

Please complete this application to establish a new Traditional IRA or Roth IRA. This application must be preceded or accompanied by a current IRA Disclosure Statement and Custodial Agreement.

### For Additional Copies or Assistance

If you need additional copies of this application, or would like assistance completing it, please call The Collar Fund at **1-888-5-COLLAR (1-888-526-5527)** or go to [www.TheCollarFund.com](http://www.TheCollarFund.com).

### Instructions

1. If you are requesting a transfer or direct rollover of current plan assets (held by another custodian) you must complete the IRA Transfer of Assets Form in addition to this form.
2. Mail this application to:  
**The Collar Fund**  
c/o Gemini Fund Services, LLC  
4020 South 147th Street, Suite 2  
Omaha, Nebraska 68137
3. Retain a copy for your records.

### Custody Fee

The Custody Fee is \$15 annually per account. The Custody Fee may be increased in the future. You will be notified in writing 90 days prior to any fee increases.

### The Collar Fund Privacy Policy Statement

Your privacy is important to us. The Collar Fund is committed to maintaining the confidentiality, integrity and security of your personal information. When you provide personal information, the Funds believe that you should be aware of policies to protect the confidentiality of that information.

The Fund collects the following nonpublic personal information about you:

- Information we receive from you on or in applications or other forms, correspondence, or conversations, including, but not limited to, your name, address, phone number, social security number, assets, income and date of birth; and
- Information about your transactions with us, our affiliates, or others, including, but not limited to, your account number and balance, payments history, parties to transactions, cost basis information, and other financial information.

The Fund does not disclose any nonpublic personal information about our current or former shareholders to nonaffiliated third parties, except as permitted by law. For example, the Fund is permitted by law to disclose all of the information we collect, as described above, to our transfer agent to process your transactions. Furthermore, the Fund restricts access to your nonpublic personal information to those persons who require such information to provide products or services to you. The Fund maintains physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

In the event that you hold shares of the Fund through a financial intermediary, including, but not limited to, a broker-dealer, bank, or trust company, the privacy policy of your financial intermediary would govern how your nonpublic personal information would be shared with nonaffiliated third parties.

### Anti-Money Laundering

The USA PATRIOT Act, signed by President Bush in 2001, is designed to detect, deter, and punish terrorists in the United States and abroad. The Act imposes new anti-money laundering requirements on all financial institutions including The Collar Fund. As part of our required anti-money laundering procedures in order to identify you, we may ask you to provide various identification documents or other information when you open or make certain changes to your account. Until you provide the information or documents we need, we may not be able to open an account or effect any additional transactions for you.

For questions about these policies, or for additional copies of The Collar Fund Privacy Policy Statement, please go to [www.TheCollarFund.com](http://www.TheCollarFund.com) or contact the Fund at 4020 S. 147th Street, Suite 2, Omaha, Nebraska, 68137 or **1-888-5-COLLAR (1-888-526-5527)**.

I, the person signing this Adoption Agreement (hereinafter called the "Owner"), establish an Individual Retirement Account (IRA), which is either a Traditional IRA or a Roth IRA, as indicated below, (the "Account") with Constellation Trust Company as Custodian ("Custodian"). A Traditional IRA operates under Internal Revenue Code Section 408(a). A Roth IRA operates under Internal Revenue Code Section 408A. I agree to the terms of my Account, which are contained in the applicable provisions of the document entitled Constellation Trust Company Traditional/Roth Individual Retirement Account Custodial Agreement and this Adoption Agreement. I certify the accuracy of the information in this Adoption Agreement. My Account will be effective upon acceptance by Custodian.

## 1. IRA ACCOUNT REGISTRATION

_____ Owner's Name (First, Middle, Last)	_____ Social Security Number
_____ Street Address	_____ Date of Birth
_____ City, State, Zip	_____ Daytime Telephone
_____ Email Address	_____ Evening Telephone

Please send mail to the address below. Please provide your primary legal address above, in addition to any mailing address (if different).

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

## 2. TRADITIONAL IRA ELECTION

If you wish to open a Traditional IRA, provide all applicable information below. The requirements for a valid rollover are complex. See the Traditional IRA Disclosure Statement for additional information and consult your tax advisor for help if needed. Direct Rollovers are described in the Traditional IRA Disclosure Statement.

### A. Traditional IRA (The Fund account minimum is \$2,500. Make checks payable to The Collar Fund).

#### 1. Annual Contributions

Check enclosed in the amount of \$\_\_\_\_\_ representing current contribution for tax year 200\_\_\_\_\_.  
*This contribution does not exceed the maximum permitted amount for the year of contribution as described in the Traditional IRA Disclosure Statement. If no tax year is indicated, contribution will automatically apply to current year.*

#### 2. Transfer

Transfer of existing Traditional IRA directly from current Custodian or Trustee. Complete the IRA Transfer of Assets Form. *[If this transfer includes any nondeductible contributions to the transferring account, indicate the amount of nondeductible contributions included in this transfer: \$\_\_\_\_\_.]*

#### 3. Rollover

Rollover of a withdrawal from another Traditional IRA or of an eligible rollover distribution from an employer qualified plan, 403(b) arrangement or eligible 457 plan. Check enclosed in the amount of \$\_\_\_\_\_. *[If this rollover contribution constitutes all or part of either a withdrawal from another Traditional IRA or an eligible rollover distribution from an employer qualified plan or 403(b) arrangement, and if it includes any after-tax (or nondeductible) contributions to such other Traditional IRA or employer qualified plan or 403(b) arrangement, indicate the amount of after-tax contributions included in this rollover contribution: \$\_\_\_\_\_.]*

#### 4. Direct Rollover

Direct rollover of an eligible rollover distribution from an employer qualified plan, 403(b) arrangement or eligible 457 plan. *[If this is a direct rollover contribution from an employer qualified plan or 403(b) arrangement, and if it includes any after-tax (or nondeductible) contributions to such employer qualified plan or 403(b) arrangement, indicate the amount of after-tax contribution included in this direct rollover: \$\_\_\_\_\_.]*

**5. Recharacterization of an existing IRA**

- If Constellation Trust Company is the current Custodian, please provide current Roth IRA Account Number: \_\_\_\_\_. Indicate amount recharacterized, if less than entire account balance: \$\_\_\_\_\_. (If no amount is inserted here, we will recharacterize the entire account balance.) If current Roth IRA is with another custodian or trustee, please complete the IRA Transfer of Assets Form.

**6. SEP Provision**

- Owner intends to use this Account in connection with a SEP Plan or grandfathered SARSEP Plan established by the Owner's employer.

**3. ROTH IRA ELECTION**

If you wish to open a Roth IRA, provide all applicable information below.

**Tax Withholding Election for Conversion.** Under IRS rules, a conversion of a Traditional IRA to a Roth IRA is treated for income tax purposes as a distribution of taxable amounts in the Traditional IRA. IRS rules also require the custodian to withhold 10% of the conversion amount for federal income taxes unless no withholding has been elected. See IRS Publication 505, Tax Withholding and Estimated Tax for more information. State tax withholding may also apply if federal income tax is withheld.

**B. ROTH IRA** (The Fund account minimum is \$2,500. Make checks payable to The Collar Fund).

**1. Annual Contributions**

- Check enclosed in the amount of \$\_\_\_\_\_ representing current contribution for tax year 200\_\_\_\_. This contribution does not exceed the maximum permitted amount for the year of contribution as described in the Roth IRA Disclosure Statement. If no tax year is indicated, contribution will automatically apply to current year.

**2. Conversion**

- Conversion of existing Traditional IRA with Constellation Trust Company Account No: \_\_\_\_\_ to a Roth IRA with Constellation Trust Company.

Amount to Convert:  All  Part (please specify): \$\_\_\_\_\_ or \_\_\_\_\_%.  
*Caution: Withholding income taxes from the amount converted (instead of paying applicable income taxes from another source) may adversely impact the expected financial benefits of converting from a Traditional to a Roth IRA (consult your financial adviser if you have a question). Because of this impact, by electing to convert a Traditional IRA to a Roth IRA, you are deemed to elect no withholding unless you specify otherwise herein.*

- No income tax withholding       Withhold 10% for income tax       Withhold \_\_\_\_\_% for income tax

**3. Conversion of Existing Traditional IRA**

- Rollover or Transfer from existing Traditional IRA with another custodian or trustee to a Roth IRA with Constellation Trust Company.

**4. Rollover or Transfer of Existing Roth IRA**

- Rollover or Transfer from existing Roth IRA with another custodian or trustee to a Roth IRA with Constellation Trust Company. Date existing Roth IRA was originally opened: \_\_\_\_\_.  
*Please complete the IRA Transfer of Assets Form if either 3 or 4 is checked and the transaction is a transfer (as opposed to a rollover).*

**4. BENEFICIARY(IES)**

As Owner, I hereby make the following designation of beneficiary in accordance with the Constellation Trust Company Traditional Individual Retirement Custodial Account or Roth Individual Retirement Custodial Account:

In the event of my death, pay any interest I may have under my Account to the following Primary Beneficiary or Beneficiaries who survive me. Make payment in the proportions specified below (or in equal proportions if no different proportions are specified). If any Primary Beneficiary predeceases me, his share is to be divided among the Primary Beneficiaries who survive me in the relative proportions assigned to each such surviving Primary Beneficiary. If none of the Primary Beneficiaries survives me, pay any interest I may have under my Account to the following Alternate Beneficiary or Beneficiaries who survive me. Make payment in the proportions specified below (or in equal proportions if no different proportions are specified). If any Alternate Beneficiary predeceases me, his share is to be divided among the Alternate Beneficiaries who survive me in the relative proportions assigned to each such surviving Alternate Beneficiary. Proportions for Beneficiaries must total 100%.

**Primary Beneficiaries**

Primary Beneficiary Name (First, Middle, Last)		Share %
/ /		
Relationship	Date of Birth (month/day/year)	Taxpayer ID Number
Primary Beneficiary Name (First, Middle, Last)		Share %
/ /		
Relationship	Date of Birth (month/day/year)	Taxpayer ID Number
Primary Beneficiary Name (First, Middle, Last)		Share %
/ /		
Relationship	Date of Birth (month/day/year)	Taxpayer ID Number

**Alternate Beneficiaries**

Alternate Beneficiary Name (First, Middle, Last)		Share %
/ /		
Relationship	Date of Birth (month/day/year)	Taxpayer ID Number
Alternate Beneficiary Name (First, Middle, Last)		Share %
/ /		
Relationship	Date of Birth (month/day/year)	Taxpayer ID Number
Alternate Beneficiary Name (First, Middle, Last)		Share %
/ /		
Relationship	Date of Birth (month/day/year)	Taxpayer ID Number

This Designation of Beneficiary may have important tax or estate planning effects. If you cannot accomplish your estate planning objectives by using this Section to designate your beneficiary(ies) (for example, if you wish to provide that the surviving children of a beneficiary who predeceases you should take that beneficiary's share by right of representation), you may submit another form of written beneficiary designation to the Custodian.

**Any amount remaining in the Account that is not disposed of by a proper Designation of Beneficiary will be distributed to your estate (unless otherwise required by the laws of your state of residence). You may change the beneficiary(ies) named above at anytime by filing a new Designation of Beneficiary with the Custodian. Any subsequent Designation filed with the Custodian will revoke all prior Designations, even if the subsequent designation does not dispose of your entire Account.**

**Spousal Consent\***

I am the spouse of the above-named Owner. I acknowledge that I have received a full and reasonable disclosure of my spouse(s) property and financial obligations. Due to any possible consequences of giving up my community or marital property interest in this IRA, I have been advised to see a tax professional or legal advisor. I hereby consent to the beneficiary designation(s) indicated above. I assume full responsibility for any adverse consequence that may result. No tax or legal advice was given to me by the Custodian, The Collar Fund or the Sponsor.

Signature of Spouse	/ /	Date (month/day/year)
Signature of Witness	/ /	Date (month/day/year)

\*This section should be reviewed if the Owner is married and designates a beneficiary other than the spouse. It is the Owner(s) responsibility to determine if this section applies. The Owner may need to consult with legal counsel. Neither the Custodian, The Collar Fund nor the Sponsor are liable for any consequences resulting from a failure of the Owner to provide proper spousal consent.

## 5. AUTOMATIC INVESTMENT PLAN (AIP)

AIP allows you to add regularly to your investment by authorizing us to deduct money directly from your checking or savings account every month. Your bank must be a member of the Automated Clearing House (ACH). **Attach a voided check.**

Please transfer \$ \_\_\_\_\_ (**\$100 minimum**) from my bank account in to:

Monthly  Quarterly on the \_\_\_\_\_ day of the month Beginning: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Important Note:** If the AIP date falls on a holiday or weekend the deduction from your checking or savings account will occur on the next business day.

\_\_\_\_\_  
Name on Bank Account

\_\_\_\_\_  
Account Number

\_\_\_\_\_  
Bank Name

\_\_\_\_\_  
Bank Routing/ABA #

\_\_\_\_\_  
Signature of Bank Account Holder

\_\_\_\_\_  
Signature of Joint Owner

## 6. INFORMATION DELIVERY

To obtain your Fund account statements, confirms and regulatory mailings online instead of in paper form, please provide us with your email address. After your account is opened, we will send you an e-mail with the instructions on how to sign up for electronic information delivery.

Yes, I want Information Delivery E-mail address: \_\_\_\_\_

## 7. DEALER INFORMATION

If opening your account through a broker/dealer, please have them complete this section.

\_\_\_\_\_  
Dealer Name

\_\_\_\_\_  
Representative's Last Name,

\_\_\_\_\_  
First Name

### DEALER HEAD OFFICE

### REPRESENTATIVE'S BRANCH OFFICE

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Rep's ID

\_\_\_\_\_  
Branch Number

\_\_\_\_\_  
Branch Number

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Email Address

## 8. REGISTERED INVESTMENT ADVISOR INFORMATION

If opening your account through a Registered Investment Advisor, please have them complete this section.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Investment Advisor Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Email Address

## 9. SIGNATURES AND CERTIFICATIONS

By signing below, under penalties of perjury, I certify that: 1) The number shown on this form is my correct taxpayer identification number, and 2) I am not subject to back up withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). I further acknowledge that I have the sole responsibility for my investment choices and that I have received and read a current prospectus for The Collar Fund. I release the Funds and their agents and representatives from all liability and agree to indemnify them from any and all losses, damages or costs for acting in good faith in accordance with instructions, including telephone instructions, believed to be genuine. I certify that I have the authority to establish this account and the information provided herein is accurate and complete. I agree to notify The Collar Fund promptly in writing if any information contained in this application changes.

If I have indicated a Traditional IRA Rollover or Direct Rollover above, I certify that, if the distribution is from another Traditional IRA, that I have not made another rollover within the one-year period immediately preceding this rollover; that such distribution was received within 60 days of making the rollover to this Account; and that no portion of the amount rolled over is a required minimum distribution under the required distribution rules or a hardship distribution from an employer qualified plan or 403(b) arrangement or eligible 457 plan.

If I have indicated a Conversion, Transfer or a Rollover of an existing Traditional IRA to a Roth IRA, I acknowledge that the amount converted will be treated as taxable income (except for any prior nondeductible contributions) for federal income tax purposes, and certify that no portion of the amount converted, transferred or rolled over is a required minimum distribution under applicable rules. If I have elected to convert an existing Traditional IRA with Constellation Trust Company as custodian to a Roth IRA and have elected no withholding, I understand that I may be required to pay estimated tax and that insufficient payments of estimated tax may result in penalties.

If I have indicated a rollover from another Roth IRA, I certify that the information given herein is correct and acknowledge that adverse tax consequences or penalties could result from giving incorrect information. I certify that any rollover contribution to the Roth IRA was completed within 60 days after the amount was withdrawn from the other IRA.

I have received and read the applicable sections of the IRA Disclosure Statements relating to this Account, the Custodial Agreement, and this Adoption Agreement. I understand that my Account will be charged an annual Custody Fee as set forth on the first page of this Adoption Agreement. I understand that I have the right to revoke this Individual Retirement Account within seven (7) days of receiving the IRA Disclosure Statements by notifying The Collar Fund in writing.

I acknowledge that it is my sole responsibility to report all contributions to or withdrawals from the Account correctly on my tax returns, and to keep necessary records of all my IRAs (including any that may be held by another custodian or trustee) for tax purposes. All forms must be acceptable to the Custodian and dated and signed by me.

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Signature

/ /  
Date (month/day/year)

## 10. CUSTODIAN ACCEPTANCE

Constellation Trust Company will accept appointment as Custodian of the Owner's Account. However, this Agreement is not binding upon the Custodian until the Owner has received a statement confirming the initial transaction for the Account. Receipt by the Owner of a confirmation of the purchase of the Fund shares indicated above will serve as notification of Constellation Trust Company's acceptance of appointment as Custodian of the Owner's Account.

### TO CONTACT US:

#### By Telephone

Toll-free **1-888-5-COLLAR**  
**1-888-526-5527**

#### In Writing

**THE COLLAR FUND**  
c/o Gemini Fund Services, LLC  
4020 South 147<sup>th</sup> St., Suite 2  
Omaha, NE 68137

#### Internet

[www.TheCollarFund.com](http://www.TheCollarFund.com)

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# CONSTELLATION TRUST COMPANY

## Custodial Account Adoption Agreement

**THIS CUSTODIAL ACCOUNT AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into by and between the customer whose identity and signature are set forth on the Custodial Account Adoption Agreement (hereinafter referred to as “Customer”) and Constellation Trust Company (“CTC”). Customer hereby requests CTC or its successors and assigns, including affiliates, establish a custody account (the “Account”) for and in the name of the Customer and to hold, as custodian, all assets deposited into, or collected with respect to, such Account (collectively the “Assets”).

1. The Customer, in consideration for this Agreement to perform the duties of a custodian under this Agreement, hereby designates CTC as custodian of the Account. CTC, in consideration for the deposit by the Customer of funds into the Account, and other valuable consideration, hereby agrees to act as custodian with respect to the Account herein established.
2. CTC, as agent but not as trustee shall take, hold, invest and distribute all of the Assets in accordance with the terms of this Agreement, and shall hold the Assets as agent for the Account of the Customer. Unless otherwise agreed to in writing by the parties, all registered securities for a Customer Account shall be held in the name of: **Constellation Trust Company, custodian FBO [Customer]**.
3. CTC may invest any cash balances in the Account each day in a money market fund or depository bank. CTC may convert the money market fund investments to cash whenever it is so directed by the Customer or where CTC reasonable determines such conversion to be necessary. Upon written advance notice whereby Customer has the right to object, CTC may substitute another short-term money market investment vehicle for the current money market fund. It is understood by the Customer that any Designated Representative or Authorized Investment Adviser (as defined below) may direct CTC to retain a specific amount of cash in the Customer’s account on deposit with the CTC.
4. CTC shall not be liable for any act, omission, or determination made in connection with this Agreement except for its intentional misconduct or gross negligence. Without limiting the generality of the foregoing, CTC shall not be liable for any losses arising from its compliance with the Customer’s written or oral directions. CTC shall be under no duties whatsoever except such duties as are specifically set forth in this Agreement. CTC shall be fully protected in acting upon any instrument, certificate, or paper reasonably believed by it to be genuine and to be signed or presented by the proper person or persons, and CTC shall be under no liability to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statement therein contained.
5. The Customer will not direct the purchase or sale of a security which is not marketable under the securities laws of the appropriate state, nor, without limiting the generality of the foregoing, direct any investment that would be illegal under federal, state, or local law. The Customer hereby warrants that it (its Designated Representative or Authorized Investment Adviser) will not enter into a transaction, or cause a transaction to be entered into, which is prohibited under section 4975 of the Code. Customer further warrants that, if a transaction is questionable due to Customer’s relationship to an investment sponsor, that it will consult with such counsel and advisors as Customer may deem necessary prior to directing or causing the direction of the transaction. Pursuant to the directions of the Customer, Customer’s Designated Representative or Authorized Investment Adviser, CTC shall invest and reinvest the Assets of the Account without any duty to diversify and without regard to whether such investment is authorized by the laws of any jurisdiction for investment in securities obtainable “over the counter” or on a recognized exchange, savings media and any other acceptable public or non-standard investment which in the sole judgment of CTC will not impose an unreasonable administrative burden (with such determination by CTC not to be construed in any respect as a judgment concerning the prudence or advisability of such investment).
6. Without limiting the generality of the foregoing, CTC is authorized to collect all interest, dividends, proceeds of the sale and other monies due and collectable that arise from the investment of the Assets (collectively, “Fund Income”) and to credit such Fund Income to the Account and, upon CTC’s receipt, shall become part of the Account.
7. The Assets shall be separate from the other funds or properties of CTC and its customers. CTC may, however, commingle the Assets with the assets of other custodial accounts managed by it solely for investment purposes, provided that an individual accounting is made to the Customer annually of the Account’s share in any common fund or joint investment.
8. CTC shall provide the Customer with a quarterly statement setting forth all transactions with respect to the Account and a listing of each Asset which comprises the Account as of the close of the calendar quarter of reference, which statement shall be provided within a reasonable time following the close of each calendar quarter.
9. The Customer shall have sixty (60) days after the mailing to the Customer of such statements, to the address of the Customer as shown on CTC’s records, to file objections in writing with CTC with respect to anything contained in any statement. Failure to object in a timely fashion shall be deemed to constitute approval by the Customer of all items contained in the statement. To the extent items have been reflected in, and approved by the Customer in a quarterly statement, such transactions may not later be challenged by Customer as they are reported on an annual or consolidated statement.
10. CTC shall have all powers reasonably necessary to carry out its duties under this Agreement, as directed by the Customer. CTC shall have the power to designate a securities broker/dealer registered under the Securities Exchange Act of 1934 (including a qualified affiliate), with respect to any funds held in the Account, to act as a broker or dealer including the purchase or sale of mutual funds or other securities whether or not issued by an entity affiliated with CTC at standard commissions, loads, Rule 12b-1 fees or other servicing fees. Customer hereby agrees to the receipt of such distribution and/or other servicing fees by CTC and its affiliates from the funds in which the Customer’s Assets are invested.
11. The Customer shall furnish CTC with such information and instructions as may be necessary to carry out the provisions of this Agreement and to enable CTC to make any reports required by this Agreement, by any applicable law or regulation. CTC will not be responsible for the computation and the collection of any contributions under the Account, and shall be under no duty to determine whether the nature or amount of any contribution is in accordance with the Internal Revenue Code.
12. Without limiting the generality of the foregoing, the Customer understands and acknowledges that CTC will act solely as agent for the Customer, and under the instructions of the Customer, with respect to the investment of the Assets, and acting in that capacity, shall place orders for the purchases of securities provided the Customer has sufficient funds in the Account or arranges to make funds available in advance for such purposes, and will also place orders for the sale of securities provided such securities are held by CTC, and in deliverable form. The Customer authorizes CTC to charge the Account for the cost of all securities purchased or received against payment and to credit the Account with the proceeds received from the securities sold or delivered against payment.
13. CTC shall invest funds received or process other instructions received from the Customer (or Customer’s Designated Representative or Authorized Investment Adviser) within seven (7) business days of receipt of such funds plus necessary administrative and processing time. CTC shall be under no duty to credit interest or earnings on the funds received, and Customer agrees that CTC shall not be liable for any market value adjustment which may occur during the period of time CTC has control of the funds received from the Customer.
14. The Customer understands and acknowledges that CTC is not under any duty to supervise the investment of, or to advise or make recommendations to the Customer with respect to the sale or other disposition of any Assets or to advise or recommend the purchase of any assets with the funds available in the Account.
15. Without limiting the generality of the foregoing, in the case of any variable annuity held in the Account, the Customer agrees and acknowledges as follows:
  - a. In order for the Customer to receive variable annuity payments sooner than if the payment is made first to CTC and then by CTC to the Customer, CTC will instruct the insurance company to remit all variable annuity payments directly to the Customer.
  - b. Each variable annuity held in the Account will be listed with the insurance company as “Constellation Trust Company f/b/o Customer” so that CTC will receive the information from the insurance company that is necessary for CTC to fulfill its record keeping obligations under this Agreement.
  - c. The Customer agrees that CTC’s obligations with respect to any variable annuities held in the

