the Trust Estate.

The Trustee may protect, perfect and defend the title to any trust property; sue and be sued; enforce any bonds, mortgages or other obligations or liens owned by the trust; compromise, arbitrate, or otherwise adjust claims in favor of or against the trust; waive or release rights of any kind; and abandon any property considered by the Trustee to be worthless.

P. Insurance.

The Trustee may carry such insurance coverage (in stock companies or in mutual companies), including public liability, property damage and life insurance, for such hazards and in such amounts as the Trustee may deem advisable. With respect to life insurance, the Trustee may acquire life insurance on the life of any beneficiary or on the life of any person in whom a beneficiary has an insurable interest from any company in such amount and type as the Trustee may deem advisable, pay all premiums from either income or principal, and designate as beneficiary the Trustee of the trust.

Q. Employ and Compensate Agents and Representatives.

The Trustee may employ, appoint, remove and compensate, out of income or corpus or in such proportion between income and corpus as the Trustee may deem proper, agents or other representatives, including accountants, brokers, attorneys-at-law, attorneys-in-fact, investment counsel, investment brokers, realtors, rental agents, geologists, engineers, and other assistants and advisers as deemed by the Trustee to be helpful in the proper administration of the trust, without liability for any neglect, omission, misconduct, or default of such agent or representative, provided such agent or representative was selected and retained by the Trustee with due care.

R. Establish and Maintain Reserves.

Out of rents, profits, or other income received, the Trustee may set up reserves for taxes, assessments, insurance premiums, repairs, improvements, depletion, depreciation, obsolescence and general maintenance of buildings or other property.

S. Power to Determine Income and Corpus.

Stock dividends and capital gains shall be treated as corpus. Except as herein otherwise specifically provided, the Trustee shall determine in accordance with general principles of federal tax law the manner in which expenses are to be borne and receipts credited between corpus and income and what shall constitute income, net income and corpus. In determining such matters, the Trustee may give consideration to, but shall not be bound by, the provisions of the Texas Trust Code.

T. Liability of Third Party.

No purchaser at any sale made by the Trustee or person dealing with the Trustee is obliged to see to the application of any money or property paid or delivered to the Trustee or to inquire into the expediency or propriety of, or the authority of the Trustee to enter into and consummate, any transaction.

U. Documents.

The Trustee may execute and deliver any deeds, conveyances, assignments, leases, contracts, stock or security transfer powers, or any other written instrument of any character appropriate to any of the powers or duties herein conferred upon the Trustee.

V. Generation-Skipping Taxes and Payment.

If the Trustee should consider any distribution or termination of an interest or power hereunder as a distribution or termination subject to a generation skipping tax, the Trustee may:

1. Augment any taxable distribution by an amount which the Trustee shall estimate to be sufficient to pay such tax and charge the same to the particular trust or share to which the tax relates without adjustment of the relative interests of the beneficiaries;
2. Pay such tax, in the case of a taxable termination or direct skip, from the particular trust or share to which the tax relates without adjustment of the relative interests of the beneficiaries. If said tax is imposed in part by reason of the trust property hereunder, and in part by reason of other property, the Trustee shall pay only the portion of such tax attributable to the taxable termination or direct skip hereunder taking into consideration deductions, exemptions, credits and other factors which the Trustee may deem advisable; and
3. Postpone final termination of any particular trust and withhold all or any portion of the trust property until the Trustee shall be satisfied that such trust

no longer has any liability to pay any generation-skipping tax with reference to such trust or its termination.

W. GST Inclusion Ratio.

If property not having an inclusion ratio for purposes of the generation-skipping transfer tax equal to zero is directed to be added to a trust which has an inclusion ratio equal to zero, the Trustee may decline to make the addition and may instead administer the property as a separate trust with provisions identical to the trust having an inclusion ratio equal to zero. If property having an inclusion ratio for purposes of the generation-skipping transfer tax equal to zero is directed to be added to a trust which has an inclusion ratio not equal to zero, the Trustee may decline to make the addition and may instead administer the property as a separate trust with provisions identical to the trust having an inclusion ratio not equal to zero.

