

PR11-752

**LAST WILL  
OF  
MARY LOUISE IRWIN**

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**LAST WILL AND TESTAMENT  
OF  
MARY LOUISE IRWIN**

**Introductory Clause.** I, **MARY LOUISE IRWIN**, a resident of and domiciled in the County of Lancaster and State of Nebraska, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to **JACK L. IRWIN**. I have no children.

**ARTICLE I**

**Direction to Pay Debts.** I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

**ARTICLE II**

I direct that:

(1) **Direction to Pay All Taxes from Residuary Estate.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

(2) **Apportion Taxes on Nonprobate Property.** All such taxes in respect to any property or interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however: (a) there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable deduction; (b) there shall be no apportionment against my

surviving husband, if he is a donee or recipient of any such property or interest in property and the property or interest in property was allowed in my federal estate tax proceedings as a marital deduction under I.R.C. Section 2056. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate for such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

### ARTICLE III

#### **General Bequest of Personal and Household Effects With a Mandatory**

**Memorandum.** I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my husband, **JACK L. IRWIN**, if he shall survive me. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

### ARTICLE IV

**Maximum Marital Deduction. Pecuniary Formula Bequest. Maximize Unified Credit. Payable to The Marital Trust.** If my husband, **JACK L. IRWIN**, shall survive me, I give, devise and bequeath to my Trustee hereinafter named cash, securities or other property of my estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in my federal estate tax



proceedings, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to my husband otherwise than pursuant to the provisions of this Article; provided, however, the amount of this bequest shall be reduced by the amount, if any, needed to increase my taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on my estate. The term "maximum marital deduction" shall not be construed as a direction by me to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. My Personal Representative shall have the sole discretion to select the assets which shall constitute this bequest. In no event, however, shall there be included in this bequest any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this bequest shall be reduced to the extent that it cannot be created with such qualifying assets. My Personal Representative shall value any asset selected by my Personal Representative for distribution in kind as a part of this bequest at the value of such asset at the date of distribution of such asset.

This bequest shall be administered by my Trustee under the terms of **the Marital Trust** as hereinafter set forth.

## ARTICLE V

**Residuary Gift to Trustee Under the Family Trust.** I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will to the Trustee of **the Family Trust**. **The Family Trust** shall be administered as hereinafter set forth.

## ARTICLE VI

**The Marital Trust Introductory Provision.** **The Marital Trust** shall be held, administered and distributed as follows:

(1) **Direction to Pay All Income to Husband.** Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my husband during his lifetime all the net income from **the Marital Trust** in convenient installments but no less frequently than quarter-annually.

(2) **Discretionary Payments of Principal by Trustee for Benefit of Husband.** In addition, my Trustee may pay to or apply for the benefit of my husband such sums from the principal of **the Marital Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of my

husband, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my husband known to my Trustee.

(3) **Provision for Complete Withdrawal by Husband.** My husband may at any time (and from time to time) during his lifetime withdraw all or any part of the principal of **the Marital Trust**, free of trust, by delivering an instrument in writing duly signed by him to my Trustee, describing the property or portion thereof desired to be withdrawn. Upon receipt of such instrument, my Trustee shall thereupon convey and deliver to my husband, free of trust, the property described in such instrument.

(4) **Power in Husband to Cause Nonproductive Property to Be Made Productive.** My husband may at any time by written notice, require my Trustee either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

(5) **General Power of Appointment in Husband.** Upon the death of my husband, the entire remaining principal of **the Marital Trust**, together with any accrued and undistributed income therefrom, shall be paid over, conveyed and distributed to or in trust for such appointee or appointees (including the estate of my husband), in such manner and in such proportions as my husband may appoint in and by the Last Will of my husband, making specific reference to the power of appointment herein conferred upon him. In disposing of **the Marital Trust**, my Trustee shall be protected in relying upon an instrument admitted to probate in any jurisdiction as the Last Will of my husband or in acting upon the assumption that my husband died intestate in case my Trustee has no notice of the existence of a Will of my husband within Six (6) months after the death of my husband.

(6) **Default Clause to Pay Taxes Attributable to The Marital Trust and Balance Over to The Family Trust in Event Power of Appointment Not Exercised.** In default of the exercise of such power of appointment by my husband, or insofar as any part of such Trust shall not be effectively appointed, then upon the death of my husband, the entire remaining principal of **the Marital Trust**, or the part of such trust not effectively appointed, shall be distributed as follows:

(a) If my husband has not specifically exercised his power of appointment to pay any part of the estate, succession, death or similar taxes assessed with respect to the assets of **the Marital Trust**, then my Trustee shall pay to the personal representatives of my husband's estate for the purposes of paying such taxes the amount by which such taxes assessed by reason of his death shall be increased as a result of the inclusion of the assets of **the Marital Trust** in his estate for such tax purposes.