- account shall be limited, notwithstanding any other provision of this Agreement, to record keeping functions and that CTC shall have no other duties or obligations with respect to such variable annuities.
- d. The Customer agrees to indemnify CTC against any and all costs, expenses and losses that may be suffered by CTC in the event of any claim or lawsuit brought against CTC as a result of the Customer's failure to receive a variable annuity payment from an insurance company or otherwise arising out of a variable annuity held in the Account.
16. All proxies received by CTC with respect to securities owned by the Customer and other reports to stockholders issued will be forwarded directly to the Customer. In the case of any solicitation received by CTC with respect to the Account (including, but not limited to third party tender offers with respect to limited partnership interest in the Account), CTC will transmit such materials to the Customer promptly upon receipt of such materials by CTC. CTC shall have no obligation to transmit any solicitation received or instruction given with respect to the Account by any means other than regular mail, and shall not be responsible for any failure to respond to a solicitation by the deadline specified therein due to (i) delays in the mail or (ii) circumstances where CTC has less than ten (10) days from the date instruction is received and the specified date for responding. CTC need not honor offers or recognize communications that are not addressed to each Account by name. CTC shall not be responsible for any action taken by the Customer, the Designated Representative or the Authorized investment Adviser as a result of information concerning the Account or any investment that may be transmitted or not transmitted to the Customer.
17. CTC shall not be responsible for, or in any way liable for, any loss or expense (including reasonable attorney's fees) arising from claims against CTC in connection with this Agreement, including claims for taxes and other government charges, and any claims asserted by reason of any act or failure to act, except for such act or failure to act that constitutes gross negligence or willful misconduct by CTC. CTC may also retain legal counsel whenever in CTC's judgment it is necessary or advisable to do so in connection with the discharge of CTC's duties, and the fees and expenses of such counsel will be paid by the Customer, or in the absence of payment by the Customer, shall be charged against the Customer's Account. The Customer agrees that CTC will have a continuing lien on and security interest in any and all assets held in the Account as security for any liability that arises under this section 17.
18. CTC may rely on all written directions and upon the non-written directions described below, given by the Customer or a person designated by the Customer to act on its behalf in that regard (a "Designated Representative" and/or an "Authorized Investment Adviser") which CTC believes to be genuine and CTC's records of a transaction will be conclusive as to the content of any instructions. The Designated Representative and Authorized Investment Adviser shall be the authorized agent of the Customer and not of CTC. CTC shall construe any and all investment directions given by the Designated Representative or Authorized Investment Adviser, whether written or oral, as having been authorized by the Customer. The Customer may appoint and/or remove a Designated Representative or Authorized Investment Adviser by written notice to CTC, provided that removal shall not have the effect of canceling any notice, instruction, direction or approval received by CTC before actual receipt by CTC of said notice of removal from the Customer. Upon application by the Customer on a form acceptable to CTC and upon approval by CTC, CTC will accept non-written directions from the Customer, Customer's Designated Representative and Authorized Investment Adviser, and such non-written directions may be given orally, by telephone.
- Customer consents to the recording of any telephone conversation. Without limited the generality of the foregoing, CTC shall not be liable for executing, failing to execute, failure to timely execute or for any mistake in the execution of any non-written directions, unless such action or inaction is by reason of CTC gross negligence or willful misconduct.
19. CTC is authorized to release securities and cash investments in the Account to the Customer, but not to a participant directing the investment of a sub-account as described in section 32(b) herein, on the written request of the Customer and upon such further written confirmation as CTC shall reasonably request. Provided further, that regardless of the receipt of such instructions, CTC is entitled to retain such securities as shall be reasonably necessary or appropriate in order to insure that such Assets are available to discharge any liabilities of the Customer or the Account to CTC, including, but not limited to, un-paid fees, claims, or other expenses, unless the Customer makes arrangements with CTC to ensure payment of such actual and potential liabilities.
20. The Customer agrees that CTC may execute, as custodian, any declarations or certificates that may be required under any tax laws or governmental regulations now or hereafter enacted without prior approval of the Customer.
21. Except as provided in Section 22, Customer shall be charged by CTC for its services hereunder in accordance with the current posted fee schedule attached as **Schedule A**, as it may be amended from time to time (the "Custodial Fee"). Customer will be responsible for payment of all out-of-pocket expenses or other fees, and Special Service Fees as shown on **Schedule A**, at the time such expense is incurred or such service is rendered. Any fees owed to CTC will be automatically withdrawn from the Account unless CTC and Customer have agreed in writing to a different payment method. Custodial Fees as set forth on **Schedule A**, attached hereto may be amended at any time by CTC, provided written notice is delivered to the Customer at least thirty (30) days prior to the effective date of such amendment. CTC shall have no duty or responsibility to perform any of the custodial services specified in this Agreement for which any fee payable remains outstanding, provided that written Notice of CTC's intent to resign as custodian is delivered to Customer at least thirty (30) days prior to the effective date of resignation.
22. CTC may maintain omnibus demand deposit and money market cash balances with a depository bank as selected by CTC to facilitate administration. All sub accounting services for FDIC insurance purposes and crediting of money market interest may be performed by CTC. CTC may receive compensation for services performed directly from the depository bank and fund sponsor. This compensation will not increase the costs nor reduce the money market return paid on Customer's cash account balances. In some circumstances, CTC may receive administrative fees paid by funds in which the Customer's Assets are invested. Customer hereby acknowledges and consents to CTC's receipt of additional compensation as set forth herein for services performed on behalf of Customer's Account.
23. This Agreement shall remain in force until terminated and either the Customer or CTC may terminate this Agreement upon thirty (30) days written notice to the other. Upon termination of this Agreement or resignation by CTC as custodian, Customer hereby agrees to name a successor custodian and notify CTC in writing of the name of such successor custodian. In the event the Customer does not name a successor custodian, CTC shall distribute the Account's current cash holdings directly to the Customer and reregister the Assets in the name of the Customer.
24. This Agreement may be amended at any time by CTC, provided written notice is delivered to the Customer at least thirty (30) days prior to the effective date of any such amendment.
25. CTC shall not be under any obligation to defend any legal action or engage in any legal proceeding with respect to the Account or with respect to any property held in the Account unless CTC is indemnified to CTC's satisfaction. Whenever CTC deems it reasonably necessary, CTC is authorized and empowered to consult with its counsel in reference to the Account and to retain counsel and appear in any action, suit or proceeding affecting the Account or any of the Assets. All fees and expenses so incurred shall be for the Account and shall be charged to the Account.
26. The Customer agrees that all claims and disputes of every type and matter which may arise between the Customer and CTC will be submitted to binding arbitration pursuant to the rules of the American Arbitration Association; that such arbitration proceedings shall take place only in Nebraska; and that to the extent not preempted by federal law, Nebraska law will apply. The Customer expressly waives any right the Customer may have to institute or conduct litigation or arbitration in any other forum or location, or before any other body. Arbitration is final and binding on the parties. This Agreement shall be construed and interpreted according to the laws of the state of Nebraska. All contributions to, and payments from, the Account shall be deemed to take place in the State of Nebraska.
27. This Agreement shall be executed in any number of counterparts each one of which shall be deemed to be the original although the others shall not be produced.
28. For all purposes hereof, the address of the Customer shall be as set forth in writing on the Custodial Account Adoption Agreement, unless the party whose address shall change notifies the other party in writing and obtains confirmation of delivery of such notice.
29. DESIGNATED REPRESENTATIVE PROVISIONS and AUTHORIZATION OF INVESTMENT ADVISER. If Customer designated a Representative or authorized an Investment Adviser, such designation or authorization is subject to the following provisions:
- a. Customer recognizes that CTC is entitled to rely on direction from the Designated Representative or Authorized Investment Adviser, and Customer agrees that CTC shall be under no duty to make an investigation with respect to any instruction received from the Designated Representative and/or Authorized Investment Adviser;
- b. Customer is solely responsible for managing the investment of the Account and for directing the Designated Representative or Authorized Investment Adviser. All instructions, directions, and/or confirmations received by CTC from the Designated Representative and/or Authorized Investment Adviser, shall be assumed to have been authorized by the Customer;
- c. Customer recognizes that the Designated Representative and/or Authorized Investment Adviser is not an agent of CTC;
- d. Customer may remove the Designated Representative and/or Authorized Investment Adviser and designate a new party by written notice to CTC; however, removal of a Designated Representative and/or Authorized Investment Adviser will not have the effect of canceling any instruction, direct confirmation which has been received by CTC from the Designated Representative or Authorized Investment Adviser prior to the date that notice of removal is received by CTC.
30. Customer hereby indemnifies CTC and holds CTC harmless from any and all liability or claims, including but not limited to damages, court costs, legal fees, and costs of investigation as result of (i) any loss or diminution of a fund or investment

resulting from changes in the market value of the Account Assets; (ii) reliance or action taken on written instructions received from Customer, Customer's Designated Representative, or Customer's Authorized Investment Adviser; (iii) any exercise or failure to exercise investment direction authority by Customer, Customer's Designated Representative or Customer's Authorized Investment Adviser; (iv) CTC's refusal on advice of counsel to act in accordance with any exercise of investment discretion by Customer, Customer's Designated Representative or Customer's Authorized Investment Adviser; (v) any other act or failure to act by Customer, Customer's Designated Representative or Customer's Authorized Investment Adviser; (vi) any prohibited transaction or plan disqualification due to any actions taken or not taken by CTC in reliance on directions from Customer, Customer's Designated Representative or Customer's Authorized Investment Adviser; or (vii) any other act CTC takes in good faith hereunder.

31. For any non-managed assets held within the Account, CTC shall value Assets of the Account on a quarterly basis utilizing various outside sources available to it; however, CTC shall not guarantee the accuracy or prices obtained from quotation services, independent appraisal services, investment sponsors, or parties related thereto or other outside sources. Values for brokerage accounts shall be equal to the total equity value of the account, and shall reflect only those assets that are priced by the brokerage firm. In the absence of direction from the Secretary of the Treasury or his authorized

representative to the contrary, the value of illiquid assets such as limited partnerships and privately-held stock shall be determined by a fair market value from the investment sponsor or other outside source. If the investment sponsor is unwilling or unable to provide a fair market value, then CTC may list the value of the illiquid asset at its original cost or as "Not Available". Assets which have no readily determinable market value, are bankrupt, or for which no original cost or value is otherwise available may have their value reflected as "Not Available" on the CTC's quarterly statement.

32. If the Customer is a qualified retirement plan ("Qualified Plan") under section 401(a) of the Internal Revenue Code, then without limiting the generality of the foregoing, the following provisions shall apply:

- a. The Trustee(s) acknowledges that CTC's duties under the Agreement are ministerial, not fiduciary, and do not relieve the Trustee(s) (or the Plan Administrator, to the extent relevant) of any of the duties set forth in the documents comprising the Qualified Plan and its related trust;
- b. If CTC is advised by the Trustee(s) that the provisions of the Qualified Plan and related trust documents so permit and the Trustee so requests, CTC shall establish separate participant-directed sub-accounts and all references to the Customer under this Agreement shall be deemed to be references to the participant who is directing investment of such sub account, except that the address of such participant shall be deemed to be the address of the Customer as set forth above.

The right to amend the Agreement shall remain that of the Customer; and  
c. Customer understands that certain transactions are prohibited for tax-exempt retirement plans under the Employee Retirement Income Security Act of 1974 ("ERISA") and under Internal Revenue Code Section 4975. Customer will not direct the purchase or sale of any Asset to or from a "disqualified person" as defined in Section 4975 (e) of the Internal Revenue Code, or "party-in-interest" as defined in Section 3 (14) of ERISA, or in any other way direct an investment transaction which would be deemed to be a "prohibited transaction" under applicable law. CTC shall have no duty to determine whether any transaction is, or has the potential to be a "prohibited transaction."

33. Special Instructions (Optional). Please list any special instructions in the space provided.

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(Rev. March 2002)

Department of the Treasury  
Internal Revenue Service

# CONSTELLATION TRUST COMPANY

## Individual Retirement Custodial Account Agreement

(Under section 408(a) of the Internal Revenue Code)

This Traditional Individual Retirement Account Custodial Agreement (hereinafter called the "Agreement") is made between Constellation Trust Company, a Nebraska Trust Company (hereinafter called the "Custodian") and each individual (hereinafter called the "Depositor") who executes an Adoption Agreement, incorporating the terms of this Agreement, for the purpose of establishing an individual retirement account (hereinafter called the "custodial account") as described in Section 408(a) of the Internal Revenue Code of 1986, as amended, or any successor statute (hereinafter called the "Code"), upon the terms set forth herein

**Article I**

**1.1.** Except in the case of a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), an Employer contribution to a simplified employee pension plan as described in section 408(k), or a recharacterized contribution described in section 408A(d)(6), the custodian will accept only cash contributions up to \$3,000 per year for tax years 2002 through 2004. That contribution limit is increased to \$4,000 for tax years 2005 through 2007 and \$5,000 for 2008 and thereafter. For individuals who have reached the age of 50 before the close of the tax year, the contribution limit is increased to \$3,500 per year for tax years 2002 through 2004, \$4,500 for 2005, \$5,000 for 2006 and 2007, and \$6,000 for 2008 and thereafter. For tax years after 2008, the above limits will be increased to reflect a cost-of-living adjustment, if any.

**Article II**

**2.1.** The Depositor's interest in the balance in the custodial account is nonforfeitable.

**Article III**

**3.1.** No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5)).

**3.2.** No part of the custodial account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

**Article IV**

**4.1.** Notwithstanding any provision of this agreement to the contrary, the distribution of the Depositor's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.

**4.2.** The Depositor's entire interest in the custodial account must be, or begin to be, distributed not later than the Depositor's required beginning date, April 1 following the calendar year in which the Depositor reaches age 70 1/2. By that date, the Depositor may elect, in a manner acceptable to the custodian, to have the balance in the custodial account distributed in:

- (a) A single sum or
- (b) Payments over a period not longer than the life of the Depositor or the joint lives of the Depositor and his or her designated beneficiary.

**4.3.** If the Depositor dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:

- (a) If the Depositor dies on or after the required beginning date and:
  - (i) the designated beneficiary is the Depositor's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by 1 for each subsequent year, or, if

distributions are being made over the period in paragraph (a)(iii) below, over such period.

- (ii) the designated beneficiary is not the Depositor's surviving spouse, the remaining interest will be distributed over the beneficiary's remaining life expectancy as determined in the year following the death of the Depositor and reduced by 1 for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
  - (iii) there is no designated beneficiary, the remaining interest will be distributed over the remaining life expectancy of the Depositor as determined in the year of the Depositor's death and reduced by 1 for each subsequent year.
- (b) If the Depositor dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below or, if elected or there is no designated beneficiary, in accordance with (ii) below:
- (i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year Depositor's death. If, however, the designated beneficiary is the Depositor's surviving spouse, then distribution is not required to begin before the end of the calendar year in which the Depositor would have reached age 70 1/2. But, in such case, if the Depositor's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated beneficiary's life expectancy, or accordance with (ii) below if there is no such designated beneficiary.
  - (ii) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Depositor's death.

**4.4.** If the Depositor dies before his or her entire interest has been distributed and if the designated beneficiary is not the Depositor's surviving spouse, no additional contributions may be accepted in the account.

**4.5.** The minimum amount that must be distributed each year, beginning with the year containing the Depositor's required beginning date, is known as the "required minimum distribution" and is determined as follows:

- (a) The required minimum distribution under paragraph 4.2(b) for any year, beginning with the year the Depositor reaches age 70 1/2, is the Depositor's account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if the Depositor's designated beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the Depositor's account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph is determined using the Depositor's (or, if applicable, the Depositor and spouse's) attained age (or ages) in the year.
- (b) The required minimum distribution under paragraphs 4.3(a) and 4.3(b)(i) for a year, beginning with the year following the year of the Depositor's death (or the year the Depositor would have reached age 70 1/2, if applicable under paragraph 3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the

life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the individual specified in such paragraphs 4.3(a) and 4.3(b)(i)

(c) The required minimum distribution for the year the Depositor reaches age 70 1/2 can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.

**4.6.** The owner of two or more traditional IRAs may satisfy the minimum distribution requirements described above by taking from one traditional IRA the amount required to satisfy the requirement for another in accordance with the regulations under section 408(a)(6).

**Article V**

**5.1.** The Depositor agrees to provide the Custodian with all information necessary to prepare any reports required by section 408(i) and Regulations sections 1.408-5 and 1.408-6.

**5.2.** The Custodian agrees to submit to the Internal Revenue Service (IRS) and Depositor the reports prescribed by the IRS.

**Article VI**

**6.1.** Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles inconsistent with section 408(a) and the related regulations will be invalid.

**Article VII**

**7.1.** This Agreement will be amended as necessary to comply with the provisions of the Code and the related regulations. As permitted under the IRS model form, Constellation Trust Company has added all provisions which follow Article VII.

**Article VIII. Contributions**

**8.1.** All contributions made to the custodial account shall be in cash, except in the case of a rollover or transfer contribution.

**8.2.** For any year, Depositor may contribute to his or her IRA during the calendar year and not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

**8.3.** Except in the case of a Rollover IRA or a plan-to-plan transfer, contributions made by or on behalf of Depositor shall not be made during or after the calendar year in which Depositor attains age 70 1/2 years.

**8.4.** The Depositor assumes sole responsibility for determining that contributions to the custodial account do not exceed the limits specified in the Code. With respect to any contribution designated by the Depositor as a rollover contribution, the Depositor warrants:

- (a) that such amount is an "eligible rollover distribution" under Section 402 of the Code received from a qualified plan or 403(b) plan, another individual retirement account or annuity, or a U.S. retirement bond, and is rolled over directly from an eligible retirement plan, or contributed to the custodial account established hereunder within sixty (60) days of its receipt by Depositor.
- (b) that in case of a rollover from a qualified plan or 403(b) plan, the amount of such rollover contribution is an amount equal to or less than the excess of the qualified total distribution or partial distribution

- over amounts contributed thereto by Depositor (other than qualified voluntary employee contributions as described in Section 219 (e) of the Code) and, if any portion of such rollover consists of property other than cash, such distribution to Depositor consisted of the same property being contributed to the custodial account established hereunder; and
- (c) that, in the case of a rollover contribution from another individual retirement account or individual retirement annuity, such other account or annuity was not itself funded by a rollover contribution from another IRA within one (1) year of the date of the contribution to the custodial account established hereunder.

8.5. The Custodian will not be responsible for the computation and the collection of any contributions under this Agreement, and shall be under no duty to determine whether the nature or amount of any contributions is in accordance with this Agreement or the Code. In addition, the Custodian shall not be responsible for computing or maintaining a record of the deductible portion of any contribution.

#### ARTICLE IX. Investments

9.1. Depositor retains all responsibilities and duties for the selection, management, and retention of investments. At the direction of the Depositor, the Custodian shall invest all contributions to the account and earnings thereon. The Custodian shall be responsible for the execution of such orders and for maintaining adequate records thereof. If investment direction orders are not received as required, or, if received, are unclear in the opinion of the Custodian, all or a portion of the contribution may be held uninvested without liability for loss of income or appreciation and without liability for interest pending receipt of such orders or clarification. Upon death of the Depositor, the beneficiary(ies) and/or representative for the estate of the Depositor assume all rights and responsibilities for investment of the account.

9.2. The Custodian shall retain in cash so much of the custodial account as the Depositor or his designated agent or representative directs or until other instructions are received from the Depositor or his agent, and is authorized to place such cash held in the custodial account in an interest-bearing instrument. The Custodian may perform subaccounting and interest posting functions related to the account as described in this Section, and may receive a fee directly from the investment sponsor for these services. Depositor agrees that such subaccounting services are necessary for the proper function of the custodial account and further agrees to such fees being paid to Custodian. Depositor understands that fees described in this Section are not to be borne by the Depositor. It is understood by the Depositor that any Investment Advisor (as defined in Section 9.3) of the Depositor may direct the Custodian to retain a specific amount of cash in the Depositor's account on deposit with the Custodian.

9.3. The Depositor may appoint an Investment Advisor, qualified under Section 3(38) of the Employee Retirement Income Security Act of 1974, to direct the investment of the custodial account. The Depositor shall notify the Custodian in writing of any such appointment by providing the Custodian a copy of the instruments appointing the Investment Advisor and evidencing the Investment Advisor's acceptance of such appointment, and an acknowledgment by the Investment Advisor that it is a fiduciary on the account. The Custodian shall comply with any directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Depositor that the Investment Advisor's appointment has been terminated.

9.4. On a form acceptable to the Custodian, the Depositor may designate a representative for the purpose of communicating investment directions to the Custodian and receiving information on the account. Said Depositor's Representative (the

"Representative") may be a registered representative of a broker/dealer organization, a financial advisor or other person as may be acceptable to the Depositor. The Representative shall be the authorized agent of the Depositor, and not an agent of the Custodian. The Custodian shall construe any and all investment directions given by the Representative, whether written or oral, as having been authorized by the Depositor. The Depositor may appoint and/or remove a Representative by written notice to the Custodian provided that the Depositor's removal of a Representative shall not have the effect of canceling any notice, instruction, direction or approval received by the Custodian from the removed Representative before the Custodian receives said notice of removal from the Depositor.

9.5. On a form acceptable to the Custodian, the Depositor may authorize the Custodian to accept verbal investment directions from the Depositor or his Representative. Said verbal investment directions may be given by telephone or in person in the offices of the Custodian. Depositor agrees that Custodian is not responsible for verifying the propriety of any verbal investment direction which it may receive, other than requiring certain individual and account specific information of Depositor for identification purposes. Depositor further agrees that the Custodian is not responsible for unauthorized trades in the account which may be effected under this Section.

9.6. If publicly-traded securities are to be included in the specified investments, orders shall be executed through a securities broker/dealer registered under the Securities Exchange Act of 1934 designated by the Depositor upon such form as the Custodian may prescribe. Any brokerage account maintained in connection herewith shall be in the name of the Custodian for the benefit of the Depositor. The Custodian shall be authorized to honor transactions within the brokerage account without obligation to verify prior authorization of same by the Depositor. Any cash received by the brokerage account, whether as income or proceeds of transactions, shall be held by the brokerage account pending directions, and the Custodian shall have no obligation to direct the broker to remit such cash until directed to do so by the Depositor, but may receive remittances without direction if the same are made by the broker. Investments outside the brokerage account shall be made in accordance with the other provisions of this Article. Investment directions may be given directly to the designated broker by the Depositor (in such manner as the broker may require) and the broker shall be responsible for the execution of such orders. When securities are purchased within the brokerage account requiring that funds be remitted by the Custodian to make settlement, Depositor agrees to telephonically notify or instruct the broker or Representative to telephonically notify the Custodian on the trade date of the pending securities transaction, and to request delivery of the custodial account assets necessary to settle the trade. Depositor agrees to hold the Custodian harmless for any losses resulting from the Depositor's failure to notify the Custodian of the pending trade and request for settlement in the above prescribed manner.

