

(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 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 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 tax exempt 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).