X. Division of Trusts.

The Trustee may divide any trust established as the result of a provision of this instrument, at any time, into two or more separate trusts so that the federal generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code for each trust shall be either zero or one. Any such separate trusts shall have the identical provisions as the original trust. If a trust is divided into separate trusts, the Trustee may, at any time: (i) make different tax elections with respect to each separate trust, (ii) expend corpus and exercise any other discretionary powers with respect to such separate trusts differently, (iii) invest such separate trusts differently, and (iv) take all other actions consistent with such trusts being separate entities. Further, the donee of any power of appointment with respect to a trust so divided may exercise such power differently with respect to the separate trusts created by the division. The Trustee is exonerated from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are made in good faith.

Y. Dealings With Third Parties.

The Trustee may deal with any person, estate, trust, or entity regardless of any relationship or identity of any Trustee to or with that person, estate, trust, or entity, or the fiduciary thereof, and may hold or invest all or any part of a trust created hereunder in common or undivided interests with that person or entity. Except to the extent that the provisions of Sections 113.052 through 113.055 of the Texas Trust Code, as amended, cannot be waived, such provisions shall not apply to any trust created hereunder.

Z. Dealing with Estates and Trusts.

The Trustee may lend any part of the trust estate to the Executor of Settlor's estate or the Executor of a beneficiary's estate upon such security, for such time, at

such rates of interest and upon such terms as the Trustee, in the Trustee's sole discretion, may deem proper to pay all or any part of the debts, funeral expenses, administration expenses, and estate and inheritance taxes payable by reason of a beneficiary's death, and may purchase from the Executor of said estate any item of property, real or personal, for such sums and on such terms as the Trustee may deem wise and proper. The Trustee may also enter into any transaction authorized by this trust with the trustees of any trust, even though the Trustee may also be a trustee of such other trusts, including selling assets of this trust at their fair market value to another trust, purchasing assets at fair market value from another trust, or borrowing funds from or lending funds to such other trust. The Trustee acting under this paragraph shall be acting in a fiduciary capacity and shall deal with such estates or trusts in an arms-length manner.

AA. Reserve for Taxes, Obligations and Bequests.

Upon Settlor's death, the Trustee shall be authorized to withhold from distribution of corpus in accordance with this instrument an amount of property sufficient, in its judgment, to cover any liability that may be imposed upon the Trustee or the trust for estate, inheritance or other taxes attributable to Settlor's estate or to meet any taxes, bequests, or obligations (including all such taxes) and debts of Settlor or of Settlor's estate, or expenses with respect to the administration of Settlor's estate, and to pay such bequests, liabilities, obligations, debts and expenses out of the assets herein, all in the manner and in the proportions, as specified in Section IV of the Settlor's Last Will and Testament of even date herewith. The Trustee shall cooperate with Settlor's Executors in carrying out the Trustee's duties hereunder. Upon the Trustee being satisfied that it no longer has any liability with respect to such taxes, bequests, debts, liabilities, obligations and expenses, the balance of such withheld property shall be distributed in accordance with the applicable provisions of this trust agreement. Neither the trust estate nor any trust beneficiary shall be entitled to reimbursement from Settlor's estate or Settlor's heirs or devisees on account of any payment made pursuant to this paragraph.

BB. Tax Elections and Allocations.

If no personal representative is appointed for Settlor's estate within six (6) months of her death, the Trustee shall have the power and authority to make any and all estate, inheritance, generation-skipping transfer, income and other tax elections and allocations available to the Trustee, including specifically (i) the date and option, alternative or method which should be selected for the valuation of property in Settlor's estate for federal and state estate and inheritance tax purposes and the payment of all such taxes, (ii) whether a deduction shall be taken as an income tax deduction or an estate tax deduction, (iii) the election to extend the time for the payment of federal and state estate and inheritance taxes and the election to pay any such tax in installments, and (iv) the allocation of any of Settlor's available GST exemption from the federal generation-skipping transfer tax to any property as to which Settlor is the deemed



transferor. Property may be subject to the above elections and allocations whether or not such property is included in Settlor's probate estate. The Trustee shall incur no liability to any beneficiary of Settlor's probate and/or nonprobate estate as a result of making or not making any election or allocation, regardless of the fact that any federal or state tax imposed on this trust or Settlor's estate or the income therefrom is thereby increased or that there is a change in the proportion in which any beneficiary shares in this trust or Settlor's estate. The Trustee's decisions, when made in good faith, with respect to any election or allocation shall be binding and conclusive on all concerned and no compensating adjustments between income or corpus, in the amount of any trust, or the interest of any beneficiary, shall be made as a result of any decision.