9.7. Depositor may direct the Custodian to purchase "non-standard" investments which shall include but not be limited to investments which are individually negotiated by the Depositor or his Representative, or part of a private placement of securities offered in reliance upon exemptions provided by Sections 3(B) and 4(2) of the Securities Act of 1933 and Regulation D promulgated thereunder. The Custodian shall identify investments or classes of investments which are unacceptable due to their posing an administrative burden, or potential for prohibited transactions on the Custodian. For such investments, the Custodian reserves the right to not follow the Depositor's or Representative's direction or process such an investment. The Custodian's decision to reject certain assets for reasons of

administrative feasibility should not be construed as investment advice or an opinion of the Custodian as to the investment's prudence or viability. If the Depositor or his Representative should direct the Custodian to purchase a non-standard investment, as defined above, the following special certifications and provisions shall apply:

- (a) Depositor agrees to submit or cause to be submitted all offering documentation related to the non-standard investment for an administrative review by the Custodian. The Custodian reserves the right to charge a reasonable fee for such administrative review so requested by the Depositor or his Representative;
- (b) If the non-standard investment(s) contains a provision for future contractual payments or assessments, including margin calls, Depositor acknowledges that such payments shall be borne solely by the custodial account, that authorization to make such payments shall come from Depositor or his Representative, and that making such payments may reduce or exhaust the value of the custodial account. Depositor further agrees to maintain sufficient liquid funds in his custodial account to cover any such payments or assessments, and agrees that the Custodian shall not be responsible for monitoring the balance of the account to verify compliance with this Section. Depositor agrees to indemnify the Custodian and hold it harmless for any and all payments or assessments which may result from holding the non-standard investment within the custodial account, and further agrees that the Custodian shall be under no obligation whatsoever to extend credit to the account or otherwise disburse payment beyond the cash balance of the account for any payment or assessment related to the nonstandard investment(s);
- (c) If the non-standard investment(s) contain administrative and/or management requirements or duties beyond the Custodian's capabilities or expertise to provide, then Depositor agrees to seek out suitable agents or counsel necessary to perform such duties and deliver a written service agreement acceptable to the Custodian for execution on behalf of the Depositor's custodial account;
- (d) If the Depositor directs the Custodian to enter into an individually-negotiated debt instrument, including a promissory note, deed of trust, real estate contract, mortgage note or debenture, then Depositor agrees to enter into a Note Servicing Agent Agreement with a third-party Agent or Depositor may serve as his own Note Servicing Agent, on a form acceptable to the Custodian. Said Note Servicing Agent shall be the agent of the Depositor and not of the Custodian, and shall be responsible for administering the terms of the debt instrument on behalf of the Depositor's Account. Should the Note Servicing Agent ever become unwilling or unable to perform the duties outlined in the Note Servicing Agent Agreement, then Depositor understands and agrees that all duties of the Note Servicing Agent shall revert to Depositor until a successor Agent is named. Should Depositor fail to appoint a Note Servicing Agent, Depositor understands that he/she becomes responsible for fulfilling the duties of the Note Servicing Agent until Depositor names a successor third party Note Servicing Agent. Depositor understands that Custodian does not offer or provide any servicing or collection duties with respect to any note or debt instrument, nor will Custodian monitor the maturity date or take any action with regards to the maturity of any note or debt unless specifically authorized by Depositor in writing. Should Depositor elect to renew or renegotiate the terms of any note or debt instrument, Depositor agrees to notify Custodian in writing and provide appropriate written instructions for Custodian to return any original note or debt instrument to debtor.
- (e) The Custodian shall have no duty to monitor the performance or actions of any investment or to monitor the sufficiency or adequacy of the Depositor's actions or duties or those of his heirs, successors, agents, or assigns, nor shall the Custodian be required to monitor the acts of any paid consultant to whom the Custodian may have

contractually delegated any duties or responsibilities pursuant to Depositor's or his Representative's directions;

- (f) Depositor agrees to be responsible for any and all collection actions, including contracting with a collection agency or instituting legal action, and bring any other suits or actions which may become necessary to protect the rights of the account as a result of the operation or administration of the investment(s); and
- (g) Depositor may not direct the purchase of a life insurance contract or a "collectible" as defined in Code Section 408(m).

**9.8.** The Custodian may value assets of the account on a quarterly basis utilizing various sources available to it. However, the Custodian shall not guarantee the accuracy of prices obtained from quotation services, independent appraisal services, investment sponsors, or parties related thereto or, any other sources. Values for brokerage accounts shall be equal to the total equity value of the account, and shall reflect only those assets which are priced by the brokerage firm. Individual assets held within the brokerage account shall not be listed individually on statements furnished by the Custodian.

In the absence of direction from the Secretary of the Treasurer or his authorized representative to the contrary, the value of illiquid assets such as limited partnerships, limited liability companies, or privately-held stock, shall be determined by a fair market value from the investment sponsor or other source chosen by Custodian in its sole discretion. Promissory notes and privately-offered corporate debt may have valuations reflected at the face value shown on the original note or debt instrument, or if the note is such that it is subject to an amortization schedule, valuation may be shown at amortized value.

If the investment sponsor is unwilling or unable to provide a fair market value, then the Custodian may list the value of the illiquid asset at its original acquisition cost or carry forward the last known value. Assets which are reported by the investment sponsor as having no market value, are in bankruptcy, or other relevant condition exists, may reflect a valuation of zero on the Custodian's periodic statement.

For investments that are not publicly tradeable on a securities exchange, the Custodian shall seek a valuation of such securities from the sponsor/issuer of the investment. If a value is not received within ninety (90) days after request, then, upon notice from the Custodian, it is the duty of the Depositor to provide the Custodian with the fair market value of the investment from the investment sponsor or from an independent appraisal service of the Depositor's choice, provided such appraisal service is acceptable to Custodian. Custodian reserves the right to resolve differences in values in any manner Custodian deems appropriate. If the Depositor fails to do so, within six (6) months after notice, then the Custodian shall be authorized, entitled and directed to distribute such investment in-kind at fair market value, which may be original acquisition cost or the last known value, to the Depositor.

**9.9.** If investment(s) selected by the Depositor or his Rep generate Unrelated Business Taxable Income (UBTI), Depositor understands that such income, when considered in conjunction with all such income from all custodial accounts, may be taxable to the IRA account to the extent that all UBTI for a given taxable year exceeds the threshold amount set by the IRS (currently \$1000). In such instances, the IRS requires that a Form 990-T be filed for the custodial account along with the appropriate amount of tax. Depositor understands that the Custodian does not monitor the amount of UBTI in the custodial account, and does not prepare Form 990-T. Depositor agrees to monitor UBTI for this and any other Custodian account which he may hold, and further agrees to prepare, or have prepared, the proper 990-T tax form and forward it to the

Custodian for filing, along with authorization to pay any tax due from the custodial account.

**9.10.** The Depositor understands that certain transactions are prohibited for tax-exempt IRA accounts under Code Section 4975. Depositor further understands that the determination of whether a transaction directed by Depositor or his Representative is prohibited depends on all of the relevant facts and circumstances surrounding the purchase. The Depositor acknowledges that the determination of whether a transaction directed by Depositor or his Representative is prohibited depends on all of the relevant facts and circumstances surrounding the purchase. The Depositor acknowledges that, should the custodial account engage in a prohibited transaction, that the fair market value of the account will become a taxable distribution to the Depositor in the taxable year in which the transaction was made. In addition, if the Depositor is under age 59 1/2, additional premature distribution penalty taxes may apply. Depositor hereby warrants that he will not enter into a transaction, or cause a transaction to be entered into, which is prohibited under Section 4975 of the Code. Depositor further warrants that, if a transaction is questionable due to Depositor's relationship to the investment sponsor, that he will consult with such counsel and advisors as Depositor may deem necessary prior to directing or causing the direction of that transaction.

**9.11.** Without limiting the generality of the foregoing, the Depositor understands and acknowledges that Custodian will act solely as agent for the Depositor, and under the instructions of the Depositor, with respect to the investment of the assets of the custodial account and, acting in that capacity, shall place orders for the purchases of securities providing the Depositor has sufficient funds in the custodial account or arranges to make funds available in advance for such purposes, and will also place orders for the sale of securities provided such securities are held by Custodian and in deliverable form. The Depositor authorizes the Custodian to charge the custodial account for the cost of all securities purchased or received from the securities sold or delivered against payment. If the Depositor directs the Custodian to place an order for a mutual fund investment and there are insufficient funds in the account to cover the settlement cost, Depositor agrees to deposit in the custodial account immediately (and in any event not later than the settlement date) sufficient liquid funds to cover the cost of the investment. Depositor agrees that the Custodian shall be under no obligation whatsoever to extend credit to the account or otherwise disburse payment beyond the cash balance of the custodial account for any purchase of a mutual fund investment. In the event Depositor fails to timely deposit sufficient funds in the custodial account to cover the cost of any such investment, the Custodian, at its option, may cancel the order for the investment or, if the investment already has been acquired, sell the investment and reimburse itself for any costs or expenses incurred by the Custodian in settling the purchase order. Depositor agrees that Custodian shall not be liable for any actions taken in accordance with this provision, and further agrees to indemnify and hold the Custodian harmless for its actions in canceling a purchase order for a mutual fund investment in the custodial account or selling the investment to reimburse itself as provided above.

#### **ARTICLE X. Trust Accounts**

**10.1.** It shall be the sole duty of the Custodian to maintain a custodial account in the name of the Depositor and to make payments and distributions as directed by the Depositor or his Representative. Pursuant to the directions of the Depositor or his Representative, the Custodian shall invest and reinvest the assets in the custodial account without any duty to diversify and without regard to whether such investment is authorized by the laws of any jurisdiction for custodial investment, in securities obtainable "over the counter" or on a recognized exchange, saving media and any other acceptable public or non-standard investment which in the sole

judgment of the Custodian will not impose an unreasonable administrative burden (with such determination by the Custodian not to be construed in any respect as a judgment concerning the prudence or advisability of such investment). The custodial account shall reflect the amounts contributed by the Depositor, receipts, investments, distributions, disbursements, and all other transactions.

- 10.2.** The Custodian shall have the following powers and authority in the administration of the custodial account:
- (a) Pursuant to the Depositor's or his Representative's directions, to exercise or sell options, conversion privileges or rights to subscribe for additional securities and to make payments therefore.
  - (b) To make, execute and deliver as Custodian any and all contracts, waivers, releases or other instruments necessary or proper for the exercise of any of the foregoing powers.
  - (c) In the absence of specific investment instructions from the Depositor, to leave any property comprising the custodial account for safekeeping or on deposit, with or without interest, with such banks, brokers and other custodians as the Custodian may select.
  - (d) To hold any securities in bearer form or in the name of banks, brokers and other custodians or in the name of the Custodian without qualifications or description or in the name of any nominee.
  - (e) To employ suitable agents and counsel and to pay their reasonable expenses and compensation.
  - (f) To do and perform all acts or things reasonably necessary or desirable to carry out the power and authority granted to the Custodian.

**10.3.** Custodian shall process investment directions and/or invest funds which it receives in accordance with Depositor's directions within seven (7) business days of receipt of such directions and/or funds plus necessary administrative and processing time. Custodian shall be under no duty to credit interest or earnings on the funds received, and Depositor agrees that Custodian shall not be liable for any market value adjustment which may occur during or after said processing time.

**10.4.** The Custodian shall have no duty other than to follow the directions of the Depositor, his Representative, or Investment Advisor, and shall be under no duty to question said instructions. The Custodian does not assume any responsibility for rendering advice with respect to the investment and reinvestment of the Depositor's account, and shall not be liable for any loss which results from the exercise of control over his account by the Depositor, his Representative, or Investment Advisor. Without limiting the generality of the foregoing, the Custodian is authorized to collect all interest, dividends, proceeds of the sale and other monies due and collectable that arise from the investment of the Assets (collectively, "Fund Income") and to credit such Fund Income to the Account and, upon Custodian's receipt, shall become part of the custodial account. In the case of any solicitation received by the Custodian with respect to the Depositor's account (including but not limited to third party tender offers with respect to limited partnership interests in the account), the Custodian will transmit such materials to the Depositor (or to his Representative or Investment Advisor, as directed by the Depositor); however, the Custodian must have at least ten (10) days from the date it receives instructions from the Depositor (or his Representative or Investment Advisor) to transmit such instructions to the soliciting party by the date specified in the solicitation. The Custodian shall have no obligation to transmit any solicitation received or instructions given with respect to the Depositor's account by other than regular mail, and shall not be responsible for any failure to respond to a solicitation by the deadline specified therein due to (i) delays in the mail or (ii) where the Custodian has less than ten (10) days from the date instructions are received from the Depositor (or his or her Representative or Investment Advisor) and the specified deadline for responding. Custodian need

not honor offers or recognize communications that are not addressed to each Depositor's account by name. The Custodian shall not be responsible for any action taken by the Depositor or his Representative as a result of information concerning the account or any investment which may be transmitted or not transmitted to the Depositor or his Representative. The Custodian shall have no responsibility or duty to review or monitor any securities or other property held within the Custodian account, nor shall the Custodian be held liable for its failure to act because of the absence of any directions from the Depositor. The Custodian shall not be liable for the actions or inactions of any prior trustee, custodian, or other service provider or agent of the Depositor which may have occurred prior to the transfer of the Custodian account. The Depositor shall indemnify and hold Custodian harmless for any losses resulting from the Custodian's action or inaction in relation to investment directions received from the Depositor, his Representative, or Investment Advisor, for the actions or inactions of Agents appointed by the Depositor, or by the Custodian at the direction of the Depositor, and for any tax consequences resulting from the Depositor's or Representative's direction to engage in any unauthorized transaction, including an investment in life insurance contracts, investment in collectibles, or engaging in a prohibited transaction as defined in Section 4975 of the Code.

#### **ARTICLE XI. Beneficiary Designation**

**11.1.** The Depositor may from time to time designate, upon such form as the Custodian shall prescribe, any person, trust or persons, contingently or successively, to whom the Custodian shall pay the Depositor's interest in the custodial account in the event of his death. Such primary and contingent beneficiary designation shall be effective when filed with the Custodian and shall revoke all prior beneficiary designations made before that date by Depositor.

**11.2.** If a Depositor fails to name a beneficiary in accordance with Section 11.1, or if all beneficiaries named by a Depositor predecease the Depositor, the remaining balance of the custodial account shall be payable to the spouse of the Depositor, or if there is no spouse living, then to the estate of the Depositor.

**11.3.** When and after distributions of the custodial account to the Depositor's beneficiary commence, all rights and obligations of the Depositor under this Agreement shall inure to, and be exercised by, such beneficiary.

**11.4.** If the beneficiary designated to receive payments hereunder is a minor or person of unsound mind, whether so formally adjudicated or not, the Custodian, in its discretion, may make such payment to such person as may be acting as parent, guardian, committee, conservator, custodian, or legal representative of such minor or incompetent and the receipt of any such person as selected by the Custodian shall be a full and complete discharge to the Custodian for any sums so paid.

#### **ARTICLE XII. Payout of Benefits**

**12.1.** If the Depositor has selected a distribution option involving life contingencies, the Depositor may direct the Custodian to utilize the amount in the custodial account which would otherwise be available as a lump sum distribution to purchase an annuity from such insurance company as the Depositor may select to satisfy the requirements of Article IV of this Agreement.

**12.2.** Depositor's election as to the method of distribution under Section 4.3 of this Agreement must be made at least thirty (30) days before the Required Beginning Date, which is defined as April 1 of the calendar year immediately following the calendar year in which the Depositor reaches age 70 1/2. If no election is made, the Custodian will make distributions over a period not to exceed the Depositor's single life expectancy.

**12.3.** When determining the amount to be distributed for the second distribution calendar year and subsequent distribution calendar years, the Depositor's life expectancy (or the joint life expectancy of the Depositor and his named beneficiary) shall not be recalculated unless such recalculation is elected by the Depositor on a form acceptable to the Custodian.

#### **ARTICLE XIII. Duties, Records, Reports**

**13.1.** The Custodian's sole duties to the Depositor regarding reporting shall be to send Depositor a copy or facsimile of IRS Form 5498 and/or an annual calendar year statement of the assets of the account within time frames established by the IRS. In addition, the Custodian shall furnish Quarterly reports to the Depositor detailing transactions performed under this custodial account and the value of assets held within the account.

**13.2.** The Custodian shall have no liability or responsibility for transactions reported or not reported on any periodic or annual statement unless the Depositor or his Representative file written exceptions or objections within 60 days after receipt of the report or statement. Upon receipt of written notification under this Section, the Custodian's liability and responsibility shall be to fully investigate the exceptions or objections, and make any adjustments, correct any entries, or otherwise reconcile the account as may be necessary. If any such adjustments or corrections are required, the Custodian shall issue a revised statement for the reporting period(s) in question.

#### **ARTICLE XIV. Fees and Expenses**

**14.1.** THE DEPOSITOR SHALL BE CHARGED BY THE CUSTODIAN FOR ITS SERVICES HEREUNDER IN ACCORDANCE WITH THE CURRENT POSTED FEE SCHEDULE OF THE CUSTODIAN AS IT MAY BE AMENDED FROM TIME TO TIME. ANY INCOME TAXES OR OTHER TAXES OF ANY KIND WHATSOEVER THAT MAY BE LEVIED UPON OR IN RESPECT OF THE CUSTODIAL ACCOUNT, ANY TRANSFER TAXES INCURRED IN CONNECTION WITH THE INVESTMENT AND REINVESTMENT OF ASSETS IN THE CUSTODIAL ACCOUNT, AND ALL OTHER ADMINISTRATIVE EXPENSES INCURRED BY THE CUSTODIAN IN THE PERFORMANCE OF ITS DUTIES, INCLUDING FEES FOR LEGAL SERVICES RENDERED TO THE CUSTODIAN AND COMPENSATION OF THE CUSTODIAN SHALL BE PAID BY THE DEPOSITOR AND THE DEPOSITOR HEREBY COVENANTS AND AGREES TO PAY THE SAME.

**14.2.** In the event the Depositor shall at any time fail to discharge any liability under this Article, such liability shall be charged to the custodial account, and the Custodian may liquidate such of the assets of the custodial account for such purposes as in its sole discretion it shall determine. Notwithstanding any provisions of this Agreement, all payments under this Section and the liquidations of assets to obtain funds therefore may be made without the approval or direction of the Depositor. If the custodial account is not sufficient to satisfy such liability, the Depositor shall be liable for any deficiency.

**14.3.** THE CUSTODIAN'S CURRENT POSTED FEE SCHEDULE MAY BE AMENDED AT ANY TIME UPON 30 DAYS' WRITTEN NOTICE TO THE DEPOSITOR. THE CUSTODIAN RESERVES THE RIGHT TO CHARGE FEES IN ADDITION TO ITS POSTED FEE SCHEDULE FOR EXTRAORDINARY OR SPECIAL SERVICES, OR FOR UNFORESEEN EXPENSES TO THE ACCOUNT, INCLUDING LEGAL EXPENSES INCURRED BY THE CUSTODIAN. THE CUSTODIAN DOES NOT PRORATE FEES. ON A FORM ACCEPTABLE TO THE CUSTODIAN, THE DEPOSITOR MAY ELECT TO PAY FEES DIRECTLY, OR HAVE THEM WITHDRAWN FROM THE ASSETS OF THE ACCOUNT. TERMINATION FEES ARE DUE AND PAYABLE UPON DISTRIBUTION TO

THE DEPOSITOR OR UPON TRANSFER TO ANOTHER TRUSTEE OR CUSTODIAN.

#### **ARTICLE XV. Amendment and Termination**

**15.1.** The Depositor irrevocably delegates to the Custodian the right and power to amend this Agreement. Except as hereafter provided, the Custodian will give the Depositor 30 days' written notice of any amendment. In case of a retroactive amendment required by law, the Custodian will provide written notice to the Depositor of the amendment within 30 days after the amendment is made, or if later, by the time that notice of the amendment is required to be given under regulations or other guidance provided by the Code. The Depositor shall be deemed to have consented to any such amendment unless the Depositor notifies the Custodian to the contrary within 30 days after notice to the Depositor and requests a distribution or transfer of the balance of the account. The Custodian's termination fee shall be applicable to any account so distributed or transferred.

**15.2.** The Depositor may terminate this agreement at any time by delivery of written notice of such termination to the Custodian. Upon such termination, the Custodian shall continue to hold the assets and distribute them in accordance with the previous instructions of the Depositor and the provisions of this Agreement unless the Custodian receives other instructions from the Depositor (such as those involving a rollover) which the Custodian may follow, without liability and without any duty to ascertain whether such payout is proper under the provisions of the Code or of any other plan.

**15.3.** Upon request of the Depositor in writing to the Custodian, the Custodian shall transfer all assets in the custodial account to the Depositor, to a qualified retirement plan, or to another individual retirement account established by the Depositor. The Custodian is authorized, however, to reserve such sum of money or property as it may deem advisable for payment of all its fees, compensation, costs and expenses, or for any other liabilities constituting a charge against the assets of the custodial account or against the Custodian, with any balance of such reserve remaining after the payment of all such items to be paid over to the successor custodian or custodian.

#### **ARTICLE XVI. Resignation or Removal of Custodian**

**16.1.** Upon written notice to the Custodian, the Depositor may remove it from its office hereunder. Such notice, to be effective, shall designate a successor custodian or custodian and shall be accompanied by the successor's written acceptance. The Custodian may at any time resign upon thirty (30) days' written notice to Depositor, whereupon the Depositor shall appoint a successor to the Custodian. In the event of resignation of the Custodian and failure to appoint a qualified successor, the Custodian may appoint a successor trustee or custodian, or distribute the assets of the custodial account to the Depositor.

**16.2.** The successor trustee or custodian shall be a bank, insured credit union, or other person satisfactory to the Secretary of the Treasury pursuant to Section 408(a)(2) of the Code. Upon receipt by the Custodian of written acceptance by its successor of such successor's appointment, the Custodian shall transfer and pay over to such successor the assets of the custodial account and all records (or copies thereof) of Custodian pertaining thereto. The Custodian is authorized, however, to reserve such sum of money or property as it may deem advisable for payment of all its fees, compensation, costs and expenses, or for payment of any other liabilities constituting a charge on or against the assets of the custodial account or on or against the Custodian, with any balance of such reserve remaining after the payment of all such items to be paid over to the successor trustee or custodian.

**16.3.** The Custodian shall not be liable for the acts or omissions of its successor.

**ARTICLE XVII. Miscellaneous**

**17.1.** Neither the Depositor nor any beneficiary of the Depositor shall have any right to pledge, hypothecate, anticipate or in any way create a lien upon any assets or part of the custodial account. Distributions to the Depositor, his beneficiaries, spouse, heirs-at-law, or legal representatives, excepting minors and persons under legal disability, shall be made only to them and upon their personal receipts and endorsements and no interest in the custodial account, or any part thereof, shall be assignable in anticipation of payment either by voluntary or involuntary act, or by operation of law, or be liable in any way for the debts or defaults of such Depositor, his beneficiaries, spouse, or heirs-at-law. The provisions of this paragraph shall not apply to the extent that they violate any applicable law.

**17.2.** The custodial account created hereunder is created for the exclusive benefit of the Depositor or his beneficiaries, and at no time shall it be possible for any part of the assets of the custodial account to be used for or diverted to purposes other than for the exclusive benefit of the Depositor or his beneficiaries.

**17.3.** Notwithstanding the provisions of Sections 17.1 and 17.2 above, in the event the Depositor and the Depositor's spouse obtain a Separation Instrument, as described in Section 408(d)(6) of the Code, the Depositor may direct the Custodian in writing to transfer the appropriate portion of the assets in the Depositor's account directly to the Depositor's former spouse or to an IRA maintained by the Depositor's former spouse, provided the transfer is in accordance with the Separation Instrument, a copy of which shall be furnished to the Custodian. The transfer of assets to the Depositor's former spouse may be in cash or in-kind, pursuant to directions contained in the Separation Instrument.

**17.4.** THE CUSTODIAN SHALL BE UNDER NO DUTIES WHATSOEVER EXCEPT SUCH DUTIES AS ARE SPECIFICALLY SET FORTH IN THIS AGREEMENT. THE CUSTODIAN SHALL BE FULLY PROTECTED IN ACTING UPON ANY INSTRUMENT, CERTIFICATE, OR PAPER BELIEVED BY IT TO BE GENUINE AND TO BE SIGNED OR PRESENTED BY THE PROPER PERSON OR PERSONS, AND THE CUSTODIAN SHALL BE UNDER NO DUTY TO MAKE ANY INVESTIGATION OR INQUIRY AS TO ANY STATEMENT CONTAINED IN ANY SUCH WRITING BUT MAY ACCEPT THE SAME AS CONCLUSIVE EVIDENCE OF THE TRUTH AND

ACCURACY OF THE STATEMENTS THEREIN CONTAINED. THE DEPOSITOR SHALL AT ALL TIMES INDEMNIFY AND HOLD HARMLESS THE CUSTODIAN FROM ANY LIABILITY WHICH MAY ARISE HEREUNDER EXCEPT LIABILITY ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CUSTODIAN.