(b) The balance of the principal of **the Marital Trust** or all of the principal of **the Marital Trust** if no amount is distributed under subparagraph (a) shall be added to and become a part of **the Family Trust**, and shall be held, administered or distributed in whole or in part, as if it had been an original part of **the Family Trust**.



## ARTICLE VII

**The Family Trust Introductory Provision.** The Family Trust shall be held, administered and distributed as follows:

(1) **Payment to Husband of All Income.** If my husband shall survive me, then commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my husband during his lifetime all the net income from **the Family Trust** in convenient installments but no less frequently than quarter-annually.

(2) **Discretionary Payments of Principal for Husband.** If my husband shall survive me, and if there is no principal remaining in **the Marital Trust**, my Trustee may pay to or apply for the benefit of my husband during his lifetime, such sums from the principal of **the Family Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of my husband, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my husband known to my Trustee.

(3) **Limited Withdrawal by Husband.** If there is no principal remaining in **the Marital Trust**, then, in addition to the income and discretionary payments of principal from this Trust, there shall be paid to my husband during his lifetime from the principal of this Trust upon his written request during the last month of each fiscal year of the Trust an amount not to exceed during such fiscal year the greater of Five Thousand (\$5,000.00) Dollars or Five (5%) per cent of the total value of the principal of **the Family Trust** on the last day of such fiscal year without reduction for the principal payment for such fiscal year. This right of withdrawal is noncumulative, so that if my husband does not withdraw, during such fiscal year, the full amount to which he is entitled under this Paragraph, his right to withdraw the amount not withdrawn shall lapse at the end of that fiscal year.

(4) **Outright Final Distribution if Husband is Deceased.** Upon or after the death of the survivor of my husband and me, the then remaining property of this **the Family Trust** shall be paid over and distributed free of trust as follows:

**Unrestricted Outright Gift to Charity.** \$1,500,000 to the **ALZHEIMERS ASSOCIATION** located at Lincoln, Nebraska, or its successors, for the purchase or construction of an office building for the staff of the Lincoln, Nebraska chapter.

**Unrestricted Outright Gift to Charity.** \$1,500,000 to the **P.E.O. HOME OF BEATRICE, NEBRASKA**, or its successors, for such uses and purposes as its governing board shall deem necessary and advisable.

**Endowment Gift to Charity. Use of Income Designated.** \$5,000,000 to the **UNIVERSITY OF NEBRASKA FOUNDATION**, located at Lincoln, Nebraska, or its successors, to be added to its endowment fund with the income therefrom to be used to provide scholarships to students with outstanding academic achievement and/or financial need under



such rules and regulations as its governing board shall determine. This fund shall be known as the **JACK AND MARY LOU IRWIN SCHOLARSHIP FUND**. In the event that this use becomes impracticable, then such gift may be used for such other uses and purposes as its governing board shall deem necessary and advisable.

**Continuing Trust for Grandnephews and Grandnieces.** The Trustee shall set aside and retain in trust \$3,000,000 to be held and invested as a scholarship fund to provide financial assistance to my grandnephews and grandnieces. The Trustee shall have complete discretion in determining how much of the income and principal to distribute or expend for such purposes, eligibility requirements and all other aspects of the trust. At such time as the Trustee determines in its discretion that it is impractical to continue this trust or that there is no longer a need for educational assistance by the beneficiaries, the Trustee shall distribute all of the remaining trust property to the University of Nebraska Foundation to be added to the Jack and Mary Lou Irwin Scholarship Fund.

**Gift to Named Person with Survivorship to that Person's Issue.** One-eighth (1/8) thereof to **ANDREW A. NELSON**, if he shall be living when this provision becomes applicable. If he shall not then be living, then to the surviving issue per stirpes of **ANDREW A. NELSON**.

**Gift to Named Person with Survivorship to that Person's Issue.** One-eighth (1/8) thereof to **JOEL D. NELSON**, if he shall be living when this provision becomes applicable. If he shall not then be living, then to the surviving issue per stirpes of **JOEL D. NELSON**.

**Gift to Named Person with Survivorship to that Person's Issue.** One-eighth (1/8) thereof to **SUSAN L. NOEL-BRAUN**, if she shall be living when this provision becomes applicable. If she shall not then be living, then to the surviving issue per stirpes of **SUSAN L. NOEL-BRAUN**.

**Gift to Named Person with Survivorship to that Person's Issue.** One-eighth (1/8) thereof to **SCOTT M. NOEL**, if he shall be living when this provision becomes applicable. If he shall not then be living, then to the surviving issue per stirpes of **SCOTT M. NOEL**.

**Gift to Named Person with Survivorship to that Person's Issue.** One-eighth (1/8) thereof to **JOHN J. NOEL**, if he shall be living when this provision becomes applicable. If he shall not then be living, then to the surviving issue per stirpes of **JOHN J. NOEL**.