CC. Powers Cumulative.

Except as herein otherwise provided, the powers conferred upon the Trustee shall not be construed as in limitation of any authority conferred by law but as in addition thereto.

ARTICLE IX  
CONTESTS

A. Will and Other Contests.

If any beneficiary under this instrument shall contest the probate or validity of Settlor's Will, or any provision of this instrument or Settlor's Will, or shall institute or join in (except as a true party defendant) any proceeding to contest the validity of this instrument or Settlor's Will or to prevent any provision of this instrument or Settlor's Will (including the exercise of any power of appointment under Settlor's Will) from being carried out in accordance with its terms (regardless of whether or not such proceedings are instituted in good faith and with probable cause), then all benefits provided under this instrument for such beneficiary and/or the descendants of such beneficiary (including benefits conferred by the exercise of a power of appointment under Settlor's Will) are revoked, and all of such benefits shall pass pro rata to the shares of the other beneficiaries under this instrument or, as the case may be, the other beneficiaries of any power of appointment (other than such beneficiary or the descendants of such beneficiary). Each benefit conferred in this instrument is made on the condition precedent that the beneficiary shall accept and agree to all of the provisions of this instrument, and the provisions of this paragraph are an essential part of each and every such benefit.

B. Contests Relating to the Administration of the Dorothy Dann Collins Trust.

If any beneficiary under this instrument shall contest the administration of this trust or of the Dorothy Dann Collins Trust established under Article II of the will of Settlor's deceased husband, James M. Collins, including any matters relating to the division of the trust assets into separate accounts and the trustees' plan to follow the judgment, advice, and directions of Settlor's Children with respect to the investment of

assets in the accounts, or shall institute or join in (except as a true party defendant) any proceeding to contest same, or if any beneficiary under this instrument shall make any claim against Settlor or Settlor's estate or any other trustee of this trust or of the said Dorothy Dann Collins Trust in connection with services as trustee of the particular trust (regardless of whether or not such proceedings are instituted in good faith and with probable cause), then all benefits provided under this instrument for such beneficiary and/or the descendants of such beneficiary (including benefits conferred by the exercise of a power of appointment under Settlor's Will) are revoked, and all of such benefits shall pass pro rata to the shares of the other beneficiaries under this instrument or, as the case may be, the other beneficiaries of any power of appointment (other than such beneficiary or the descendants of such beneficiary). Each benefit conferred in this instrument is made on the condition precedent that the beneficiary shall accept and agree to all of the provisions of this instrument, and the provisions of this paragraph are an essential part of each and every such benefit.

## ARTICLE X DEFINITIONS AND GENERAL PROVISIONS

### A. Children and Descendants.

The words "children," "descendants," and other words of like import shall include natural children and descendants and those legally adopted before attaining the age of two (2) years into the line of descent of Settlor. Whenever a distribution is directed to be made to the descendants, per stirpes, of any person, the property to be distributed shall be divided into as many equal shares as there are then living children of that person and deceased children of that person who have descendants then living. Each then living child of such person shall take one share, and the share for the descendants of each deceased child shall be divided among the deceased child's then living descendants on a per stirpes basis.

### B. Heirs.

"Heirs" as used herein refers to those persons who take upon intestacy under the statutes of descent and distribution of the State of Texas relating to separate personalty as if the decedent had died at that time unmarried.

### C. Survival.

Except where specifically designated otherwise, for purposes of this instrument no person shall be deemed to have survived another if such person dies within 90 days after the prior decedent's death.

D. Available GST Exemption.

The "available GST exemption from the federal generation-skipping transfer tax" means an amount equal to the generation-skipping transfer exemption provided in Section 2631(a) of the Code that has not been allocated by Settlor (or by operation of law) to property transferred by Settlor during her lifetime. For this purpose, if Settlor has died without filing a gift tax return which is required to be filed and which has a due date (including extensions) that is after Settlor's death, she shall be deemed to have allocated her GST exemption (as defined in Section 2631 of the Code) to all the property with respect to which Settlor is the transferor (as defined in Section 2652(a) of the Code) that (1) may at some time be subject to the federal generation-skipping transfer tax, (2) is required to be reported on such gift tax return, (3) is to or for the benefit of Settlor's lineal descendants, and (4) does not qualify for any other exemption or exclusion from the federal generation-skipping transfer tax.