**17.5.** THE PARTIES AGREE THAT, UPON THE REQUEST OF EITHER DEPOSITOR OR THE CUSTODIAN, WHETHER MADE BEFORE OR AFTER THE INSTITUTION OF ANY LEGAL PROCEEDING, ALL CLAIMS AND DISPUTES OF EVERY TYPE AND MATTER WHICH MAY ARISE BETWEEN DEPOSITOR AND THE CUSTODIAN SHALL BE SUBMITTED TO BINDING ARBITRATION BEFORE A PANEL OF ARBITRATORS (AS DESCRIBED BELOW), OF AND PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"); THAT SUCH ARBITRATION HEARINGS AND PROCEEDINGS SHALL TAKE PLACE ONLY IN DOUGLAS COUNTY, NEBRASKA OR ANOTHER SITE SELECTED BY CUSTODIAN IN ITS SOLE DISCRETION; THAT THIS ARBITRATION PROVISION AND THE ARBITRATION SHALL BE ADMINISTERED BY THE AAA PURSUANT TO AND CONSTRUED AND ENFORCED UNDER THE FEDERAL ARBITRATION ACT (TITLE 9 OF THE UNITED STATES CODE) ("FAA"); HOWEVER, IF THE FAA IS INAPPLICABLE FOR ANY REASON, SUCH ARBITRATION SHALL BE CONDUCTED PURSUANT TO NEBRASKA LAW; THAT THERE SHALL BE NO CLASS ACTION, CLASS OR CONSOLIDATED ARBITRATION; THAT THE PREVAILING PARTY IN ANY CLAIM OR DISPUTE OF ANY TYPE BETWEEN THE DEPOSITOR AND THE CUSTODIAN SHALL RECOVER REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES, INCLUDING WITHOUT LIMITATION, ARBITRATION FILING FEES, ARBITRATORS' FEES, AND OTHER ARBITRATION FEES; AND THAT THIS ARBITRATION AGREEMENT SHALL GOVERN ANY DISPUTES INVOLVING DEPOSITOR AND THE CUSTODIAN NOTWITHSTANDING ANY PROVISIONS, INCLUDING AND WITHOUT LIMITATION VENUE OR ARBITRATION PROVISIONS, CONTAINED IN ANY AGREEMENT SIGNED BY CUSTODIAN IN ITS CUSTODIAL CAPACITY. ANY ARBITRATION PROCEEDING SHALL BE CONDUCTED BY A PANEL OF THREE NEUTRAL ARBITRATORS SELECTED BY THE PARTIES UNLESS THE

PARTIES AGREE OTHERWISE. IF ARBITRATION IS REQUESTED AS DESCRIBED ABOVE, THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO INSTITUTE OR CONDUCT LITIGATION OR ARBITRATION BEFORE ANY OTHER BODY OR TRIBUNAL. THE PARTIES FURTHER AGREE THAT IF A PARTY IS REQUIRED TO ENFORCE THIS ARBITRATION AGREEMENT AGAINST THE OTHER PARTY AND/OR TO COMPEL THE OTHER PARTY TO ARBITRATION PURSUANT TO THIS AGREEMENT, THE PARTY SHALL RECOVER FROM THE OTHER PARTY REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES SO INCURRED. ARBITRATION SHALL BE FINAL AND BINDING UPON THE PARTIES.

**17.6.** The custodial account created hereunder may be utilized by an employer in conjunction with IRS FORM 5305-SEP or other approved prototype or individually-designed document to establish a Simplified Employee Pension (SEP) Plan.

**17.7.** Any notice or statement which the Custodian is required to give hereunder shall be deemed given when mailed to the intended recipient at his last known address. Any notice or statement to be given to the Custodian shall be deemed given only when actually received by the Custodian.

**17.8.** Words used in the masculine shall apply to the feminine where applicable and wherever the context of this Agreement indicates the plural shall be read as the singular, and the singular as the plural.

**17.9.** The captions of Articles and Sections in this Agreement are included for convenience only and shall not be considered a part of, or an aid to, the construction of this Agreement.

**17.10.** This Agreement is intended to qualify under Section 408(a) of the Code and if any term or provision hereof is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with that intent.

**17.11.** This Agreement is accepted by the Custodian in, and administered under, the laws of the State of Nebraska. All contributions to the Custodian shall be deemed to take place in the State of Nebraska. **THIS AGREEMENT AND ALL AMENDMENTS HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEBRASKA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN.**

## Traditional IRA Disclosure Statement

This Disclosure Statement, which is provided you in compliance with Treasury Regulation section 1.408-6(d)(4), explains what you should know about your individual retirement account (IRA), and is a general review of the federal income tax law applicable to it.

Constellation Trust Company presents the following Disclosure Statement pursuant to Internal Revenue Service Regulations which require that the information contained therein be given to individuals for whom an Individual Retirement Account (hereinafter "IRA" or "account") is established.

### A. Right of revocation

Regulations of the Internal Revenue Service require that this Disclosure Statement be given to a participant at least seven days before the account is established, or, the participant may revoke the account within seven days after it is established. By executing the Adoption Agreement, you acknowledge receipt of this Disclosure Statement. Accordingly, you are entitled to revoke the IRA within seven days after the date of your execution of the Adoption Agreement. Such revocation may be made only by written notice which at your option may be mailed or delivered to Constellation Trust Company as follows:

Mailing address: Constellation Trust Company  
4020 South 147<sup>th</sup> Street, Suite 3  
Omaha, NE 68137

Delivery address: Constellation Trust Company  
4020 South 147<sup>th</sup> Street, Suite 3  
Omaha, NE 68137

If mailed, the revocation notice shall be deemed mailed on the date of the postmark (or if by registered or certified mail, the date of registration or certification) if deposited in the mail in the United States in an envelope or other appropriate wrapper, first class postage prepaid, properly addressed. Upon revocation within the seven-day period, Constellation Trust Company will return the current fair market value of the amount contributed to the IRA, without penalty, service charge, or administrative expense.

### B. Statutory requirements of an IRA - Code Sec. 408(a)

An individual retirement account is a trust account created by a written governing instrument that meets the following requirements:

1. The custodian or custodian must be a bank, federally insured credit union, savings and loan association, or another person eligible to act as a custodian or custodian.
2. Except for rollovers and direct transfers (the tax free transfer of retirement funds from one retirement plan to another, described below) and employer contributions to a simplified employee pension plan or SIMPLE plan, contributions may not exceed the lesser of 100% of your compensation, or \$3,000 for tax years 2002-2004, \$4,000 for years 2005-2007, \$5,000 for 2008, with the potential for cost-of-living adjustment in 2009 and beyond. The contribution must be in cash. At no time may the contribution ever exceed more than 100% of compensation.
3. You will have a nonforfeitable interest in the account.
4. No part of the trust funds will be invested in life insurance contracts nor may the assets be commingled with other property except in a common trust fund or common investment fund.
5. You may not invest the assets of your IRA in collectibles (as described in Section 408(m) of the Internal Revenue Code). A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the IRS. However, if the Custodian permits, specially minted US gold, silver and platinum coins and certain state-issued coins are permissible IRA investments. Beginning on 1/1/98 you may also invest in certain gold, silver, platinum or palladium bullion. Such bullion must be permitted by the Custodian and held in the physical possession of the IRA trustee or custodian.
6. Your interest in your IRA must begin to be distributed to you by the April 1st following the calendar year you attain the age of 70 1/2. The methods of distribution, election deadlines, and other limitations are described in detail below.

### C. Limitations and Restrictions on the Deduction or an IRA – Code Sec. 219

#### Eligible individuals

You are permitted to make a regular contribution to your IRA for any taxable year prior to the taxable year you attain age 70 1/2, and if you receive compensation for such taxable year. Compensation includes salaries, wages, tips, commissions, bonuses, alimony, royalties from creative efforts and "earned income" in the case of self-employees. The amount that is deductible, depends upon whether or not you are an active participant in a retirement plan maintained by your employer; your adjusted gross income (AGI); your marital status; and your tax filing status.

#### Maximum contribution allowance

The maximum amount you may contribute for any one year is the lesser of 100% of your compensation or, \$3,000 for tax years 2002-2004, \$4,000 for years 2005-2007, \$5,000 for 2008, with the potential for cost-of-living adjustment in 2009 and beyond. This is your contribution limit. The deductibility of regular IRA contributions depends upon your marital status, tax filing status, whether or not you are an "active participant" and your AGI.

#### Catch-Up Contributions

If you will attain the age of 50 by the end of the taxable year (December 31), you may make an additional "Catch-Up" contribution to your IRA. The maximum additional contribution limit is \$500 for tax years 2002-2005 and \$1,000 for tax years 2006 and beyond.

#### Active participant

You are considered an active participant if you participate in your employer's qualified pension, profit-sharing, or stock bonus plan qualified under Section 401(a) of the Internal Revenue Code ("the Code"); qualified annuity under section 403(a) of the Code; a simplified employee pension plan (SEP); a Savings Incentive Match Plan for Employees (SIMPLE); a retirement plan established by a government for its employees (this does not include a Section 457 plan); tax-sheltered annuities or custodial accounts under Section 403(b) of the Code; and pre-1959 pension trusts under Section 501(c)(18) of the Code.

If you are not sure whether you are covered by an employer-sponsored retirement plan, check with your employer or check your Form W-2 for the year in question. The W-2 form will have a check in the "pension plan" box if you are covered by a retirement plan. You can also obtain IRS Publication 923 for more information on active participation in retirement plans for IRA deduction purposes.

#### Deductibility of regular contributions

If neither you or your spouse is an active participant in a qualified retirement plan (including qualified pension, profit sharing or stock bonus plans, tax-sheltered annuity plans, Simplified Employee Pension (SEP) Plans, SIMPLE Plans, certain government-sponsored plans, and plans described under Section 501(c)(18) of the Internal Revenue Code), then you may deduct the full amount of your IRA contribution without regard to your adjusted gross income or filing status.

If you or your spouse is an active participant in an employer sponsored retirement plan, you may be entitled to only a partial (reduced) deduction or no deduction at all, depending on your level of adjusted gross income (AGI) and your filing status. Your deduction begins to decrease (phase out) when your AGI falls within the thresholds set forth for the tax year as shown in the table below and a calculation must be made to determine your deductible limit for the year. Your deduction is eliminated altogether when it reaches or exceeds the upper threshold of the scale.

For contributions made for taxable years, beginning 2002 and after, the dollar thresholds for active participants in employer-sponsored plans are as follows:

	Married Participants	Single Participants
2002	\$ 54,000 - \$ 64,000	\$ 34,000 - \$ 44,000
2003	\$ 60,000 - \$ 70,000	\$ 40,000 - \$ 50,000
2004	\$ 65,000 - \$ 75,000	\$ 45,000 - \$ 55,000
2005	\$ 70,000 - \$ 80,000	\$ 50,000 - \$ 60,000
2006	\$ 75,000 - \$ 85,000	\$ 50,000 - \$ 60,000
2007	\$ 80,000 - \$100,000	\$ 50,000 - \$ 60,000

Married persons filing separate returns (who lived together at any time during the year) have a beginning threshold of zero. Therefore the phase out range remains \$0 - \$10,000, the same as for pre-1998 years.

#### Nondeductible contributions

Even if you are not eligible for an IRA deduction or full deduction, the law allows you to make a nondeductible contribution up to the maximum of the lesser of the amounts described previously above or 100% of compensation. These contributions, while not currently excludable from income, do accumulate tax-deferred earnings until the account is distributed. The total amount of deductible and nondeductible contributions still must not exceed the maximum amounts stated above.

You are responsible for reporting nondeductible contributions to the IRS on Form 8606, filed with your annual tax filing. In addition, you are responsible for keeping records as to the cumulative amount of nondeductible contributions made to your IRA. You may be subject to IRS penalties should you overstate your nondeductible amount or fail to file Form 8606.

No deduction is allowed with respect to a rollover contribution (the tax free transfer of retirement funds from one retirement plan to another, described below).

Your employer may make a Simplified Employer Pension (SEP) contribution on your behalf into this IRA up to the lesser of 25% of your compensation or \$40,000 (subject to annual cost of living adjustments, if any, announced by the IRS, for tax years 2003 and following). This limit is a per employer limit. Your employer may contribute to this IRA or any other IRA on your behalf under a SEP plan even if you are age 70 1/2 or over, and even if you are covered under a qualified plan of another employer for the year.

The contribution to your IRA reduces your gross income. Therefore, even if you do not itemize your deductions and you use the standard deduction, you may still claim a deduction for contributions to your IRA.

You must make contributions to your account prior to April 15th following the year in which you claim the deduction.

#### Tax Credits for Contributions

For tax years between 2002 and 2006, you may be eligible to receive a tax credit on your IRA contribution. This tax credit is in addition to any deduction that may be allowed, and may not exceed \$1,000 in any given year. You may be eligible for a tax credit if you are a) age 18 or older, b) not a dependent of another tax payer, and c) not a full time student.

The credit is based on income levels as shown in the chart below and will range from 0 to 50 percent of eligible contributions not exceeding \$2,000.

Joint Return*	Head of Household*	All other cases*	%
\$1 - \$30,000	\$1 - \$22,500	\$1 - \$15,000	50
\$30,001 - \$32,500	\$22,501 - \$24,375	\$15,001 - \$16,250	20
\$32,500 - \$50,000	\$24,376 - \$37,500	\$16,251 - \$25,000	10
Over \$50,000	Over \$37,500	Over \$25,000	0

\*Adjusted Gross Income (see your tax advisor for more information)

#### Age 70 1/2.

No deduction will be allowed for contributions made for the tax year in which you attain age 70 1/2.

#### Marital status.

Since a deduction is available to each eligible individual, your marital status and whether or not you file a joint return will have no effect on contributions to an IRA. Both husband and wife can claim the deduction if each individual is eligible and each adopts a separate IRA. If they do, the deduction is computed separately for each spouse whether or not they file a joint tax return.

Community property laws of a state or other jurisdiction do not apply to IRAs. Therefore, you and your spouse must meet the qualifications individually and determine the amount of deductible contributions on the income that each of you has earned individually. You may not claim a deduction based on the earnings of your spouse, even though a state's law may provide that each spouse owns half of the income.

The deductible contribution limitation is increased if you make a contribution to an IRA established for your non-compensated spouse. (See SECTION "L" below.)

#### D. Prohibited transactions

If you or your beneficiary engage in a prohibited transaction described in Code Section 4975, the entire account will lose its exemption from tax, and you must include the fair market value of the account in your income for the year in which the prohibited transaction took place. In addition, you may incur certain penalties for engaging in the transaction as well as the premature distribution penalty tax if you are under age 59 1/2 (see below). Examples of prohibited transactions are the borrowing of the income or corpus from an account, selling property to or buying property from the account, or receiving more than reasonable compensation for service performed for the account.

#### E. Pledging account as security

If you use your account or any portion thereof as security for a loan, the portion so used is treated as distributed to you and may be subject to the 10% penalty tax on premature distributions if you are under age 59 1/2 (see below). Accordingly, if you invest in securities, you may not sell short or execute purchases in an amount greater than available cash.

#### F. Premature distributions

If you receive a payment from your IRA before you attain the age of 59 1/2, the payment will be considered a premature distribution, unless it falls under one of the following exceptions:

- (1) distributions made due to your death;
- (2) distributions made due to your disability;
- (3) any distribution to an alternate payee under a qualified domestic relations order;

(4) a series of substantially equal periodic payments at least annually over a period not to exceed single or joint life expectancy;

(5) distributions made to pay for medical expenses that exceed 7.5% of your adjusted gross income; or

(6) distributions made to pay health insurance premiums by certain unemployed individuals;

(7) distributions made to pay for certain qualified higher education expenses;

(8) distributions made to pay for qualified first-time home purchases, not to exceed \$10,000;

(9) a qualifying rollover distribution; or

(10) the timely withdrawal of the principal amount of an excess or nondeductible contribution.

If you receive a premature distribution, the amount received is included in your gross income in the taxable year of receipt. In addition, your income tax liability for that tax year is increased by an amount equal to 10% of the premature distribution includible in your gross income.

If your account is disqualified because you engaged in a prohibited transaction discussed above, the amount deemed distributed to you is included in your gross income. The premature distribution penalty tax (10% of the amount of the deemed distribution) will also apply if you had not attained the age of 59 1/2 before the beginning of such tax year.

If you request a distribution in the form of a series of substantially equal payments, and you modify the payments before 5 years have elapsed and before attaining age 59 1/2, the 10% additional income tax will apply retroactively to the year payments began through the year of such modification.

#### G. Federal estate and gift taxes

Generally there is no specific exclusion for IRAs under the estate tax rules. Therefore, in the event of your death, your IRA balance will be includible in your gross estate for federal estate tax purposes. However, if your surviving spouse is the beneficiary of your IRA, the amount in your IRA may qualify for the marital deduction available under Section 2056 of the Internal Revenue Code. A transfer of property for federal gift tax purposes does not include an amount which a beneficiary receives from an IRA plan.

#### H. Taxation of distributions

Taxable distributions from your IRA are taxed as ordinary income regardless of their source. They are not eligible for capital gains treatment or the special 5-year or 10-year averaging rules that may apply to lump-sum distributions from qualified employer plans.

The distributions you receive from your IRA are subject to Federal Income Tax Withholding unless you elect not to have the withholding apply. You may elect not to have withholding apply to your distribution. If you do not make an election, Federal Income tax will be withheld at the rate of 10% of the distribution amount. If you elect not to have withholding apply to your distribution, or if you do not have enough Federal Income Tax withheld from your distribution, you may be responsible for payment of estimated tax. You may incur penalties under the estimated tax rules if your withholding and estimated tax payments are not sufficient.

Constellation Trust will withhold state income tax according to the State Income Tax Withholding Requirements chart located on Constellation Trust's IRA Distribution Request form, unless otherwise instructed. (Not applicable in all states.)

#### I. Excise Tax on Excess Contributions

Generally an excess IRA contribution which exceeds the contribution limits, and such excess contribution is subject to a 6% excise tax penalty on the principal amount of the excess each year until the excess is corrected.

**Method of withdrawing excess in a timely manner.** This 6% penalty may be avoided, if the excess amount plus the earnings attributable to the excess are distributed by your tax filing deadline including extensions for the year the excess contribution was made, and you do not take a deduction for such excess amount. If you decide to correct your excess in this manner, the principal amount of the excess returned is not taxable, however, the earnings attributable to the excess are taxable to you in the year in which the contribution was made. In addition, if you are under age 59 1/2 the earnings attributable are subject to a 10% premature distribution penalty. **THIS IS THE ONLY METHOD OF CORRECTING AN EXCESS CONTRIBUTION THAT WILL AVOID THE 6% PENALTY.**

**Method of withdrawing excess after tax filing due date.** If you do not correct your excess contribution in the manner prescribed above by the due date for filing your tax return, then you may withdraw the principal amount of the excess (no earnings need be distributed). The 6% penalty will, however, apply first to the year in which the excess was made and each subsequent year until it is withdrawn.

Undercontribution method. Another method of correcting an excess contribution is to treat a prior year excess as a regular contribution in a subsequent year. Basically all you do is undercontribute in the first subsequent year where you have an unused contribution limit until your excess amount is used up. However, once again you will be subject to the 6% penalty in the first year and each subsequent year that an excess remains.

#### J. Required distributions

**Taxation of distributions.** When you start withdrawing from your IRA, you may take the distributions in regular payments, random withdrawals or in a single sum payment. Generally all amounts distributed to you from your IRA are included in your gross income in the taxable year in which they are received. However, if you have made nondeductible contributions to your IRA, the nontaxable portion of the distribution, if any, will be a percentage based upon the ratio of your unrecovered nondeductible contributions to the aggregate of all IRA balances, including SEP and rollover contributions, as of the end of the year in which you take the distribution, plus distributions from the account during the year. All taxable distributions from your IRA are taxed at ordinary income tax rates for federal income tax purposes and are not eligible for either capital gains treatment or 5/10 year averaging.

**Age 70 1/2 required minimum distributions.** Once you attain age 70½, you are required to take the minimum distributions from your IRA each year. Below is a summary of the IRA distribution rules.

You are required to take a minimum distribution from your IRA for the year in which you reach age 70 ½ and for each year thereafter. You must take your first distribution by your required beginning date, which is April 1 of the year following the year you attain age 70 ½. The minimum distribution for any taxable year is equal to the amount obtained by dividing your IRA balance as of December 31 of the prior year by the applicable divisor (provided by the IRS and located in IRS Publications 590).

The applicable divisor is generally determined using the Uniform Lifetime Table (provided by the IRS). The table assumes a designated beneficiary that is exactly 10 years younger than you, regardless of who you designated as your beneficiary(ies), if any. If your spouse is your sole designated beneficiary, and is more than 10 years younger than you, the required minimum distribution is determined annually using the actual joint life expectancy of you and your spouse obtained from the Joint and Last Survivor Table provided by the IRS, rather than the life expectancy divisor from the Uniform Lifetime Table.

#### Death Distributions

If you die,

a) On or after your required beginning date, distributions must be made to your beneficiary(ies) over the longer of the single life expectancy of your designated beneficiary(ies), or your remaining life expectancy. If a beneficiary other than an individual or qualified trust as defined in the Regulations is named, you will be treated as having no designated beneficiary of your IRA for the purpose of determining the distribution period. If your IRA does not have a designated beneficiary, distributions will begin utilizing your single life expectancy, reduced by one thereafter each year.

b) Before your required beginning date, the entire amount remaining in your account will, at the election of your designated beneficiary(ies), either

- i. Be distributed by the December 31st of the year containing the fifth anniversary of your death, or
- ii. Be distributed over the remaining life expectancy of your designated beneficiary(ies).

Your designated beneficiary(ies) must elect either option (i) or (ii) by the December 31st of the year following the year of your death. If no election is made, distribution calculations will default in accordance with option (ii). In the case of distributions under option (ii), distributions must commence by the December 31st of the year following the year of your death.

If your spouse is the designated beneficiary, distributions need not commence until the December 31st of the year you would have attained age 70 ½, if later. If a beneficiary(ies) other than an individual or qualified trust as defined in the Regulations is named, you will be treated as having no designated beneficiary(ies) of your IRA for purposes of determining the distribution period. If there is no designated beneficiary of your IRA, the entire IRA must be distributed by the December 31st of the year containing the fifth anniversary of your death.

A spouse who is the sole designated beneficiary of your entire IRA may elect to redesignate your IRA at his or her own. Regardless of whether or not the spouse is the sole designated beneficiary of your IRA, a spouse beneficiary may roll over his or her share of the assets to his or her own IRA.

**Caution:** These transactions are often complex. If you have any questions regarding minimum distributions, please see a competent tax advisor. In any distribution calendar year you may take more than the required minimum. However, if you take less than the required minimum with respect to any distribution calendar year, you are subject to a federal excise tax of 50% of the

difference between the amount required to be distributed and the amount actually distributed.

#### K. Rollover IRAs

A rollover from another IRA is any amount you receive from one IRA and roll some or all of it over into another IRA. You are not required to roll over the entire amount received from the first IRA. However, any amount you do not roll over will be taxed at ordinary income tax rates for federal income tax purposes.

#### The following special rules also apply to rollovers between IRAs:

1. The rollover must be completed no later than the 60th day after the day the distribution was received by you.
2. You may have only one IRA to IRA rollover during a 12 consecutive month period measured from the date you received a distribution of an IRA which was rolled over to another IRA. (See IRS Publication 590 for more information.)
3. The same property you receive in a distribution must be the same property you roll over into the second IRA. For example, if you receive a distribution from an IRA of property, such as stocks, that same stock must be rolled over into the second IRA.
4. You are required to make an irrevocable election indicating that this transaction will be treated as a rollover contribution.
5. You are not required to receive a complete distribution from your IRA in order to make a rollover contribution into another IRA, nor are you required to roll over the entire amount you received from the first IRA.
6. If you inherit an IRA due to the death of the participant, you may not roll this IRA into your own IRA unless you are the spouse of the decedent.
7. If you are age 70 1/2 or older and wish to roll over to another IRA, you must first satisfy the minimum distribution requirement for that year and then the rollover of the remaining amount may be made.
8. Rollovers from a SEP or an Employer-IRA follow the IRA to IRA rollover rules since your contributions under these types of plans are funded directly into your own IRA.