**Gift to Named Person with Survivorship to that Person's Issue.** One-eighth (1/8) thereof to **JILL C. NOEL**, if she shall be living when this provision becomes applicable. If she shall not then be living, then to the surviving issue per stirpes of **JILL C. NOEL**.

**Gift to Named Person with Survivorship to that Person's Issue.** One-eighth (1/8) thereof to **CHRISTOPHER J. NOEL**, if he shall be living when this provision becomes

applicable. If he shall not then be living, then to the surviving issue per stirpes of **CHRISTOPHER J. NOEL**.

**Gift to Named Person with Survivorship to that Person's Issue.** One-eighth (1/8) thereof to **STEPHEN M. NOEL**, if she shall be living when this provision becomes applicable. If she shall not then be living, then to the surviving issue per stirpes of **STEPHEN M. NOEL**.

## **ARTICLE VIII**

**Naming the Personal Representative, Personal Representative Succession, Personal Representative's Fees and Other Matters.** The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) **Naming an Individual Personal Representative.** I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament **JACK L. IRWIN** and direct that he shall serve without bond.

(2) **Naming Individual Successor or Substitute Personal Representative.** If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be **SCOTT M. NOEL**.

(3) **Final Succession If Individual Successor Personal Representative Cannot Act.** If my individual successor Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Personal Representative who shall also serve without bond shall be **FREMONT NATIONAL BANK & TRUST**.

(4) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, my individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Fee Schedule for Corporate Personal Representative.** For its services as Personal Representative, my corporate Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

## **ARTICLE IX**

**Naming the Trustee, Trustee Succession, Trustee's Fees and Other Matters.** The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:



(1) **Naming an Individual Trustee.** I hereby nominate, constitute and appoint as Trustee of this my Last Will and Testament **JACK L. IRWIN** and direct that he shall serve without bond.

(2) **Naming Individual Successor or Substitute Trustee.** If my individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the successor or substitute Trustee who shall also serve without bond shall be **SCOTT M. NOEL**.

(3) **Final Succession If Individual Successor Trustee Cannot Act.** If my individual successor Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be **FREMONT NATIONAL BANK & TRUST**.

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, my individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Fee Schedule for Corporate Trustee.** For its services as Trustee, my corporate Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(6) **Change in Corporate Fiduciary.** Any corporate successor to the trust business of the corporate fiduciary designated herein or at any time acting hereunder shall succeed to the capacity of its predecessor without conveyance or transfer.

(7) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which I have given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

## **ARTICLE X**

**Definition of Personal Representative and Trustee.** Whenever the word "Personal Representative" and/or the word "Trustee", or any modifying or substituted pronoun therefor are used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and

responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

## ARTICLE XI

**Powers for Personal Representative and Trustee.** My Personal Representative and Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this my Will and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this my Will or by statute or general rules of law:

(1) To retain any property or undivided interests in property owned by me at the time of my death, including residential property and shares of my Personal Representative's or Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of my estate or the Trust Estate or even the entirety thereof.

(2) To invest and reinvest all or any part of my Estate or the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of my Personal Representative or Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate or the Trust Estate, for cash or upon credit, to exchange any property of my estate or the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(4) To hold any securities or other property in its own name as Personal Representative or Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(5) To keep, at any time and from time to time, all or any portion of my Estate or the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(6) To sell or exercise stock subscription or conversion rights.



(7) To refrain from voting or to vote shares of stock owned by my Estate or the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my Estate or the Trust Estate.

(8) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my Estate or the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by my Personal Representative or Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(9) To borrow money and to encumber, mortgage or pledge any asset of my estate or the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in my Personal Representative or Trustee.

(10) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(11) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(12) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(13) To continue and operate any business owned by me at my death and to do any and all things deemed needful or appropriate by my Personal Representative or Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(14) To collect, receive, and receipt for rents, issues, profits, and income of my Estate or the Trust Estate.

(15) To insure the assets of my Estate or of the Trust Estate against damage or loss and my Personal Representative or Trustee against liability with respect to third persons.



(16) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary, capacity.

(17) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against my Estate or the Trust Estate as my Personal Representative or Trustee shall deem best.

(18) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by my Personal Representative or Trustee needful for the proper administration of my Estate or the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(19) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(20) To hold and retain the principal of my Estate or the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on my Personal Representative's or Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(21) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of my Estate or the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(22) To exercise any power herein granted with reference to the control, management, investment or disposition of my Estate or the Trust Estate either as Personal Representative or Trustee without having to declare in which capacity it is acting.

(23) In general, to exercise all powers in the management of my Estate or the Trust Estate which any individual could exercise in his own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this my Will.