E. Trust.

Except as provided otherwise by the context of this agreement, the word "trust" as used herein shall include any and all trusts created hereunder.

F. Statutory References.

"Code" means the Internal Revenue Code of 1986. All statutory references include subsequent amendments and corresponding provisions of any subsequently enacted laws.

G. Beneficiary Under Disability.

The natural or legal guardian or other legal representative of any beneficiary who is a minor or, in the opinion of a Trustee, is other-wise legally or mentally disabled may act, receive notice, and sign any instrument on behalf of the beneficiary.

H. Incapacity of Trustee.

If any Trustee becomes unable to discharge his duties under this instrument because of accident, physical or mental illness or deterioration, or other cause and does not resign, then upon certification in a form sufficient for the recording of a deed in the State of Texas by a medical doctor (who is not a beneficiary under this instrument) affirming that he or she has examined the Trustee and that he or she has concluded, based on such examination, that the Trustee is unable to discharge his or her duties under this instrument, and upon the written agreement of the successor Trustee agreeing with such certification, the Trustee shall cease to serve, as if he or she had resigned, effective the date of the certification.

ARTICLE XI  
ACCEPTANCE BY TRUSTEE

The Trustee by executing this trust agreement hereby accepts the trust created by this trust agreement and covenants to faithfully discharge all duties of the Trustee hereunder.

ARTICLE XII  
BINDING EFFECT

This trust agreement shall extend to and be binding upon the heirs, executors, administrators, legal representatives and successors, respectively, of the parties hereto. IN WITNESS WHEREOF, this Amended and Restated Trust Agreement has been executed this 26<sup>th</sup> day of January, 2011.

SETTLOR: Dorothy Collins Torbert  
DOROTHY COLLINS TORBERT

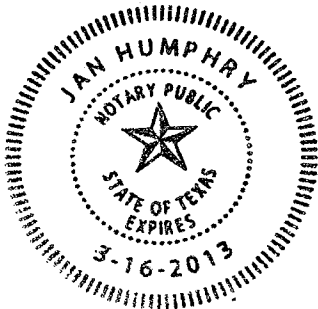
TRUSTEE: Dorothy Collins Torbert  
DOROTHY COLLINS TORBERT

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared DOROTHY COLLINS TORBERT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 26<sup>th</sup> day of January, 2011.

[S E A L]



Jan Humphry  
Notary Public in and for the State of Texas

**EXHIBIT F**

**Revocation of 2011 Revocable Trust Agreement**

## REVOCATION OF REVOCABLE TRUST

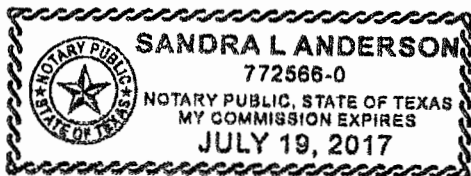
Pursuant to Article II of that certain Amended and Restated Trust Agreement (the "Trust Agreement") dated January 26, 2011 between DOROTHY COLLINS TORBERT, as Settlor and Trustee, the undersigned hereby REVOKES such Trust Agreement in its entirety, and the trust created by such Trust Agreement, known as the The Dorothy Collins Torbert 2011 Revocable Trust (the "Trust"), is hereby terminated effective immediately as of the date in the notary block below.

Dorothy Collins Torbert  
DOROTHY COLLINS TORBERT, Settlor

STATE OF TEXAS           §  
  §  
COUNTY OF Dallas   §

Before me, the undersigned authority, on this day personally appeared DOROTHY COLLINS TORBERT, Settlor, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity stated.

Given under my hand and seal this 13<sup>th</sup> day of March, 2017.



Sandra L. Anderson  
Name: \_\_\_\_\_  
Notary Public in and for the State of T E X A S  
My commission expires: \_\_\_\_\_

### RECEIPT AND CONSENT BY TRUSTEE:

Pursuant to Article II of the Trust Agreement notice of this Revocation shall be delivered in writing to the Trustee and shall be effective immediately upon delivery to the Trustee. Receipt of this Revocation is hereby acknowledged by and consented to by the undersigned on the date set forth in the notary block above.

Dorothy Collins Torbert  
DOROTHY COLLINS TORBERT, Trustee