**Rollovers to Roth IRAs.** You are not permitted to make a qualified rollover contribution to a Roth IRA from any IRA plan (other than another Roth IRA) if your AGI for the year during which the rollover is made exceeds \$100,000 or you are a married individual filing a separate return. AGI means the adjusted gross income determined from the year during which the rollover is made, but reduced by the taxable amount of an IRA distribution includible in income but only with respect to such amount that was rolled over to a Roth IRA. Taxable IRA distributions that are not rolled over to a Roth IRA are included in the AGI amount. Qualified rollovers between Roth IRAs are permitted regardless of your AGI.

**Taxation in Rolling Over from Traditional IRA to Roth IRA.** Any rollovers from an IRA to a Roth IRA after 12/31/98 will be fully includible in income the year in which rolled over. The 10% premature distribution tax shall not apply to the taxable amount of an IRA rolled to a Roth IRA. Income tax withholding will apply to the distribution.

**Contribution Conversion of Traditional IRA to Roth IRA.** Generally, the conversion of a traditional IRA to a Roth IRA is treated as a distribution and subsequent rollover conversion contribution. However, if an individual decides by their tax filing deadline (not including extensions) to transfer a current year contribution plus earnings thereon from an IRA to a Roth IRA, no amount shall be includible in gross income as long as no deduction was taken for the contribution. In addition, you are permitted to “convert” a contribution plus earnings from a Roth IRA to a traditional IRA by your tax filing deadline, including extensions.

**Qualified Rollover Contribution.** This term includes: (a) Rollovers between Roth IRA accounts; and (b) Traditional IRA to a Roth IRA. Qualified rollovers must meet the general IRA rollover rules outlined above, except that the 12 month rollover restriction shall not apply to rollovers between a traditional IRA and a Roth IRA. However, the 12 month rule shall apply to rollovers between Roth IRAs. Rollovers from employer-sponsored plans, such as qualified plans and 403(b)s, to a Roth IRA are not permitted. However, you could roll over from the employer plan to a traditional IRA, and then roll over to a Roth IRA. A rollover conversion from a SEP IRA (provided the 2-year holding period has been met) to a Roth IRA is permitted.

**Rollovers from Employer-sponsored Plans.** Employer-Sponsored Plans Eligible for Rollovers to IRAs are permitted if you have received an eligible rollover distribution from one of the following:

1. A qualified plan under Section 401(a);
2. A qualified annuity under Section 403(a); or
3. A Tax-Sheltered Annuity (TSA) or Custodial Account under Section 403(b).

**Eligible rollover distributions before 1/1/93.** Eligible rollover distributions from a qualified plan, annuity or TSA include a qualified total distribution, a partial

distribution or a total distribution to you as an eligible alternate payee under a qualified domestic relations order (QDRO). (The following citations are from the Internal Revenue Code prior to its amendment under the Unemployment Compensation Amendments Act of 1992.)

A Qualified Total Distribution includes either a lump sum distribution (as defined under §402(e)(4)(A)), a plan termination distribution (as defined under §402(a)(5)(E)(i)(I)), or a distribution of accumulated deductible employee contributions (as defined under §402(a)(5)(E)(i)(III)). A Partial Distribution is also permitted to be rolled over if it meets the requirements under §402(a)(5)(D). A spouse or former spouse may make a rollover pursuant to a QDRO (as defined under §414(p)) if it meets the requirements under §402(a)(6)(F).

The following special rules apply to a rollover from an employer-sponsored plan to an IRA:

1. The rollover must be completed no later than the 60th day after the day the distribution was received by you.
2. You are required to make an irrevocable election indicating that this transaction will be treated as a rollover contribution.
3. You are not required to contribute the entire amount you received from the qualified plan, qualified annuity or TSA distribution.
4. If you are age 70 1/2 or older and wish to roll over your qualified plan, qualified annuity or TSA distribution to an IRA, you must first satisfy the minimum distribution requirement for that year and then the rollover of the remaining amount may be made.
5. If your distribution consists of money which was nondeductible employee contributions, these amounts may not be rolled over to an IRA.
6. If your distribution consists of property (i.e., stocks) you may either roll over the same property (the same stock) or you may sell the distributed property and roll over the proceeds from the sale. This is true whether the proceeds from the sale are more or less than the fair market value of the property on the date of distribution. You may not keep the property received in the distribution and roll over cash which represents the fair market value of the property.

**Conduit IRAs Before 1/1/93.** A conduit IRA is an IRA which contains only qualified total distributions from qualified plans, annuities and TSAs. The IRA is then used as a "holding account" until you subsequently roll that IRA back into another qualified plan, annuity or TSA. In order to take advantage of this conduit treatment, you must establish a separate IRA plan into which the qualified total distribution will be rolled over. When you decide to roll the conduit IRA back into a qualified plan or TSA, the entire balance in the IRA plan must be distributed. However, you are not required to roll over the entire amount into a qualified plan or TSA. Any amounts not rolled back into a qualified plan or TSA will be taxed to you at ordinary income tax rates. A surviving spouse who rolls a qualified total distribution to the spouse's own IRA may not use that IRA as a Conduit IRA.

**Eligible rollover distributions after 12/31/92.** Eligible rollover distributions from a qualified plan, annuity, or TSA generally include any distribution which is not:

1. part of a series of substantially equal payments that are made at least once a year and that will last for:
  - a.) your lifetime (or your life expectancy), or
  - b.) your lifetime and your beneficiary's lifetime (or joint life expectancies), or
  - c.) a period of ten years or more.
2. attributable to your required minimum distribution for the year;
3. attributable to your "after-tax" employee contributions to the plan, since these amounts will be non-taxable when they are paid to you; or
4. attributable to a "hardship" distribution from a 401(k) plan.

**Direct rollover to another plan.** You can elect a direct rollover of all or any portion of your payment that is an "eligible rollover distribution," as described above. In a direct rollover, the eligible rollover distribution is paid directly from the Plan to an IRA or another employer plan that accepts rollovers. If you elect a direct rollover, you are not taxed on the payment until you later take it out of the IRA or the employer plan, and you will not be subject to the 20% mandatory income tax withholding otherwise applicable to Eligible Rollover Distributions which are paid directly to you. Your employer is required to provide you with a Notice regarding the effects of electing or not electing a direct rollover to an IRA or another employer plan. Although a direct rollover is accomplished similar to a transfer, the Custodian must report the direct rollover on Form 5498 as a rollover contribution.

**Eligible rollover distribution paid to you.** If you choose to have your eligible rollover distribution paid to you (instead of electing a direct rollover), you will receive only 80% of the payment, because the plan administrator is required to withhold 20% of the payment and send it to the IRS as income tax withholding to be credited against your taxes. However, you may still roll over the payment to an IRA within 60 days of receiving the distribution. The amount rolled over will not be taxed until you take it out of the IRA. If you want to roll over 100% of the payment

to an IRA, you must replace the 20% that was withheld from other sources. If you roll over only the 80% that you received, you will be taxed on the 20% that was withheld and that is not rolled over. In either event, the 20% that was withheld can be claimed on your income tax return as a credit toward that year's tax liability.

**Conduit IRAs after 12/31/92.** A direct rollover (or rollover within 60 days of receipt) of any eligible rollover distribution may be treated as a "Conduit IRA," provided that a separate IRA is established for purposes of retaining the ability to later roll these funds back into a qualified plan or 403(b) plan, however, the amount distributed must be rolled over to the qualified plan or 403(b) plan. In addition, a surviving spouse may also treat such conduit IRA for purposes of rolling over into the surviving spouse's qualified plan or 403(b) plan.

#### **Special rules for surviving spouses, alternative payees, and other beneficiaries.**

If you are a surviving spouse, you may choose to have an eligible rollover distribution paid in a direct rollover to an IRA or paid to you. If you have the payment paid to you, you can keep it or roll it over yourself to an IRA, but you cannot roll it over to an employer plan. If you are the spouse or former spouse alternate payee with respect to a Qualified Domestic Relations Order, you may have the payment paid as a direct rollover or paid to you which you may roll over to an IRA or another employer plan. If you are a beneficiary other than the surviving spouse, you cannot choose a direct rollover and you cannot roll over the payment yourself.

#### **L. Spousal IRA Contributions**

**Eligibility.** An individual may make spousal IRA contributions on behalf of himself and his spouse if he is eligible to establish and contribute to an IRA in his own right (i.e., he must have "compensation" which is includable in his gross income). If you (the compensated spouse) are over the age of 70 1/2 and your non-compensated spouse is under age 70 1/2, then a contribution may still be made for the year into the IRA established by your non-compensated spouse. You must file a joint tax return for the year for which the contribution is made.

**Limitation on contributions.** In order to make spousal IRA contributions, separate IRAs are established for the individual and for his spouse. The maximum allowed limit on spousal contributions which may be deducted by the contributing spouse in a given tax year is the lesser of 100% of his compensation or \$6,000 for tax years 2002-2004, \$8,000 for tax years 2005- 2007, and \$10,000 for tax year 2008. This amount may be increased with cost-of-living adjustments in 2009 and beyond. The maximum amount allowed as a deduction may be divided between the individual's IRA and the Spousal IRA in any manner provided the amount contributed to either IRA is not more than the maximum individual contribution limit as outlined in Section C above.

If your spouse will attain the age of 50 by the end of the taxable year (December 31), and is eligible you may make an additional "Catch-Up" contribution to the spouse's IRA. The maximum additional contribution limit is \$500 for tax years 2002-2005 and \$1,000 for tax years 2006 and beyond.

**Miscellaneous.** Each spouse becomes the owner or "Depositor" of his own IRA account and must execute the Adoption Agreement establishing the account. Once an IRA is established for a non-working spouse, the spouse, as the owner and "Depositor" of that IRA, becomes subject to all of the privileges, rules and restrictions applicable to IRAs generally.

#### **M. Form 5329**

You must file IRS Form 5329 with your tax return for each tax year during which a premature distribution takes place or less than the required minimum amount is distributed.

If you are under age 59 1/2 and receive a premature distribution from your IRA, an additional 10% income tax will apply on the taxable amount of the distribution. If you make an excess contribution to your IRA and it is not corrected on a timely basis, an excise tax of 6% is imposed on the excess amount. This tax will apply each year to any part or all of the excess which remains in your account.

If you are age 70 1/2 or over or if you should die, and the appropriate required minimum distributions are not made from your IRA, an additional tax of 50% is imposed upon the difference between what should have been distributed and what was actually distributed.

#### **N. Additional financial information**

Under the Constellation Trust Company Self-Directed Traditional Individual Retirement Custodial Account, you are required to direct the Custodian with respect to the investment of funds in your account. In the absence of direction from you, or your Representative (as described in Section "O" below), the Custodian will not make or dispose of any investments or distribute any funds held in the account. The Custodian has no power or duty to question the direction of a specified investment, to review any investments held in the account or to make any suggestions to you with respect to the investment, retention or disposition of any asset in the account. The Custodian will not be liable for any loss of any kind which may result by reason of any action taken by it in accordance with direction from you or your Representative, or by reason of any failure to act because of the absence of any directions. The Custodian may refuse to execute an investment direction if it

determines in its discretion that the investment would not be administratively feasible.

**INVESTMENT OF IDLE CASH.** In the event that cash is received by the Custodian for which there is no investment direction, or if cash in the account is less than the Custodian's applicable minimum reinvestment amount, the Custodian shall transfer said cash to an interest-bearing cash account of the Custodian's choice. All such cash shall remain invested in the interest-bearing cash account, earning interest which shall be posted to the account no less than monthly, until investment direction is received, or until the accumulated balance equals or exceeds the minimum reinvestment amount.

**UNRELATED BUSINESS TAXABLE INCOME.** There is an exception to the tax-exempt status of your IRA when you invest in any security which is debt-financed, or a limited partnership which actively conducts a trade or business rather than receiving passive income or which is publicly traded. Unrelated Business Taxable Income (UBTI) from such an investment may be taxable to your account if it exceeds \$1,000 in any tax year. For purposes of the \$1,000 limit, all of your IRA accounts are considered to be one account. These taxes are an expense of your account and should be paid by you using assets in the account, and should be filed utilizing IRS Form 990-T. Constellation Trust Company does not calculate UBTI for your account and does not prepare Form 990-T. If your account has any investment which generates UBTI, you are responsible for preparing or having prepared on behalf of your IRA account the appropriate 990-T form. Upon completion, the form should be forwarded to Constellation Trust Company for filing, along with instructions to pay any required tax.

**ASSET VALUATION.** Constellation Trust Company shall periodically value the assets in your IRA account utilizing various outside sources available to it. However, Constellation Trust Company shall not guarantee the accuracy of prices obtained from quotation services, independent appraisal services, investment sponsors or parties related thereto or other outside sources. Values for brokerage accounts shall be equal to the total equity value of the account, and shall reflect only those assets which are priced by the brokerage firm. Individual assets held within the brokerage account shall not be listed or priced individually on statements furnished by Constellation Trust Company.

In the absence of direction from the Secretary of the Treasurer or his authorized representative to the contrary, the value of illiquid assets such as limited partnerships, limited liability companies, or privately-held stock, shall be determined by a fair market value from the investment sponsor or other source chosen by Constellation Trust Company in its sole discretion. Promissory notes and privately-offered corporate debt may have valuations reflected at the face value shown on the original note or debt instrument, or if the note is such that it is subject to an amortization schedule, valuation may be shown at amortized value.

If the investment sponsor is unwilling or unable to provide a fair market value, then Constellation Trust Company may list the value of the illiquid asset at its original acquisition cost or carry forward the last known value. Assets which are reported by the investment sponsor as having no market value, are in bankruptcy, or other relevant condition exists, may reflect a valuation of zero on Constellation Trust Company's periodic statement.

For investments that are not publicly tradeable on a securities exchange, Constellation Trust Company shall seek a valuation of such securities from the sponsor/issuer of the investment. If a value is not received within ninety (90) days after request, then, upon notice from Constellation Trust Company, it is the duty of the accountholder to provide Constellation Trust Company with the fair market value of the investment from the investment sponsor or from an independent appraisal service of the accountholder's choice, provided such appraisal service is acceptable to Constellation Trust Company. Constellation Trust Company reserves the right to resolve differences in values in any manner it deems appropriate. If the accountholder fails to do so, within six (6) months after notice, then Constellation Trust Company shall be authorized, entitled and directed to distribute such investment in-kind at fair market value, which may be original acquisition cost or the last known value, to the accountholder.

**GROWTH IN VALUE.** As stated in Articles IX and X of the Constellation Trust Company Traditional Individual Retirement Account Custodial Agreement, the assets of the IRA will be invested only in accordance with directions received from you or your Representative. Constellation Trust Company permits you to invest the assets of your IRA in a wide variety of acceptable investments, but Constellation Trust Company offers no investment advice as to which investments may be best for your account. **Your Constellation Trust Self-Directed IRA account is not FDIC-insured, nor guaranteed by Constellation Trust Company, nor by any government agency or any other entity. Because your Constellation Trust account is self-directed, you assume sole responsibility for the success or failure of your investments.** The value of assets in the account that will be available to you at any given time will depend upon the amount of your contributions, the mix of permitted assets, and the performance of the investment(s) you have chosen. Accordingly, growth in value of your account is not guaranteed, and the value at any given point in time in the future is impossible to predict. Types of investments deemed to be acceptable to Constellation Trust Company are based on administrative factors unrelated to the prudence, merit, or viability of the investment. Constellation Trust Company evaluates only administrative feasibility with respect to any investment, and does not recommend or evaluate the merits or suitability of any investment. The decision by Constellation Trust Company to

accept or reject any investment or category of investments does not constitute an opinion as to the prudence, viability, or advisability of the investment, nor does it constitute investment advice to you on the part of Constellation Trust Company.

#### **O. Representative provisions**

If you have designated a Representative in Section 5 of the Constellation Trust Company Traditional Individual Retirement Custodial Account Adoption Agreement, or on a form acceptable to Constellation Trust Company, your designation is subject to the following provisions:

1. You recognize that Constellation Trust Company is entitled to rely on directions from your Representative, and you agree that Constellation Trust Company shall be under no duty to make an investigation with respect to any instructions received from your Representative. You also recognize that your Representative may choose to communicate investment directions to Constellation Trust Company via an agent, such as his office staff or broker/dealer organization;
2. You are solely responsible for managing the investment of your IRA account, and for directing your Representative. All instructions, directions, and/or confirmations received by Constellation Trust Company from your Representative, shall be assumed to have been authorized by you;
3. You recognize that such Representative is your agent, and not an agent, employee, or representative of Constellation Trust Company;
4. You understand that your Representative may be a registered representative of a broker dealer organization, a financial advisor, or other person that you deem acceptable.
5. You understand that Constellation Trust Company has not made and will not make any recommendation or investigation with respect to your Representative, nor does Constellation Trust Company compensate your Representative in any manner.
6. You may remove your Representative and either designate a new Representative or choose not to designate any representative, by written notice to Constellation Trust Company on a form acceptable to Constellation. However, removal of a Representative will not have the effect of canceling any instruction, direction, or confirmation which has been received by Constellation Trust Company from the Representative prior to the date that notice of removal is received and processed by Constellation Trust Company; and
7. You agree to indemnify and hold Constellation Trust Company harmless from any and all liability or claims, including, but not limited to, damages, court costs, legal fees, and costs of investigation as a result of (i) any loss or diminution of your IRA funds resulting from changes in the market value of such funds; (ii) reliance or action taken in reliance on written or oral instructions received from you or your Representative; (iii) any exercise or failure to exercise investment direction authority by you or by your Representative; (iv) Constellation Trust Company's refusal on advice of counsel to act in accordance with any exercise of investment direction by you or your Representative; (v) any other act or failure to act by you or your Representative; (vi) any prohibited transaction or plan disqualification due to any actions taken or not taken by Constellation Trust Company in reliance on directions from you or your Representative; or (vii) any other act Constellation Trust Company takes in good faith hereunder.

#### **P. Custodian Fees**

A schedule of the fees and charges of Constellation Trust Company is included in the Adoption Agreement of your IRA account. This schedule may be amended from time to time upon 30 days' written notice to you. Constellation Trust Company reserves the right to charge additional fees over and above those shown on the fee schedule for extraordinary services or expenses. Examples of extraordinary services include, but are not limited to, stop payment fees, incoming or outgoing wire charges, checks returned for insufficient funds, safekeeping fees for tangible assets, or the administrative review of a private placement. You are responsible for the payment of all fees, expenses or other charges relating to your IRA account. If you do not pay such charges upon billing, or if you make an automatic withdrawal election, the fees, expenses and charges will be withdrawn from the assets of your account.

Constellation Trust Company performs all subaccounting and interest posting functions (where applicable) for the omnibus demand deposit and interest bearing money market accounts. Constellation Trust Company may receive a fee for these services, paid directly from the bank, money market sponsor, or affiliate of either entity. Such fees, if any, shall be a per-account administrative charge similar to costs which would be borne directly by the bank or fund sponsor, or paid to a third-party transfer agent for similar services. No subaccounting fee will be borne by you or your IRA account.

#### **Q. IRS Approval as to Form**

The Constellation Trust Company Traditional Individual Retirement Custodial Account Agreement is treated as approved as to form by the Internal Revenue Service since it utilizes precise language of Form 5305-A currently provided by the

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Internal Revenue Service, plus additional language permitted by such form. The Internal Revenue Service approval is a determination only as to the form of the account, and does not represent a determination of the merits of the account.

**R. Substitution of non-bank custodian**

The non-bank Custodian shall substitute another trustee or custodian if the non-bank Custodian receives notice from the Commissioner of the Internal Revenue Service that such substitution is required because it has failed to comply with the requirements of Regulations section 1.408-2(e).

**S. Additional information**

Additional information regarding Individual Retirement Accounts may be obtained from any district office of the Internal Revenue Service. In particular, you may wish to obtain IRS Publication 590 (Individual Retirement Arrangements).

CONSTELLATION TRUST COMPANY  
Roth Individual Retirement Custodial Account Agreement  
(Under section 408A of the Internal Revenue Code)

This Roth Individual Retirement Account Custodial Agreement (hereinafter called the "Agreement") is made between Constellation Trust Company, a Nebraska Trust Company (hereinafter called the "Custodian") and each individual (hereinafter called the "Depositor") who executes a Roth IRA Adoption Agreement, incorporating the terms of this Agreement, for the purpose of establishing a Roth individual retirement custodial account (hereinafter called the "custodial account") as described in Section 408A of the Internal Revenue Code of 1986, as amended, or any successor statute (hereinafter called the "Code"), upon the terms set forth herein.

**ARTICLE I**

**1.1.** Except in the case of a rollover contribution described in section 408A(e), a recharacterized contribution described in section 408A(d)(6), or an IRA Conversion Contribution, the Custodian will accept only cash contributions up to \$3,000 per year for tax years 2002 through 2004. That contribution limit is increased to \$4,000 for tax years 2005 through 2007 and \$5,000 for 2008 and thereafter. For individuals who have reached the age of 50 before the close of the tax year, the contribution limit is increased to \$3,500 per year for tax years 2002 through 2004, \$4,500 for 2005, \$5,000 for 2006 and 2007, and \$6,000 for 2008 and thereafter. For tax years after 2008, the above limits will be increased to reflect a cost-of-living adjustment, if any.

**ARTICLE II**

**2.1.** The annual contribution limit described in Article I is gradually reduced to \$0 for higher income levels. For a single Depositor, the annual contribution is phased out between adjusted gross income (AGI) of \$95,000 and \$110,000; for a married Depositor filing jointly, between AGI of \$150,000 and \$160,000; and for a married Depositor filing separately, between AGI of \$0 and \$10,000. In the case of a conversion, the custodian will not accept IRA Conversion Contributions in a tax year if the Depositor's AGI for the tax year the funds were distributed from the other IRA exceeds \$100,000 or if the Depositor is married and files a separate return. Adjusted gross income is defined in section 408A(c)(3) and does not include IRA Conversion Contributions.

**2.2.** In the case of a joint return, the AGI limits in the preceding paragraph apply to the combined AGI of the Depositor and his or her spouse.

**ARTICLE III**

**3.1.** The Depositor's interest in the balance in the custodial account is nonforfeitable.

**ARTICLE IV**

**4.1.** No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5)).

**4.2.** No part of the custodial account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

**ARTICLE V**

**5.1.** If the Depositor dies before his or her entire interest is distributed to him or her and the Depositor's surviving spouse is not the designated beneficiary, the remaining interest will be distributed in accordance with (a) below or, if elected or there is no designated beneficiary, in accordance with (b) below:

- (a) The remaining interest will be distributed, starting by the end of the calendar year following the year of the Depositor's death, over the designated beneficiary's remaining life expectancy as determined in the year following the death of the Depositor.
- (b) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Depositor's death.

**5.2.** The minimum amount that must be distributed each year under paragraph 1(a) above is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the designated beneficiary using the attained age of the beneficiary in the year following the year of the Depositor's death and subtracting 1 from the divisor for each subsequent year.

**5.3.** If the Depositor's surviving spouse is the designated beneficiary, such spouse will then be treated as the Depositor.

**ARTICLE VI**

**6.1.** The Depositor agrees to provide the custodian with all information necessary to prepare any reports required by sections 408(i) and 408A(d)(3)(E), Regulations sections 1.408-5 and 1.408-6, or other guidance published by the Internal Revenue Service (IRS).

**6.2.** The Custodian agrees to submit to the IRS and Depositor the reports prescribed by the IRS.

**ARTICLE VII**

**7.1.** Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through VI and this sentence will be controlling. Any additional articles inconsistent with section 408A, the related regulations, and other published guidance will be invalid.

**ARTICLE VIII**

**8.1.** This Agreement will be amended as necessary to comply with the provisions of the Code, the related regulations, and other published guidance. As permitted under the IRS model form, Constellation Trust Company has added all provisions which follow Article VIII.