(24) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if my Trustee reasonably

determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(25) To divide any trust into separate shares or separate trusts or to create separate trusts if my Trustee reasonably deems it appropriate and the division or creation is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(26) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero; to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as my Trustee in its sole discretion deems best.

(27) To elect to allocate any portion or all of my generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of my death, to any portion or all of any other trusts or bequests in my Will or any other transfer which I am the transferor for purposes of the generation-skipping tax. Generally, I anticipate that my Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to **the Family Trust**, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent my Personal Representative deems in the best interest of my estate.

## ARTICLE XII

**Personal Representative and Trustee to Have Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate.** My Personal Representative and Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence. Provided, however, my Personal Representative and Trustee shall not exercise this power in any way which would deprive my husband under **the Marital Trust** of the beneficial enjoyment of **the Marital Trust** and my husband shall have the right to limit, restrict or terminate my Personal Representative's or Trustee's exercises of this power if they interfere with such beneficial enjoyment.

## ARTICLE XIII

**Marital Deduction Savings Clause for the Marital Trust.** It is expressly provided that the grant of rights, powers, privileges and authority to my Personal Representative and Trustee in



connection with the imposition of duties upon my Personal Representative and Trustee by any provision of this my Will or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in **the Marital Trust** hereof. It is my intention that my husband under the provisions of **the Marital Trust** have substantially that degree of beneficial enjoyment of the Trust Estate during his lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and my Trustee shall not exercise its discretion in a manner which is not in accord with this expressed intention. My Personal Representative and Trustee shall invest the Trust Estate so that it will produce for my husband during his lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that my Trustee shall not in the exercise of its discretion make any determination inconsistent with the foregoing.

#### ARTICLE XIV

**Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One.** If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as my Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to my Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. My Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

#### ARTICLE XV

**Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person.** In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of my Trustee unable properly to administer such amounts, then such amounts shall be paid out by my Trustee in such of the following ways as my Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by my Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that my Trustee shall not make any payment from **the Marital Trust** under (3) above.

## ARTICLE XVI

**Discretion Granted to Personal Representative in Reference to Tax Matters.** My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my husband.

(1) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the Nebraska Probate Code.

## ARTICLE XVII

**Definition of Words Relating to the Internal Revenue Code.** As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

## ARTICLE XVIII

**Statement by Testatrix of Intent Not to Exercise Power of Appointment.** I hereby refrain from exercising any power of appointment that I may have at the time of my death.

## ARTICLE XIX

**Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix.** If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

## ARTICLE XX

**Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary.** On the death of any person entitled to income or support from any Trust hereunder, my Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

## ARTICLE XXI

**Spendthrift Provision.** Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of my fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

## ARTICLE XXII

**Perpetuities Savings Clause.** Notwithstanding anything herein to the contrary, the trusts created hereunder shall terminate not later than Twenty-one (21) years after the death of the last survivor of the trust beneficiaries hereunder, their issue, and any person or persons or their issue used to define the trust beneficiaries under this trust, living on the date of my death (or when this trust becomes irrevocable, if sooner), when my Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.



**Testimonium, Attestation and Self-Proving Affidavit.** I, **MARY LOUISE IRWIN**, the Testatrix, sign my name to this instrument this May 9, 2007, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Mary Louise Irwin  
**MARY LOUISE IRWIN**

We, Ray D. Drobny and Douglas J. Drobny, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, and in the presence of each other, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

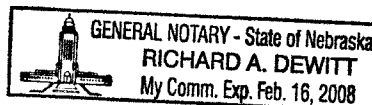
Ray D. Drobny  
(Witness)  
Douglas J. Drobny  
(Witness)

The State of Nebraska

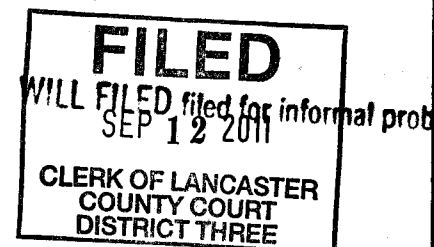
County of Douglas

Subscribed, sworn to, and acknowledged before me by **MARY LOUISE IRWIN**, the Testatrix, and subscribed and sworn to before me by Ray D. Drobny and Douglas J. Drobny, witnesses, this May 9, 2007.

Richard A. DeWitt  
Notary Public



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CERTIFICATE OF INFORMAL PROBATE  
IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

Estate of Mary Louise Irwin, Deceased

Estate No. PR11-752

The State of Nebraska                    )  
  ) SS  
Lancaster County                        )

This is to certify on this 12 day of September, 2011, the foregoing instrument annexed here to was found to be the original, duly executed and apparently unrevoked Last Will and Testament of said deceased. A statement of informal probate was issued and ordered recorded in this court.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at Lincoln the day and year above written.

(SEAL)

Keri Brutschau

Registrar