**ARTICLE IX. Contributions**

**9.1.** The Depositor assumes sole responsibility for determining that contributions to the custodial account do not exceed the limits specified in the Code. All contributions made to the custodial account shall be in cash, except in the case of a rollover or transfer contribution. With respect to any contribution designated by the Depositor as a rollover contribution, the Depositor warrants:

- (a) that such amount is a qualified rollover contribution under Section 408(d)(3) of the Code. For purposes of Code Section 408(d)(3)(B), there shall be disregarded any qualified rollover contributions from an individual retirement plan (other than a Roth IRA) to a Roth IRA; and

- (b) that in case of a rollover, the amount of such rollover contribution is an amount equal to or less than the total amount distributed to Depositor, and if any portion of such rollover consists of property other than cash, such distributions to Depositor consisted of same property being contributed to the custodial account established hereunder; and
- (c) that, in the case of a rollover contribution from a traditional individual retirement account or individual retirement annuity, such other account or annuity was not itself funded by a rollover contribution from another IRA within one (1) year of the date of the contribution to the custodial account established hereunder.

**9.2.** The Custodian will not be responsible for the computation and the collection of any contributions under this Agreement, and shall be under no duty to determine whether the nature or amount of any contributions is in accordance with this Agreement or the Code. In addition, the Custodian shall not be responsible for computing or maintaining a record of the deductible portion of any contribution.

**ARTICLE X. Investments**

**10.1.** Depositor retains all responsibilities and duties for the selection, management, and retention of investments. At the direction of the Depositor, the Custodian shall invest all contributions to the account and earnings thereon. The Custodian shall be responsible for the execution of such orders and for maintaining adequate records thereof. If investment direction orders are not received as required, or, if received, are unclear in the opinion of the Custodian, all or a portion of the contribution may be held uninvested without liability for loss of income or appreciation and without liability for interest pending receipt of such orders or clarification. Upon death of the Depositor, the beneficiary(ies) and/or representative for the estate of the Depositor assume all rights and responsibilities for investment of the account.

**10.2.** The Custodian shall retain in cash so much of the custodial account as the Depositor or his designated agent or representative directs or until other instructions are received from the Depositor or his agent, and is authorized to place such cash held in the custodial account in an interest-bearing instrument. The Custodian may perform subaccounting and interest posting functions related to the account as described in this Section, and may receive a fee directly from the investment sponsor for these services. Depositor agrees that such subaccounting services are necessary for the proper function of the custodial account and further agrees to such fees being paid to Custodian. Depositor understands that fees described in this Section are not to be borne by the Depositor. It is understood by the Depositor that any Investment Advisor (as defined in Section 10.3) of the Depositor may direct the Custodian to retain a specific amount of cash in the Depositor's account on deposit with the Custodian.

**10.3.** The Depositor may appoint an Investment Advisor (the "Investment Adviser"), to direct the investment

of the custodial account. The Depositor shall notify the Custodian in writing of any such appointment by providing the Custodian a copy of the instruments appointing the Investment Advisor and evidencing the Investment Advisor's acceptance of such appointment. The Custodian shall comply with any directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Depositor that the Investment Advisor's appointment has been terminated.

**10.4.** On a form acceptable to the Custodian, the Depositor may designate a representative for the purpose of communicating investment directions to the Custodian and receiving information on the account. Said Depositor's Representative (the "Representative") may be a registered representative of a broker/dealer organization, a financial advisor or other person as may be acceptable to the Depositor. The Representative shall be the authorized agent of the Depositor, and not an agent of the Custodian. The Custodian shall construe any and all investment directions given by the Representative, whether written or oral, as having been authorized by the Depositor. The Depositor may appoint and/or remove a Representative by written notice to the Custodian provided that the Depositor's removal of a Representative shall not have the effect of canceling any notice, instruction, direction or approval received by the Custodian from the removed Representative before the Custodian receives said notice of removal from the Depositor.

**10.5.** On a form acceptable to the Custodian, the Depositor may authorize the Custodian to accept verbal investment directions from the Depositor or his Representative. Said verbal investment directions may be given by telephone or in person in the offices of the Custodian. Depositor agrees that Custodian is not responsible for verifying the propriety of any verbal investment direction which it may receive, other than requiring Depositor's individual and account specific information for identification purposes. Depositor further agrees that the Custodian is not responsible for unauthorized trades in the account which may be effected under this Section.

**10.6.** If publicly-traded securities are to be included in the specified investments, orders shall be executed through a securities broker/dealer registered under the Securities Exchange Act of 1934 designated by the Depositor upon such form as the Custodian may prescribe. Any brokerage account maintained in connection herewith shall be in the name of the Custodian for the benefit of the Depositor. The Custodian shall be authorized to honor transactions within the brokerage account without obligation to verify prior authorization of same by the Depositor. Any cash received by the brokerage account, whether as income or proceeds of transactions, shall be held by the brokerage account pending directions, and the Custodian shall have no obligation to direct the broker to remit such cash until directed to do so by the Depositor, but may receive remittances without direction if the same are made by the broker. Investments outside the brokerage account shall be made in accordance with the other provisions of this Article. Investment directions may be given directly to the designated broker by the Depositor (in such manner as the broker may require) and the broker shall be responsible for the execution of such orders. When securities are purchased within the brokerage account requiring that funds be remitted by the Custodian to make settlement, Depositor agrees to telephonically notify or instruct the broker or Representative to telephonically notify the

Custodian on the trade date of the pending securities transaction, and to request delivery of the custodial account assets necessary to settle the trade. Depositor agrees to hold the Custodian harmless for any losses resulting from the Depositor's failure to notify the Custodian of the pending trade and request for settlement in the above prescribed manner.

**10.7.** Depositor may direct the Custodian to purchase "non-standard" investments which shall include but not be limited to investments which are individually negotiated by the Depositor or his Representative, or part of a private placement of securities offered in reliance upon exemptions provided by Sections 3(B) and 4(2) of the Securities Act of 1933 and Regulation D promulgated thereunder. The Custodian may identify investments or classes of investments which are unacceptable due to their posing an administrative burden, or potential for prohibited transactions on the Custodian. For such investments, the Custodian reserves the right to not follow the Depositor's or Representative's direction or process such an investment. The Custodian's decision to reject certain assets for reasons of administrative feasibility should not be construed as investment advice or an opinion of the Custodian as to the investment's prudence or viability. If the Depositor or his Representative should direct the Custodian to purchase a non-standard investment, as defined above, the following special certifications and provisions shall apply:

- (a) Depositor agrees to submit or cause to be submitted all offering documentation related to the non-standard investment for an administrative review by the Custodian. The Custodian reserves the right to charge a reasonable fee for such administrative review so requested by the Depositor or his Representative;
- (b) If the non-standard investment(s) contains a provision for future contractual payments or assessments, including margin calls, Depositor acknowledges that such payments shall be borne solely by the custodial account, that authorization to make such payments shall come from Depositor or his Representative, and that making such payments may reduce or exhaust the value of the custodian account. Depositor further agrees to maintain sufficient liquid funds in his custodial account to cover any such payments or assessments, and agrees that the Custodian shall not be responsible for monitoring the balance of the account to verify compliance with this Section. Depositor agrees to indemnify the Custodian and hold it harmless for any and all payments or assessments which may result from holding the non-standard investment within the custodial account, and further agrees that the Custodian shall be under no obligation whatsoever to extend credit to the account or otherwise disburse payment beyond the cash balance of the account for any payment or assessment related to the nonstandard investment(s);
- (c) If the non-standard investment(s) contain administrative and/or management requirements or duties beyond the Custodian's capabilities or expertise to provide, then Depositor agrees to seek out suitable agents or counsel necessary to perform such duties and deliver a written service agreement acceptable to the Custodian for execution on behalf of the Depositor's custodial account;
- (d) If the Depositor directs the Custodian to enter into an individually-negotiated debt instrument, including a promissory note, deed of trust, real estate contract, mortgage note or debenture, then Depositor agrees to enter into a Note Servicing Agent Agreement with a third-party Agent or Depositor may serve as his own Note Servicing Agent, on a form acceptable to the Custodian. Said

Note Servicing Agent shall be the agent of the Depositor and not of the Custodian, and shall be responsible for administering the terms of the debt instrument on behalf of the Depositor's Account. Should the Note Servicing Agent ever become unwilling or unable to perform the duties outlined in the Note Servicing Agent Agreement, then Depositor understands and agrees that all duties of the Note Servicing Agent shall revert to Depositor until a successor Agent is named. Should Depositor fail to appoint a Note Servicing Agent, Depositor understands that he/she becomes responsible for fulfilling the duties of the Note Servicing Agent until Depositor names a successor third party Note Servicing Agent. Depositor understands that Custodian does not offer or provide any servicing or collection duties with respect to any note or debt instrument, nor will Custodian monitor the maturity date or take any action with regards to the maturity of any note or debt unless specifically authorized by Depositor in writing. Should Depositor elect to renew or renegotiate the terms of any note or debt instrument, Depositor agrees to notify Custodian in writing and provide appropriate written instructions for Custodian to return any original note or debt instrument to debtor.

- (e) The Custodian shall have no duty to monitor the performance or actions of any investment or to monitor the sufficiency or adequacy of the Depositor's actions or duties or those of his heirs, successors, agents, or assigns, nor shall the Custodian be required to monitor the acts of any paid consultant to whom the Custodian may have contractually delegated any duties or responsibilities pursuant to Depositor's or his Representative's directions;
- (f) Depositor agrees to be responsible for any and all collection actions, including contracting with a collection agency or instituting legal action, and bring any other suits or actions which may become necessary to protect the rights of the account as a result of the operation or administration of the investment(s); and
- (g) Depositor may not direct the purchase of a life insurance contract or a "collectible" as defined in Code Section 408(m).

**10.8.** The Custodian may value assets of the account on a quarterly basis utilizing various sources available to it. However, the Custodian shall not guarantee the accuracy of prices obtained from quotation services, independent appraisal services, investment sponsors, or parties related thereto or, any other sources. Values for brokerage accounts shall be equal to the total equity value of the account, and shall reflect only those assets which are priced by the brokerage firm.

In the absence of direction from the Secretary of the Treasurer or his authorized representative to the contrary, the value of illiquid assets such as limited partnerships, limited liability companies, or privately-held stock, shall be determined by a fair market value from the investment sponsor or other source chosen by Custodian in its sole discretion. Promissory notes and privately-offered corporate debt may have valuations reflected at the face value shown on the original note or debt instrument, or if the note is such that it is subject to an amortization schedule, valuation may be shown at amortized value.

If the investment sponsor is unwilling or unable to provide a fair market value, then the Custodian may list the value of the illiquid asset at its original acquisition cost or carry forward the last known value. Assets which are reported by the investment sponsor as having no market value, are in bankruptcy, or other relevant condition exists, may

reflect a valuation of zero on the Custodian's periodic statement.

For investments that are not publicly tradeable on a securities exchange, the Custodian shall seek a valuation of such securities from the sponsor/issuer of the investment. If a value is not received within ninety (90) days after request, then, upon notice from the Custodian, it is the duty of the Depositor to provide the Custodian with the fair market value of the investment from the investment sponsor or from an independent appraisal service of the Depositor's choice, provided such appraisal service is acceptable to Custodian. Custodian reserves the right to resolve differences in values in any manner Custodian deems appropriate. If the Depositor fails to do so, within six (6) months after notice, then the Custodian shall be authorized, entitled and directed to distribute such investment in-kind at fair market value, which may be original acquisition cost or the last known value, to the Depositor.

**10.9.** If investment(s) selected by the Depositor or his Representative generate Unrelated Business Taxable Income (UBTI), Depositor understands that such income, when considered in conjunction with all such income from all custodial accounts, may be taxable to the IRA account to the extent that all UBTI for a given taxable year exceeds the threshold amount set by the IRS (currently \$1000). In such instances, the IRS requires that a Form 990-T be filed for the custodial account along with the appropriate amount of tax. Depositor understands that the Custodian does not monitor the amount of UBTI in the custodial account, and does not prepare Form 990-T. Depositor agrees to monitor UBTI for this and any other IRA account which he may hold, and further agrees to prepare, or have prepared, the proper 990-T tax form and forward it to the Custodian for filing, along with authorization to pay any tax due from the custodial account.

**10.10.** The Depositor understands that certain transactions are prohibited for tax-exempt IRA accounts under Code Section 4975. Depositor further understands that the determination of whether a transaction directed by Depositor or his Representative is prohibited depends on all of the relevant facts and circumstances surrounding the purchase. The Depositor acknowledges that the determination of whether a transaction directed by Depositor or his Representative is prohibited depends on all of the relevant facts and circumstances surrounding the purchase. The Depositor acknowledges that, should the custodial account engage in a prohibited transaction, that the fair market value of the account will become a taxable distribution to the Depositor in the taxable year in which the transaction was made. In addition, if the Depositor is under age 59 1/2, additional premature distribution penalty taxes may apply. Depositor hereby warrants that he will not enter into a transaction, or cause a transaction to be entered into, which is prohibited under Section 4975 of the Code. Depositor further warrants that, if a transaction is questionable due to Depositor's relationship to the investment sponsor, that he will consult with such counsel and advisors as Depositor may deem necessary prior to directing or causing the direction of that transaction.

**10.11.** Without limiting the generality of the foregoing, the Depositor understands and acknowledges that Custodian will act solely as agent for the Depositor, and under the instructions of the Depositor, with respect to the investment of the assets of the custodial account and, acting in that capacity, shall place orders for the purchases of securities providing the Depositor has sufficient funds in the

custodial account or arranges to make funds available in advance for such purposes, and will also place orders for the sale of securities provided such securities are held by Custodian and in deliverable form. The Depositor authorizes the Custodian to charge the custodial account for the cost of all securities purchased or received from the securities sold or delivered against payment. If the Depositor directs the Custodian to place an order for a mutual fund investment and there are insufficient funds in the account to cover the settlement cost, Depositor agrees to deposit in the custodial account immediately (and in any event not later than the settlement date) sufficient liquid funds to cover the cost of the investment. Depositor agrees that the Custodian shall be under no obligation whatsoever to extend credit to the account or otherwise disburse payment beyond the cash balance of the custodial account for any purchase of a mutual fund investment. In the event Depositor fails to timely deposit sufficient funds in the custodial account to cover the cost of any such investment, the Custodian, at its option, may cancel the order for the investment or, if the investment already has been acquired, sell the investment and reimburse itself for any costs or expenses incurred by the Custodian in settling the purchase order. Depositor agrees that Custodian shall not be liable for any actions taken in accordance with this provision, and further agrees to indemnify and hold the Custodian harmless for its actions in canceling a purchase order for a mutual fund investment in the custodial account or selling the investment to reimburse itself as provided above.

#### **ARTICLE XI. Trust Accounts**

**11.1.** It shall be the sole duty of the Custodian to maintain a custodial account in the name of the Depositor and to make payments and distributions as directed by the Depositor or his Representative. Pursuant to the directions of the Depositor or his Representative, the Custodian shall invest and reinvest the assets in the custodial account without any duty to diversify and without regard to whether such investment is authorized by the laws of any jurisdiction for custodial investment, in securities obtainable "over the counter" or on a recognized exchange, savings media and any other acceptable public or non-standard investment which in the sole judgment of the Custodian will not impose an unreasonable administrative burden (with such determination by the Custodian not to be construed in any respect as a judgment concerning the prudence or advisability of such investment). The custodial account shall reflect the amounts contributed by the Depositor, receipts, investments, distributions, disbursements, and all other transactions.

**11.2** The Custodian shall have the following powers and authority in the administration of the custodial account:

- (a) Pursuant to the Depositor's or his Representative's directions, to exercise or sell options, conversion privileges or rights to subscribe for additional securities and to make payments therefore.
- (b) To make, execute and deliver as Custodian any and all contracts, waivers, releases or other instruments necessary or proper for the exercise of any of the foregoing powers.
- (c) In the absence of specific investment instructions from the Depositor, to leave any property comprising the custodial account for safekeeping or on deposit, with or without interest, with such banks, brokers and other custodians as the Custodian may select.
- (d) To hold any securities in bearer form or in the name of banks, brokers and other custodians or in the name of the Custodian without qualifications or

description or in the name of any nominee.

- (e) To employ suitable agents and counsel and to pay their reasonable expenses and compensation.
- (f) To do and perform all acts or things reasonably necessary or desirable to carry out the power and authority granted to the Custodian.

**11.3.** Custodian shall process investment directions and/or invest funds which it receives in accordance with Depositor's directions within seven (7) business days of receipt of such directions and/or funds plus necessary administrative and processing time. Custodian shall be under no duty to credit interest or earnings on the funds received, and Depositor agrees that Custodian shall not be liable for any market value adjustment which may occur during or after said processing time.

**11.4.** The Custodian shall have no duty other than to follow the directions of the Depositor, his Representative, or Investment Advisor, and shall be under no duty to question said instructions. The Custodian does not assume any responsibility for rendering advice with respect to the investment and reinvestment of the Depositor's account, and shall not be liable for any loss which results from the exercise of control over his account by the Depositor, his Representative, or Investment Advisor. Without limiting the generality of the foregoing, the Custodian is authorized to collect all interest, dividends, proceeds of the sale and other monies due and collectable that arise from the investment of the Assets (collectively, "Fund Income") and to credit such Fund Income to the Account and, upon Custodian's receipt, shall become part of the custodial account. In the case of any solicitation received by the Custodian with respect to the Depositor's account (including but not limited to third party tender offers with respect to limited partnership interests in the account), the Custodian will transmit such materials to the Depositor (or to his Representative or Investment Advisor, as directed by the Depositor); however, the Custodian must have at least ten (10) days from the date it receives instructions from the Depositor (or his Representative or Investment Advisor) to transmit such instructions to the soliciting party by the date specified in the solicitation. The Custodian shall have no obligation to transmit any solicitation received or instructions given with respect to the Depositor's account by other than regular mail, and shall not be responsible for any failure to respond to a solicitation by the deadline specified therein due to (i) delays in the mail or (ii) where the Custodian has less than ten (10) days from the date instructions are received from the Depositor (or his or her Representative or Investment Advisor) and the specified deadline for responding. Custodian need not honor offers or recognize communications that are not addressed to each Depositor's account by name. The Custodian shall not be responsible for any action taken by the Depositor or his Representative as a result of information concerning the account or any investment which may be transmitted or not transmitted to the Depositor or his Representative. The Custodian shall have no responsibility or duty to review or monitor any securities or other property held within the account, nor shall the Custodian be held liable for its failure to act because of the absence of any directions from the Depositor. The Custodian shall not be liable for the actions or inactions of any prior trustee, custodian, or other service provider or agent of the Depositor which may have occurred prior to the transfer of the Custodian account assets to the Custodian. The Depositor shall indemnify and hold Custodian harmless for any losses resulting from the Custodian's action or inaction in relation to investment directions received from the Depositor,

his Representative, or Investment Advisor, for the actions or inactions of Agents appointed by the Depositor, or by the Custodian at the direction of the Depositor, and for any tax consequences resulting from the Depositor's or Representative's direction to engage in any unauthorized transaction, including an investment in life insurance contracts, investment in collectibles, or engaging in a prohibited transaction as defined in Section 4975 of the Code.

## ARTICLE XII. Beneficiary Designation

**12.1.** The Depositor may from time to time designate, upon such form as the Custodian shall prescribe, any person, trust or persons, contingently or successively, to whom the Custodian shall pay the Depositor's interest in the custodial account in the event of his death. Such primary and contingent beneficiary designation shall be effective when filed with the Custodian and shall revoke all prior beneficiary designations made before that date by Depositor.

**12.2.** If a Depositor fails to name a beneficiary in accordance with Section 12.1, or if all beneficiaries named by a Depositor predecease the Depositor, the remaining balance of the custodial account shall be payable to the spouse of the Depositor, or if there is no spouse living, then to the estate of the Depositor.

**12.3.** When and after distributions of the custodial account to the Depositor's beneficiary commence, all rights and obligations of the Depositor under this Agreement shall inure to, and be exercised by, such beneficiary.

**12.4.** If the beneficiary designated to receive payments hereunder is a minor or person of unsound mind, whether so formally adjudicated or not, the Custodian, in its discretion, may make such payment to such person as may be acting as parent, guardian, committee, conservator, custodian, or legal representative of such minor or incompetent and the receipt of any such person as selected by the Custodian shall be a full and complete discharge to the Custodian for any sums so paid.

## ARTICLE XIII. Payout of Benefits

**13.1.** If the Depositor has selected a distribution option involving life contingencies, the Depositor may direct the Custodian to utilize the amount in the custodial account which would otherwise be available as a lump sum distribution to purchase an annuity from such insurance company as the Depositor may select to satisfy the requirements of Article IV of this Agreement.

**13.2.** Depositor's election as to the method of distribution must be made at least thirty (30) days before the Required Beginning Date, which is defined as April 1 of the calendar year immediately following the calendar year in which the Depositor reaches age 70 1/2. If no election is made, the Custodian will make distributions over a period not to exceed the Depositor's single life expectancy.

**13.3.** When determining the amount to be distributed for the second distribution calendar year and subsequent distribution calendar years, the Depositor's life expectancy (or the joint life expectancy of the Depositor and his named beneficiary) shall not be recalculated unless such recalculation is elected by the Depositor on a form acceptable to the Custodian.

## ARTICLE XIV. Duties, Records, Reports

**14.1.** The Custodian's sole duties to the Depositor regarding reporting shall be to send Depositor a copy or facsimile of IRS Form 5498 and/or an annual calendar year statement of the assets of the

account within time frames established by the IRS. In addition, the Custodian shall furnish Quarterly reports to the Depositor detailing transactions performed under this custodial account and the value of assets held within the account.

**14.2.** The Custodian shall have no liability or responsibility for transactions reported or not reported on any periodic or annual statement unless the Depositor or his Representative file written exceptions or objections within 60 days after receipt of the report or statement. Upon receipt of written notification under this Section, the Custodian's liability and responsibility shall be to fully investigate the exceptions or objections, and make any adjustments, correct any entries, or otherwise reconcile the account as may be necessary. If any such adjustments or corrections are required, the Custodian shall issue a revised statement for the reporting period(s) in question.

## ARTICLE XV. Fees and Expenses

**15.1.** THE DEPOSITOR SHALL BE CHARGED BY THE CUSTODIAN FOR ITS SERVICES HEREUNDER IN ACCORDANCE WITH THE CURRENT POSTED FEE SCHEDULE OF THE CUSTODIAN AS IT MAY BE AMENDED FROM TIME TO TIME. ANY INCOME TAXES OR OTHER TAXES OF ANY KIND WHATSOEVER THAT MAY BE LEVIED UPON OR IN RESPECT OF THE CUSTODIAL ACCOUNT, ANY TRANSFER TAXES INCURRED IN CONNECTION WITH THE INVESTMENT AND REINVESTMENT OF ASSETS IN THE CUSTODIAL ACCOUNT, AND ALL OTHER ADMINISTRATIVE EXPENSES INCURRED BY THE CUSTODIAN IN THE PERFORMANCE OF ITS DUTIES, INCLUDING FEES FOR LEGAL SERVICES RENDERED TO THE CUSTODIAN AND COMPENSATION OF THE CUSTODIAN SHALL BE PAID BY THE DEPOSITOR AND THE DEPOSITOR HEREBY COVENANTS AND AGREES TO PAY THE SAME.

**15.2.** In the event the Depositor shall at any time fail to discharge any liability under this Article, such liability shall be charged to the custodial account, and the Custodian may liquidate such of the assets of the custodial account for such purposes as in its sole discretion it shall determine. Notwithstanding any provisions of this Agreement, all payments under this Section and the liquidations of assets to obtain funds therefore may be made without the approval or direction of the Depositor. If the custodial account is not sufficient to satisfy such liability, the Depositor shall be liable for any deficiency.

**15.3.** THE CUSTODIAN'S CURRENT POSTED FEE SCHEDULE MAY BE AMENDED AT ANY TIME UPON 30 DAYS' WRITTEN NOTICE TO THE DEPOSITOR. THE CUSTODIAN RESERVES THE RIGHT TO CHARGE FEES IN ADDITION TO ITS POSTED FEE SCHEDULE FOR EXTRAORDINARY OR SPECIAL SERVICES, OR FOR UNFORESEEN EXPENSES TO THE ACCOUNT, INCLUDING LEGAL EXPENSES INCURRED BY THE CUSTODIAN. THE CUSTODIAN DOES NOT PRORATE FEES. ON A FORM ACCEPTABLE TO THE CUSTODIAN, THE DEPOSITOR MAY ELECT TO PAY FEES DIRECTLY, OR HAVE THEM WITHDRAWN FROM THE ASSETS OF THE ACCOUNT. TERMINATION FEES ARE DUE AND PAYABLE UPON DISTRIBUTION TO THE DEPOSITOR OR UPON TRANSFER TO ANOTHER TRUSTEE OR CUSTODIAN.

## ARTICLE XVI. Amendment and Termination

**16.1.** The Depositor irrevocably delegates to the

Custodian the right and power to amend this Agreement. Except as hereafter provided, the Custodian will give the Depositor 30 days' written notice of any amendment. In case of a retroactive amendment required by law, the Custodian will provide written notice to the Depositor of the amendment within 30 days after the amendment is made, or if later, by the time that notice of the amendment is required to be given under regulations or other guidance provided by the Code. The Depositor shall be deemed to have consented to any such amendment unless the Depositor notifies the Custodian to the contrary within 30 days after notice to the Depositor and requests a distribution or transfer of the balance of the account. The Custodian's termination fee shall be applicable to any account so distributed or transferred.

**16.2.** The Depositor may terminate this agreement at any time by delivery of written notice of such termination to the Custodian. Upon such termination, the Custodian shall continue to hold the assets and distribute them in accordance with the previous instructions of the Depositor and the provisions of this Agreement unless the Custodian receives other instructions from the Depositor (such as those involving a rollover) which the Custodian may follow, without liability and without any duty to ascertain whether such payout is proper under the provisions of the Code or of any other plan.

**16.3.** Upon request of the Depositor in writing to the Custodian, the Custodian shall transfer all assets in the custodial account to the Depositor, to a qualified retirement plan, or to another individual retirement account established by the Depositor. The Custodian is authorized, however, to reserve such sum of money or property as it may deem advisable for payment of all its fees, compensation, costs and expenses, or for any other liabilities constituting a charge against the assets of the custodial account or against the Custodian, with any balance of such reserve remaining after the payment of all such items to be paid over to the successor custodian or custodian.

## ARTICLE XVII. Resignation or Removal of Custodian

**17.1.** Upon written notice to the Custodian, the Depositor may remove it from its office hereunder. Such notice, to be effective, shall designate a successor custodian or custodian and shall be accompanied by the successor's written acceptance. The Custodian may at any time resign upon thirty (30) days' written notice to Depositor, whereupon the Depositor shall appoint a successor to the Custodian. In the event of resignation of the Custodian and failure to appoint a qualified successor, the Custodian may appoint a successor trustee or custodian, or distribute the assets of the custodial account to the Depositor.

**17.2.** The successor trustee or custodian shall be a bank, insured credit union, or other person satisfactory to the Secretary of the Treasury pursuant to Section 408(a)(2) of the Code. Upon receipt by the Custodian of written acceptance by its successor of such successor's appointment, the Custodian shall transfer and pay over to such successor the assets of the custodial account and all records (or copies thereof) of Custodian pertaining thereto. The Custodian is authorized, however, to reserve such sum of money or property as it may deem advisable for payment of all its fees, compensation, costs and expenses, or for payment of any other liabilities constituting a charge on or against the assets of the custodial account or on or against the Custodian, with any balance of such reserve remaining after the

payment of all such items to be paid over to the successor trustee or custodian.

- 17.3. The Custodian shall not be liable for the acts or omissions of its successor.

#### ARTICLE XVIII. Miscellaneous

- 18.1. Neither the Depositor nor any beneficiary of the Depositor shall have any right to pledge, hypothecate, anticipate or in any way create a lien upon any assets or part of the custodial account. Distributions to the Depositor, his beneficiaries, spouse, heirs-at-law, or legal representatives, excepting minors and persons under legal disability, shall be made only to them and upon their personal receipts and endorsements and no interest in the custodial account, or any part thereof, shall be assignable in anticipation of payment either by voluntary or involuntary act, or by operation of law, or be liable in any way for the debts or defaults of such Depositor, his beneficiaries, spouse, or heirs-at-law. The provisions of this paragraph shall not apply to the extent that they violate any applicable law.
- 18.2. The custodial account created hereunder is created for the exclusive benefit of the Depositor or his beneficiaries, and at no time shall it be possible for any part of the assets of the custodial account to be used for or diverted to purposes other than for the exclusive benefit of the Depositor or his beneficiaries.
- 18.3. Notwithstanding the provisions of Sections 18.1 and 18.2 above, in the event the Depositor and the Depositor's spouse obtain a Separation Instrument, as described in Section 408(d)(6) of the Code, the Depositor may direct the Custodian in writing to transfer the appropriate portion of the assets in the Depositor's account directly to the Depositor's former spouse or to an IRA maintained by the Depositor's former spouse, provided the transfer is in accordance with the Separation Instrument, a copy of which shall be furnished to the Custodian. The transfer of assets to the Depositor's former spouse may be in cash or in-kind, pursuant to directions contained in the Separation Instrument.
- 18.4. THE CUSTODIAN SHALL BE UNDER NO DUTIES WHATSOEVER EXCEPT SUCH DUTIES AS ARE SPECIFICALLY SET FORTH IN THIS AGREEMENT. THE CUSTODIAN SHALL BE FULLY PROTECTED IN ACTING UPON ANY INSTRUMENT, CERTIFICATE, OR PAPER BELIEVED BY IT TO BE GENUINE AND TO BE SIGNED OR PRESENTED BY THE PROPER PERSON OR PERSONS, AND THE CUSTODIAN SHALL BE UNDER NO DUTY TO MAKE ANY

INVESTIGATION OR INQUIRY AS TO ANY STATEMENT CONTAINED IN ANY SUCH WRITING BUT MAY ACCEPT THE SAME AS CONCLUSIVE EVIDENCE OF THE TRUTH AND ACCURACY OF THE STATEMENTS THEREIN CONTAINED. THE DEPOSITOR SHALL AT ALL TIMES INDEMNIFY AND HOLD HARMLESS THE CUSTODIAN FROM ANY LIABILITY WHICH MAY ARISE HEREUNDER EXCEPT LIABILITY ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CUSTODIAN.

- 18.5. THE PARTIES AGREE THAT, UPON THE REQUEST OF EITHER DEPOSITOR OR THE CUSTODIAN, WHETHER MADE BEFORE OR AFTER THE INSTITUTION OF ANY LEGAL PROCEEDING, ALL CLAIMS AND DISPUTES OF EVERY TYPE AND MATTER WHICH MAY ARISE BETWEEN DEPOSITOR AND THE CUSTODIAN SHALL BE SUBMITTED TO BINDING ARBITRATION BEFORE A PANEL OF ARBITRATORS (AS DESCRIBED BELOW), OF AND PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"); THAT SUCH ARBITRATION HEARINGS AND PROCEEDINGS SHALL TAKE PLACE ONLY IN DOUGLAS COUNTY, NEBRASKA OR ANOTHER SITE SELECTED BY CUSTODIAN IN ITS SOLE DISCRETION; THAT THIS ARBITRATION PROVISION AND THE ARBITRATION SHALL BE ADMINISTERED BY THE AAA PURSUANT TO AND CONSTRUED AND ENFORCED UNDER THE FEDERAL ARBITRATION ACT (TITLE 9 OF THE UNITED STATES CODE) ("FAA"); HOWEVER, IF THE FAA IS INAPPLICABLE FOR ANY REASON, SUCH ARBITRATION SHALL BE CONDUCTED PURSUANT TO NEBRASKA LAW; THAT THERE SHALL BE NO CLASS ACTION, CLASS OR CONSOLIDATED ARBITRATION; THAT THE PREVAILING PARTY IN ANY CLAIM OR DISPUTE OF ANY TYPE BETWEEN THE DEPOSITOR AND THE CUSTODIAN SHALL RECOVER REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES, INCLUDING WITHOUT LIMITATION, ARBITRATION FILING FEES, ARBITRATORS' FEES, AND OTHER ARBITRATION FEES; AND THAT THIS ARBITRATION AGREEMENT SHALL GOVERN ANY DISPUTES INVOLVING DEPOSITOR AND THE CUSTODIAN NOTWITHSTANDING ANY PROVISIONS, INCLUDING AND WITHOUT LIMITATION VENUE OR ARBITRATION PROVISIONS, CONTAINED IN ANY AGREEMENT SIGNED BY CUSTODIAN IN ITS CUSTODIAL CAPACITY. ANY ARBITRATION

PROCEEDING SHALL BE CONDUCTED BY A PANEL OF THREE NEUTRAL ARBITRATORS SELECTED BY THE PARTIES UNLESS THE PARTIES AGREE OTHERWISE. IF ARBITRATION IS REQUESTED AS DESCRIBED ABOVE, THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO INSTITUTE OR CONDUCT LITIGATION OR ARBITRATION BEFORE ANY OTHER BODY OR TRIBUNAL. THE PARTIES FURTHER AGREE THAT IF A PARTY IS REQUIRED TO ENFORCE THIS ARBITRATION AGREEMENT AGAINST THE OTHER PARTY AND/OR TO COMPEL THE OTHER PARTY TO ARBITRATION PURSUANT TO THIS AGREEMENT, THE PARTY SHALL RECOVER FROM THE OTHER PARTY REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES SO INCURRED. ARBITRATION SHALL BE FINAL AND BINDING UPON THE PARTIES.

- 18.6. Any notice or statement which the Custodian is required to give hereunder shall be deemed given when mailed to the intended recipient at his last known address. Any notice or statement to be given to the Custodian shall be deemed given only when actually received by the Custodian.
- 18.7. Words used in the masculine shall apply to the feminine where applicable and wherever the context of this Agreement indicates the plural shall be read as the singular, and the singular as the plural.
- 18.8. The captions of Articles and Sections in this Agreement are included for convenience only and shall not be considered a part of, or an aid to, the construction of this Agreement.
- 18.9. This Agreement is intended to qualify under Section 408A of the Code and if any term or provision hereof is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with that intent.
- 18.10. This Agreement is accepted by the Custodian in, and administered under, the laws of the State of Nebraska. All contributions to the Custodian shall be deemed to take place in the State of Nebraska. **THIS AGREEMENT AND ALL AMENDMENTS HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEBRASKA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN.**

## Roth IRA Disclosure Statement

This Disclosure Statement, which is provided you in compliance with Treasury Regulation section 1.408-6(d)(4), explains what you should know about your individual retirement account (IRA), and is a general review of the federal income tax law applicable to it.

Constellation Trust Company presents the following Disclosure Statement pursuant to Internal Revenue Service Regulations which require that the information contained therein be given to individuals for whom a Roth Individual Retirement Account (hereinafter "IRA" or "account") is established.

### A. Right of Revocation

Regulations of the Internal Revenue Service require that this Disclosure Statement be given to a participant at least seven days before the account is established, or, the participant may revoke the account within seven days after it is established. By executing the Roth IRA Adoption Agreement, you acknowledge receipt of this Disclosure Statement. Accordingly, you are entitled to revoke the IRA within seven days after the date of your execution of the Adoption Agreement. Such revocation may be made only by written notice which at your option may be mailed or delivered to Constellation Trust Company as follows:

**Mailing address:** Constellation Trust Company  
4020 South 147<sup>th</sup> Street, Suite 3  
Omaha, NE 68137

**Delivery address:** Constellation Trust Company  
4020 South 147<sup>th</sup> Street, Suite 3  
Omaha, NE 68137

If mailed, the revocation notice shall be deemed mailed on the date of the postmark (or if by registered or certified mail, the date of registration or certification) if deposited in the mail in the United States in an envelope or other appropriate wrapper, first class postage prepaid, properly addressed. Upon revocation within the seven-day period, the Custodian will return the current fair market value of the amount contributed to the IRA, without penalty, service charge, or administrative expense.

### B. Statutory Requirements of a Roth IRA

A Roth individual retirement account is a trust account created by a written governing instrument that meets the following requirements:

1. The trustee or custodian must be a bank, federally insured credit union, savings and loan association, or another person eligible to act as a trustee or custodian.
2. Except for rollovers and direct transfers (the tax free transfer of retirement funds from one retirement plan to another, described below), contributions may not exceed (not including allowable catch-up contributions) the lesser of 100% of your compensation, or \$3,000 for tax years 2002-2004, \$4,000 for years 2005-2007, \$5,000 for 2008, with the potential for cost-of-living adjustment in 2009 and beyond. The contribution must be in cash. At no time may the contribution ever exceed more than 100% of compensation.
3. You will have a nonforfeitable interest in the account all times.
4. No part of the trust funds will be invested in life insurance contracts nor may the assets be commingled with other property except in a common trust fund or common investment fund.
5. You may not invest the assets of your IRA in collectibles (as described in Section 408(m) of the Internal Revenue Code). A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the IRS. However, if the Custodian permits, specially minted US gold, silver and platinum coins and certain state-issued coins are permissible Roth IRA investments. Beginning on 1/1/98 you may also invest in certain gold, silver, platinum or palladium bullion, if the trustee or custodian permits. If the trust acquires collectibles within the meaning of Code section 408(m) after December 31, 1981, trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.
6. Your regular annual Roth IRA contributions for any taxable year may be deposited at any time during that taxable year and up to the due date for the filing of your federal income tax return for that taxable year, no extensions. Generally, this will be April 15th of the following year.
7. No amount is required to be distributed prior to the death of the individual for whose benefit the account was originally established.
8. Separate records will be maintained for the interest of each individual.
9. The account is established for the exclusive benefit of the individual or his or her beneficiaries.

### C. Contribution Limitations and Restrictions of A Roth IRA

#### 1. Eligible individuals

You are permitted to make a regular contribution to your Roth IRA for any taxable year if you receive compensation for such taxable year which is below the applicable limit discussed below. Compensation includes salaries, wages, tips, commissions, bonuses, alimony, royalties from creative efforts and "earned income" in the case of self-employed individuals. The amount which is permitted, depends upon your modified adjusted gross income (Modified AGI), your marital status, and your tax filing status.

#### 2. General Contribution Limitations:

**Regular Roth IRA Contributions:** The maximum amount you may contribute for any one year is the lesser of 100% of your compensation or, \$3,000 for tax years 2002-2004, \$4,000 for years 2005-2007, \$5,000 for 2008, with the potential for cost-of-living adjustment in 2009 and beyond. Your actual contribution limit depends upon your marital status, tax filing status, and your Modified AGI. All regular contributions to a Roth IRA are nondeductible for Federal income tax purposes. The maximum amount you may contribute to a Roth IRA is reduced by any contributions you make to all of your traditional IRAs for the same tax year. This means that the total maximum combined annual contribution to a traditional IRA and a Roth IRA may not exceed the amounts referenced above.

If you are a single taxpayer (or a married person filing a separate return who did not live with your spouse at any time during the year), and your Modified AGI is \$95,000 or less, you may contribute up to the maximum amount stated above to your Roth IRA. If your Modified AGI is \$110,000 or more, no contribution is permitted. If your Modified AGI is over \$95,000 but less than \$110,000, then a calculation must be made to determine your Roth IRA contribution limit for the year. Utilize this calculation to determine your contribution limit:

- (1) Subtract your MAGI from \$110,000
- (2) Divide the difference by \$15,000
- (3) Multiply the result in step (2) by the maximum allowable contribution for the year, including catch-up contributions if you are age 50 or older.

If you are married and file a joint tax return with your spouse and your Modified AGI is \$150,000 or less, you may contribute up to the maximum amount stated above to your Roth IRA. If your combined Modified AGI is \$160,000 or more, no contribution is permitted. If your Modified AGI is over \$150,000 but less than \$160,000, then a similar calculation must be made. Utilize this calculation to determine your contribution limit:

- (1) Subtract your MAGI from \$160,000
- (2) Divide the difference by \$10,000
- (3) Multiply the result in step (2) by the maximum allowable contribution for the year, including catch-up contributions if you are age 50 or older.

If you are married but file separate tax returns (or lived together at any time during the year) and you have a separate Modified AGI which exceeds \$10,000, no contribution is permitted to your Roth IRA. If you or your spouse's separate Modified AGI is more than \$0 but less than \$10,000 then utilize the calculation below to determine your contribution limit. If your Modified AGI is \$0, you may contribute up to the maximum amount stated above to your Roth IRA.

- (1) Subtract your MAGI from \$10,000
- (2) Divide the difference by \$10,000
- (3) Multiply the result in step (2) by the maximum allowable contribution for the year, including catch-up contributions if you are age 50 or older.

**Catch-Up Contributions:** If you will attain the age of 50 by the end of the taxable year (December 31), you may make an additional "Catch-Up" contribution to your IRA. The maximum additional contribution limit is \$500 for tax years 2002-2005 and \$1,000 for tax years 2006 and beyond. The contribution must be in cash.

**Spousal Roth IRAs:** If you and your spouse file a joint tax return and have unequal compensation (including no compensation for one spouse) you may establish separate Roth IRAs for each spouse. The total annual contribution limit for both Roth IRAs may not exceed (not including allowable catch-up contributions) the lesser of 100% of the combined compensation for both spouses or \$6,000 for tax years 2002-2004, \$8,000 for years 2005-2007, \$10,000 for 2008, with the potential for cost-of-living adjustment in 2009 and beyond, or \$6,000, but neither Roth IRA may accept more than maximum amount per individual (as described above) per spouse. The contribution must be in cash. If your spouse will attain the age of 50 by the end of the taxable year (December 31), and is eligible, you may be able to make an additional "Catch-Up" contribution to the spouse's IRA. The maximum additional contribution limit is \$500 for tax years 2002-2005 and \$1,000 for tax years 2006 and beyond. The maximum Roth IRA contribution for the spouse must be reduced by any regular traditional IRA contributions made on behalf of such spouse, and, any Roth IRA contributions made on behalf of such spouse. The contribution limit may be further reduced if the Modified AGI exceed the levels

discussed above. Each spouse becomes the owner or "Depositor" of his own IRA account and must execute the Adoption Agreement establishing the account. Once an IRA is established for a non-working spouse, the spouse, as the owner and "Depositor" of that IRA, becomes subject to all of the privileges, rules and restrictions applicable to IRAs generally.

**\$200 Minimum Roth IRA Contribution.** If you fall into any of the categories listed above, your minimum allowable Roth IRA contribution will be \$200 until phased out under the appropriate marital status. In other words, if your Roth IRA contribution amount calculated under the appropriate dollar amounts discussed above results in a contribution between \$0 and \$200, your permitted contribution is \$200 instead of the calculated amount. If the result is not a multiple of \$10, round up to the nearest \$10.

**Modified AGI:** Modified AGI does not include any amount included in adjusted gross income as a result of a rollover (conversion) distribution from a traditional IRA. Modified AGI is determined before deductible traditional IRA contributions.

**Other Contributions:** Your Roth IRA cannot accept rollovers directly from an employer-sponsored plan, employer contributions made under a SEP or SIMPLE plan or traditional IRA contributions. However, certain rollovers and transfers as described below may be made.

**Miscellaneous Contribution Rules:**

- Contributions are permitted after you attain age 70 1/2, so long as you have compensation as discussed above.
- Contributions are permitted regardless of whether you are an active participant in an employer-sponsored plan.
- Contributions may be made for a tax year up to your tax filing deadline, excluding extensions.

**3. Possible Tax Credits for Contributions**

For tax years between 2002 and 2006, you may be eligible to receive a tax credit on your IRA contribution. This tax credit is in addition to any deduction that may be allowed, and may not exceed \$1,000 in any given year. You may be eligible for a tax credit if you are a) age 18 or older, b) not a dependent of another tax payer, and c) not a full time student. The credit is based on income levels as shown in the chart below and will range from 0 to 50 percent of eligible contributions not exceeding \$2,000.

Joint Return*	Head of Household*	All other cases*	%
\$1 - \$30,000	\$1 - \$22,500	\$1 - \$15,000	50
\$30,001 - \$32,500	\$22,501 - \$24,375	\$15,001 - \$16,250	20
\$32,500 - \$50,000	\$24,376 - \$37,500	\$16,251 - \$25,000	10
Over \$50,000	Over \$37,500	Over \$25,000	0

\*Adjusted Gross Income (see your tax advisor for more information)

**D. Excess Contributions**

A Roth IRA contribution is an excess contribution if the contribution exceeds the amount allowable as a regular contribution or if ineligible amounts are rolled over. Such excess amount is subject to a 6% excise tax on the principal amount of the excess each year until the excess is corrected.

**1. Method Of Withdrawing Excess in a Timely Manner:** This 6% penalty may be avoided, if the excess amount plus the earnings attributable to the excess are distributed to you by your tax filing deadline including extensions for the year during which the excess contribution was made. If you decide to correct your excess in this manner, the principal amount of the excess returned is not taxable. However, the earnings attributable to the excess are taxable to you in the year in which the contribution was made. In addition, if you are under age 59 1/2 the earnings attributable to the excess are subject to a 10% premature distribution penalty. This is the only method of correcting an excess contribution that will avoid the 6% penalty.

**2. Recharacterization:** Another way a taxpayer could correct an excess contribution made to a Roth IRA is to recharacterize the contribution by transferring the amount plus earnings to a traditional IRA. A correction handled in this manner must be completed by the tax-filing deadline including extensions. (The same methodology applies when recharacterizing a contribution from a Traditional IRA to a Roth IRA.) In addition, a recharacterization must be elected, in writing, on a form acceptable to the trustee or custodian, and the recharacterization must be handled as a direct trustee-to-trustee or custodian-to-custodian transfer, rather than a distribution and subsequent rollover. An election to recharacterize before your tax-filing deadline (including extensions) will avoid the 6% penalty.

**3. Method of Withdrawing Excess After Tax Filing Due Date:** If you do not correct your excess contribution in the manner prescribed above by the due date for filing your tax return, then you may withdraw the principal amount of the excess (no earnings need be distributed). The 6% penalty will, however, apply first to the year in which the excess was made and each subsequent year until it is withdrawn.

**E. Rollover Contributions and/or Conversions**

Your Roth IRA may be rolled over to another Roth IRA of yours, may receive rollover contributions, or may receive conversion contributions provided that all of the applicable rollover or conversion rules are followed. "Rollover" is a term used to

describe a tax-free movement of cash or other property to your Roth IRA from another Roth IRA. "Conversion" is a term used to describe the movement of Traditional IRA, SEP IRA, or SIMPLE IRA assets to a Roth IRA. This is generally a taxable event. The rollover and conversion rules are summarized below. These transactions are often complex. If you have any questions regarding a rollover or conversion, you are encouraged to seek the advice of a competent tax advisor.

**Rollover Contribution from Another Roth IRA:** A rollover from another Roth IRA is any amount you receive from one Roth IRA and roll some or all of it over into another IRA. You are not required to roll over the entire amount received from the first Roth IRA. However, any amount you do not roll over will be taxed at ordinary income tax rates for federal income tax purposes and may be subject to additional income taxes. The following special rules also apply to rollovers between Roth IRAs:

1. The rollover must be completed no later than the 60th day after the day the distribution was received by you from the first Roth IRA.
2. You may have only one Roth IRA to Roth IRA rollover during a 12 consecutive month period measured from the date you received a distribution of a Roth IRA which was rolled over to another Roth IRA.
3. The same property you receive in a distribution from the first Roth IRA must be the same property you roll over into the second Roth IRA. For example, if you receive a distribution from a Roth IRA of property, such as stocks, that same stock must be the property rolled over into the second Roth IRA.
4. You are required to make an irrevocable election indicating that this transaction will be treated as a rollover contribution.
5. You are not required to receive a complete distribution from your Roth IRA in order to make a rollover contribution into another Roth IRA, nor are you required to roll over the entire amount you received from the first Roth IRA into the second Roth IRA.
6. If you inherit a Roth IRA due to the death of the participant, you may not roll this Roth IRA into your own Roth IRA unless you are the spouse of the decedent.

**Rollovers from Employer-Sponsored Plans:** You may not roll over directly from an employer-sponsored plan to a Roth IRA. However, you may roll over from an employer-sponsored plan to a traditional IRA and then convert the traditional IRA to a Roth IRA in a Rollover Conversion explained below. Employer-sponsored plans eligible for rollovers to traditional IRAs are permitted if you have received an eligible rollover distribution from one of the following:

1. A qualified plan under Section 401(a);
2. A qualified annuity under Section 403(a);
3. A Tax-Sheltered Annuity (TSA) or Custodial Account under Section 403(b); or,
4. A Federal Employee's Thrift Savings Plan.

**Rollover Conversion from a SEP IRA or SIMPLE IRA:** A SEP or SIMPLE IRA may be converted to a Roth IRA on the same terms as an amount in any other traditional IRA as explained below. However, a SIMPLE IRA may not be converted until the 2-year required holding period has expired.

**Rollover Conversion from a Traditional IRA to a Roth IRA:** You are permitted to make a qualified rollover contribution from a traditional IRA to a Roth IRA if your Modified AGI (not including the taxable amount rolled over) for the year during which the rollover is made does not exceed \$100,000 and if married, you file a joint tax return. (Married taxpayers filing a separate return are not eligible to make a conversion.) This is called a "rollover conversion" and may be done at any time without waiting the usual 12 months.

**Taxation in Completing a Rollover Conversion from a Traditional IRA to a Roth IRA:** If you complete a rollover conversion from a traditional IRA to a Roth IRA, the rollover amount (to the extent taxable) is generally included in your income for the year during which the rollover is made. However, the 10% additional income tax for premature distributions does not apply.

For rollover conversions made during 1998, you will include the taxable amount of the traditional IRA distribution in income ratably over a 4-taxable year period beginning with the taxable year in which the conversion contribution is made. Any rollover conversions from a traditional IRA to a Roth IRA made in 1999 and after will be fully taxable in the year of the conversion contribution.

With respect to the 1998 rollover conversions, if the taxpayer dies before including the taxable amounts in income over a 4-year period, all remaining amounts will be included in gross income for the taxable year of death. However, if the surviving spouse of such deceased Roth IRA participant is the beneficiary of the Roth IRA, the surviving spouse may elect to continue including the remaining amount in income over the 4-year period.

**Miscellaneous Conversion Requirements:**

- If you are age 70 1/2 or older, or will attain age 70 1/2 during the tax year, and convert your traditional IRA to a Roth IRA, you are required to withdraw your mandatory distribution as required under the traditional IRA before the remainder of your traditional IRA can be converted to a Roth IRA.

- If you are taking distributions from your traditional IRA which are subject to the substantially equal periodic payment exception, and convert to a Roth IRA, the same periodic payments must continue from your Roth IRA.

#### F. Contribution Recharacterizations of Traditional IRA to a Roth IRA or a Roth IRA to a Traditional IRA

If you decide by your tax-filing deadline (not including extensions) to recharacterize a current year contribution plus earnings from a traditional IRA to a Roth IRA, no amount will be included in your gross income as long as you did not take a deduction for the amount of the converted contribution. If you make a contribution to a Traditional IRA and later recharacterize either all or a portion of the original contribution to a Roth IRA along with net income attributable, you may elect to treat the original contribution as having been made to the Roth IRA. The same methodology applies when recharacterizing a contribution from a Roth IRA to a Traditional IRA.

#### G. Distributions From A Roth IRA

**Taxation of Distributions:** "Qualified" distributions are neither subject to income tax nor the 10% premature penalty tax. Nonqualified distributions are taxable to the extent such distribution is attributable to the income earned in the account. When you start withdrawing from your Roth IRA, you may take the distributions in regular payments, random withdrawals or in a single sum payment.

**Qualified Distributions:** A Qualified distribution is one that is made BOTH:

1. on or after you attain age 59 1/2;
2. to a beneficiary after your death;
3. on account of you becoming disabled (as defined under IRC Section 72(m)(7));
4. for qualified first time homebuyer expenses, (limited to \$10,000),

**AND** after the end of the 5 year period beginning with the first taxable year for which you made any type of contribution (annual or rollover) to any Roth IRA you maintain.

For rollover conversion contributions from a traditional IRA to a Roth IRA, the 5 year period begins with the first day of your taxable year in which the first conversion was made. The 5-year period ends on the last day of the 5<sup>th</sup> consecutive year.

**Nonqualified Distributions:** Distributions from a Roth IRA which are made as a nonqualified distribution are treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA and reduced by the taxable amount of such previous distributions, does not exceed the aggregate amount of contributions to the Roth IRA. This means that nonqualified distributions are treated as taken from the nontaxable portion first (the contributions) until the aggregate distributions exceed the aggregate contributions. When the aggregate distributions exceed the aggregate contributions, then the earnings will be treated as part of the distribution for taxation purposes. The portion of the nonqualified distribution that represents earnings will be taxable and subject to the 10% premature penalty tax, unless an exception applies.

**Distributions Made Before the End of the 5 Year Period:** Distributions taken before the end of the 5 year period are taxable (to the extent you receive the earnings attributable) and are subject to the 10% additional income tax if the participant is not age 59 1/2. However, the 10% additional income tax is avoided if the distribution meets one of the following exceptions under Section 72(t):

1. on or after you attain age 59 1/2;
2. on or after your death;
3. on account of you becoming disabled (as defined under IRC Section 72(m)(7));
4. first time homebuyers (up to \$10,000 limit);
5. a series of substantially equal periodic payments made at least annually over your life expectancy, without modification for the later of 5 years or the attainment of age 59 1/2;
6. medical expenses in excess of 7 1/2% adjusted gross income;
7. health insurance premiums paid by certain unemployed individuals;
8. higher education expenses;
9. (beginning in 2000) due to an IRS levy against the Roth IRA.

The 10% additional tax on early distributions will apply to rollover conversions if the taxpayer withdraws any portion of the taxable conversion amount before the end of the 5 year period unless an exception under Section 72(t) applies. Also, if the taxpayer withdraws any portion of the taxable conversion amount before the end of the 5 year period, an additional 10% tax will apply to the taxable portion of the rollover conversion if such conversion occurs in 1998 and the 4-year income inclusion rule applies.

**Basics Recovery Rules for Distributions from Different IRA Plans:** The taxation of distributions from a Roth IRA shall be treated separately from the taxation of a distribution from other IRA plans. In other words, nondeductible contributions made to your traditional IRA will continue to be recovered tax-free on a ratable basis.

**Ordering Rules:** Any distribution from a Roth IRA will be deemed to come from the following sources, in the order indicated. First, from annual contributions made

to the Roth IRA; second, from rollover contributions to the Roth IRA on a first in, first out basis; and third, from post-contribution earnings (once all contributions have been distributed out). The taxpayer is required to keep track of these ordering provisions by filing IRS Form 8606 along with their annual tax return.

**Premature Distributions:** If you are under age 59 1/2 and receive a nonqualified distribution from your Roth IRA, a 10% additional income tax will apply to the taxable portion (generally the earnings portion) of the distribution unless the distribution is received due to death; disability; a qualifying rollover distribution; the timely withdrawal of the principal amount of an excess; substantially equal periodic payments; certain medical expenses; health insurance premiums paid by certain unemployed individuals; qualified higher education expenses; or qualified first time homebuyer expenses.

**Required Distributions:** Unlike a traditional IRA, you are not required to begin distributions when you attain age 70 1/2.

#### Death Distributions:

- (a) If you die, the entire balance in your Roth IRA must be distributed no later than December 31st of the year containing the 5th anniversary of your death except to the extent that an election is made to receive distributions in accordance with (i) or (ii) below.
  - (i) If your interest is payable to a designated beneficiary, then your entire interest may be distributed over the life expectancy of your designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year of your death.
  - (ii) If your designated beneficiary is your surviving spouse, the date distributions are required to begin in accordance with (i) above shall not be earlier than the later of (A) December 31 of the calendar year immediately following the calendar year of your death or (B) December 31 of the calendar year in which the individual would have attained age 70 1/2.

- (b) If the designated beneficiary is your surviving spouse, your spouse may elect to treat the account as his or her own Roth IRA. This election will be deemed to have been made if such surviving spouse makes a regular contribution to the account, makes a rollover to or from such account, or fails to take distributions as described in (a) above. Distributions from your account to your beneficiaries may be subject to federal estate taxes.

**Beneficiary Designation:** The Roth IRA Trust Account Adoption Agreement includes a section where you may choose your beneficiary or beneficiaries. If you want to change that designation, you may do so at any time by notifying us in writing by using our Change of Beneficiary form. Any change will cancel all prior beneficiary designations.

The last beneficiary designation which is filed with us during your lifetime will be the controlling designation at your death. In the event no beneficiary is designated or you are not survived by a designated beneficiary, your benefits will be paid to your spouse, or if there is no spouse living, then to the estate of the Grantor.

If you are married and live in a community property state or if you accumulated Roth IRA assets while living in a community property state, your Roth IRA assets may be subject to community property rules. If so and you wish to name a beneficiary other than your spouse, spousal consent may be required. You should seek advice from your attorney for consent language that will constitute an effective waiver of community property rights in your state.

#### H. Prohibited Transactions

If you or your beneficiary engages in a prohibited transaction described in Code Section 4975 with your Roth IRA, it will lose its tax exemption and you must include the taxable portion of your account in your gross income for the taxable year in which the prohibited transaction took place. Examples of prohibited transactions are the borrowing of the income or corpus from an account, selling property to or buying property from the account, or receiving more than reasonable compensation for service performed for the account.

In addition, if you pledge any portion of your Roth IRA as collateral for a loan, the amount so pledged will be treated as a distribution and the taxable portion will be included in your gross income for that year.

#### I. Additional Taxes and Penalties

If you are under age 59 1/2 and receive a nonqualified premature distribution from your Roth IRA, an additional 10% income tax will apply on the taxable amount of the distribution (generally the earnings portion only), unless an exception under Section 72(t) applies.

If you make an excess contribution to your Roth IRA and it is not corrected on a timely basis, an excise tax of 6% is imposed on the excess amount. This tax will apply each year to any part or all of the excess which remains in your account.

If you should die, and the appropriate required death distributions are not made from your Roth IRA, an excise tax of 50% is assessed to your beneficiary based upon the difference between the amount that should have been distributed and the amount that was actually distributed. You must file Form 5329 with the Internal Revenue Service for any year an additional tax is due.

#### J. Recharacterization

A taxpayer may recharacterize a contribution to or from a Roth IRA by:

- 1) transferring a current year regular contribution plus earnings either to or from a traditional IRA; or,
- 2) reversing a conversion made to a Roth IRA by transferring the amount plus earnings back to a traditional IRA.

A recharacterization must be completed by the tax filing deadline including extensions. In addition, a recharacterization must be elected, in writing, on a form acceptable to the Custodian, and it must be handled as a direct Custodian-to-Custodian transfer, rather than a distribution and subsequent rollover. An election to recharacterize cannot be revoked after the transfer, but you may be able to perform a reconversion (see below).

Also, you must report the recharacterization and treat the contribution as having been made to the account which receives the recharacterization transfer, on your Federal income tax return in accordance with applicable instructions.

#### Miscellaneous Rules Regarding Recharacterizations:

- A recharacterization is not subject to Federal income tax withholding
- Prior year excess contributions made to an IRA that are carried over to a subsequent year cannot be recharacterized as a current year contribution to another IRA. Only actual contributions made for a taxable year may be recharacterized.
- When calculating the amount of earnings attributable in a recharacterization transfer, net losses on the amount to be recharacterized may be included.
- An election to recharacterize may be made on behalf of a deceased IRA owner by the executor, administrator, or other person charged with the duty of filing the decedent's final Federal income tax return.
- Amounts in a SEP IRA or SIMPLE IRA that are converted to a Roth IRA can be recharacterized back to a SEP IRA or SIMPLE IRA.
- Amounts in a "conduit" IRA that are converted to a Roth IRA can be recharacterized back to a traditional IRA and retain its status as a "conduit" IRA.

#### K. Reconversion

Once an amount has been properly converted, any subsequent conversion of that amount is called a reconversion. Effective January 1, 2000, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during any taxable year and then recharacterizes that amount back to a traditional IRA may not reconvert that amount from the traditional IRA to a Roth IRA before the later of:

- a. the taxable year following the taxable year in which the amount was first converted to a Roth IRA; or
- b. the end of the 30-day period beginning on the day on which the IRA owner recharacterizes the amount from the Roth IRA back to a traditional IRA. (Regardless of whether the recharacterization occurs during the taxable year in which the amount was converted to a Roth IRA or the following taxable year.)

In determining the portion of any amount held in a Roth IRA or a traditional IRA that an IRA owner may not reconvert, any amount previously converted (or reconverted) is adjusted for subsequent net earnings thereon. Any attempted reconversion of an amount prior to the time permitted is a failed conversion of that amount. The only remedy in this case is to recharacterize back to a traditional IRA. If the amount is not recharacterized, it is deemed a regular Roth IRA contribution, thus an excess may arise and any excess contribution is subject to the 6% excise tax to the extent that it exceeds the individual's regular Roth IRA contribution limit.

For these purposes, only a failed conversion resulting from failure to satisfy the statutory requirements for a conversion (i.e. The \$100,000 MAGI limit) is treated as a conversion for determining when an IRA owner may make a reconversion. However, if an IRA owner inadvertently attempts to reconvert before waiting the appropriate time period, the attempted reconversion is not treated as a conversion for purposes of the reconversion rules (although it is otherwise treated as a failed conversion).

#### L. Income Tax Withholding

All withdrawals from your Roth IRA (except a direct transfer or recharacterization) are subject to federal income tax withholding. You may, however, elect not to have withholding apply to your Roth IRA distribution in most cases. If withholding does

apply to your distribution, it is at a rate of 10% of the amount of the distribution unless you elect otherwise.

#### M. Federal Estate and Gift Taxes

Generally there is no specific exclusion for Roth IRAs under the estate tax rules. Therefore, in the event of your death, the value of your Roth IRA will be includable in your gross estate for federal estate tax purposes. However, if your surviving spouse is the beneficiary of your IRA, the value of your Roth IRA may qualify for the marital deduction available under Section 2056 of the Internal Revenue Code. A transfer of property for federal gift tax purposes does not include an amount which a beneficiary receives from a Roth IRA plan.

#### N. Transfers

A direct Custodian-to-Custodian transfer of all or a portion of your funds is permitted from this Roth IRA to another Roth IRA or visa versa. Direct transfers do not constitute a distribution since you are never in constructive receipt and thus are not reportable to the IRS.

#### O. Additional Financial Information

Under the Constellation Trust Company Self-Directed Roth Individual Retirement Custodial Account, you are required to direct the Custodian with respect to the investment of funds in your account. In the absence of direction from you, or your Representative (as described in Section "P" below), the Custodian will not make or dispose of any investments or distribute any funds held in the account. The Custodian has no power or duty to question the direction of a specified investment, to review any investments held in the account or to make any suggestions to you with respect to the investment, retention or disposition of any asset in the account. The Custodian will not be liable for any loss of any kind which may result by reason of any action taken by it in accordance with direction from you or your Representative, or by reason of any failure to act because of the absence of any directions. The Custodian may refuse to execute an investment direction if it determines in its discretion that the investment would not be administratively feasible.

**Investment of Idle Cash:** In the event that cash is received by the Custodian for which there is no investment direction, or if cash in the account is less than the Custodian's applicable minimum reinvestment amount, the Custodian shall transfer said cash to an interest-bearing cash account of the Custodian's choice. All such cash shall remain invested in the interest-bearing cash account, earning interest which shall be posted to the account no less than monthly, until investment direction is received, or until the accumulated balance equals or exceeds the minimum reinvestment amount.

**Unrelated Business Taxable Income:** There is an exception to the taxexempt status of your IRA when you invest in any security which is debtfinanced, or a limited partnership which actively conducts a trade or business rather than receiving passive income or which is publicly traded. Unrelated Business Taxable Income (UBTI) from such an investment may be taxable to your account if it exceeds \$1,000 in any tax year. For purposes of the \$1,000 limit, all of your IRA accounts are considered to be one account. These taxes are an expense of your account and should be paid by you using assets in the account, and should be filed utilizing IRS Form 990-T. Constellation Trust Company does not calculate UBTI for your account and does not prepare Form 990-T. If your account has any investment which generates UBTI, you are responsible for preparing or having prepared on behalf of your IRA account the appropriate 990-T form. Upon completion, the form should be forwarded to Constellation Trust Company for filing, along with instructions to pay any required tax.

**Asset Valuation:** Constellation Trust Company shall periodically value the assets in your IRA account utilizing various outside sources available to it. However, Constellation Trust Company shall not guarantee the accuracy of prices obtained from quotation services, independent appraisal services, investment sponsors or parties related thereto or any other sources. Values for brokerage accounts shall be equal to the total equity value of the account, and shall reflect only those assets which are priced by the brokerage firm. Individual assets held within the brokerage account shall not be listed or priced individually on statements furnished by Constellation Trust Company.

In the absence of direction from the Secretary of the Treasurer or his authorized representative to the contrary, the value of illiquid assets such as limited partnerships, limited liability companies, or privately-held stock, shall be determined by a fair market value from the investment sponsor or other source chosen by Constellation Trust Company in its sole discretion. Promissory notes and privately-offered corporate debt may have valuations reflected at the face value shown on the original note or debt instrument, or if the note is such that it is subject to an amortization schedule, valuation may be shown at amortized value.

If the investment sponsor is unwilling or unable to provide a fair market value, then Constellation Trust Company may list the value of the illiquid asset at its original acquisition cost or carry forward the last known value. Assets which are reported by the investment sponsor as having no market value, are in bankruptcy, or other

relevant condition exists, may reflect a valuation of zero on Constellation Trust Company's periodic statement. For investments that are not publicly tradeable on a securities exchange, Constellation Trust Company shall seek a valuation of such securities from the sponsor/issuer of the investment. If a value is not received within ninety (90) days after request, then, upon notice from Constellation Trust Company, it is the duty of the accountholder to provide Constellation Trust Company with the fair market value of the investment from the investment sponsor or from an independent appraisal service of the accountholder's choice, provided such appraisal service is acceptable to Constellation Trust Company. Constellation Trust Company reserves the right to resolve differences in values in any manner it deems appropriate. If the accountholder fails to do so, within six (6) months after notice, then Constellation Trust Company shall be authorized, entitled and directed to distribute such investment in-kind at fair market value, which may be original acquisition cost or the last known value, to the accountholder.

**Growth In Value:** As stated in Articles X and XI of the Constellation Trust Company Roth Individual Retirement Account Custodial Agreement, the assets of the IRA will be invested only in accordance with directions received from you or your Representative. Constellation Trust Company permits you to invest the assets of your IRA in a wide variety of acceptable investments, but Constellation Trust Company offers no investment advice as to which investments may be best for your account. **Your Constellation Trust Self-Directed Roth IRA account is not FDIC-insured, nor guaranteed by Constellation Trust Company, nor by any government agency or any other entity. Because your Constellation Trust account is self-directed, you assume sole responsibility for the success or failure of your investments.** The value of assets in the account that will be available to you at any given time will depend upon the amount of your contributions, the mix of permitted assets, and the performance of the investment(s) you have chosen. Accordingly, growth in value of your account is not guaranteed, and the value at any given point in time in the future is impossible to predict. Types of investments deemed to be acceptable to Constellation Trust Company are based on administrative factors unrelated to the prudence, merit, or viability of the investment. Constellation Trust Company evaluates only administrative feasibility with respect to any investment, and does not recommend or evaluate the merits or suitability of any investment. The decision by Constellation Trust Company to accept or reject any investment or category of investments does not constitute an opinion as to the prudence, viability, or advisability of the investment, nor does it constitute investment advice to you on the part of Constellation Trust Company.

#### **P. Representative Provisions**

If you have designated a Representative in Section 5 of the Constellation Trust Company Roth Individual Retirement Custodial Account Adoption Agreement, or on a form acceptable to Constellation Trust Company, your designation is subject to the following provisions:

1. You recognize that Constellation Trust Company is entitled to rely on directions from your Representative, and you agree that Constellation Trust Company shall be under no duty to make an investigation with respect to any instructions received from your Representative. You also recognize that your Representative may choose to communicate investment directions to Constellation Trust Company via an agent, such as his office staff or broker/dealer organization;
2. You are solely responsible for managing the investment of your IRA account, and for directing your Representative. All instructions, directions, and/or confirmations received by Constellation Trust Company from your Representative, shall be assumed to have been authorized by you;
3. You recognize that such Representative is your agent, and not an agent, employee, or representative of Constellation Trust Company;
4. You understand that your Representative may be a registered representative of a broker dealer organization, a financial advisor, or other person that you deem acceptable.
5. You understand that Constellation Trust Company has not made and will not make any recommendation or investigation with respect to your Representative, nor does Constellation Trust Company compensate your Representative in any manner.

6. You may remove your Representative and either designate a new Representative or choose not to designate any representative, by written notice to Constellation Trust Company on a form acceptable to Constellation. However, removal of a Representative will not have the effect of canceling any instruction, direction, or confirmation which has been received by Constellation Trust Company from the Representative prior to the date that notice of removal is received and processed by Constellation Trust Company; and

7. You agree to indemnify and hold Constellation Trust Company harmless from any and all liability or claims, including, but not limited to, damages, court costs, legal fees, and costs of investigation as a result of (i) any loss or diminution of your IRA funds resulting from changes in the market value of such funds; (ii) reliance or action taken in reliance on written or oral instructions received from you or your Representative; (iii) any exercise or failure to exercise investment direction authority by you or by your Representative; (iv) Constellation Trust Company's refusal on advice of counsel to act in accordance with any exercise of investment direction by you or your Representative; (v) any other act or failure to act by you or your Representative; (vi) any prohibited transaction or plan disqualification due to any actions taken or not taken by Constellation Trust Company in reliance on directions from you or your Representative; or (vii) any other act Constellation Trust Company takes in good faith hereunder.

#### **Q. Custodian Fees**

A schedule of the fees and charges of Constellation Trust Company is included in the Adoption Agreement of your IRA account. This schedule may be amended from time to time upon 30 days' written notice to you. Constellation Trust Company reserves the right to charge additional fees over and above those shown on the fee schedule for extraordinary services or expenses. Examples of extraordinary services include, but are not limited to, stop payment fees, incoming or outgoing wire charges, checks returned for insufficient funds, safekeeping fees for tangible assets, or the administrative review of a private placement. You are responsible for the payment of all fees, expenses or other charges relating to your IRA account. If you do not pay such charges upon billing, or if you make an automatic withdrawal election, the fees, expenses and charges will be withdrawn from the assets of your account.

Constellation Trust Company performs all subaccounting and interest posting functions (where applicable) for the omnibus demand deposit and interest bearing money market accounts. Constellation Trust Company may receive a fee for these services, paid directly from the bank, money market sponsor, or affiliate of either entity. Such fees, if any, shall be a per-account administrative charge similar to those which would be borne directly by the bank or fund sponsor, or paid to a third-party transfer agent for similar services. No subaccounting fee will be borne by you or your IRA account.

#### **R. IRS Approval As To Form**

The Constellation Trust Company Roth Individual Retirement Account is treated as approved as to form by the Internal Revenue Service since it utilizes precise language of Form 5305-RA currently provided by the Internal Revenue Service, plus additional language permitted by such form. The Internal Revenue Service approval is a determination only as to the form of the account, and does not represent a determination of the merits of the account.

#### **S. Substitution of Non-Bank Trustee**

The non-bank Trustee shall substitute another trustee or custodian if the non-bank Trustee receives notice from the Commissioner of the Internal Revenue Service that such substitution is required because it has failed to comply with the requirements of Regulations section 1.408-2(e).

#### **T. Additional Information**

Additional information regarding Individual Retirement Accounts may be obtained from any district office of the Internal Revenue Service. In particular, you may wish to obtain IRS Publication 590 (Individual Retirement Arrangements).