

CAUSE NO. DC-24-19378

IN RE: THE 1975 RICHARD ROGERS
TRUST

RYAN ROGERS and TOLLESON
PRIVATE BANK,
Petitioners,

v.

RICHARD ROGERS, ET AL.
Respondents.

RICHARD R. ROGERS, individually and
as primary beneficiary of the Mary Kay -
Richard R. Rogers 1975 Trust,
Petitioner,

v.

RYAN T. ROGERS, individually and as
Personal trustee of the Mary Kay - Richard
R. Rogers 1975 Trust, and TOLLESON
PRIVATE BANK, Individually and as
corporate trustee of The Mary Kay -
Richard R. Rogers 1975 Trust,
Respondents.

OLIVIA ABBOTT,
Counterclaimant,

v.

RYAN T. ROGERS, ET AL.
Counter-Defendants.

IN THE 160TH DISTRICT COURT

FOR

DALLAS COUNTY, TEXAS

THIRD AMENDED PETITION FOR DECLARATORY RELIEF

Ryan Rogers and Tolleson Private Bank (“Co-Trustees”) of a trust known as the Mary Kay – Richard R. Rogers 1975 Trust¹ (“Trust”), who as Petitioners file this Third Amended Petition for Declaratory Judgment and petition this Court for a determination of questions arising in the administration of the Trust, and in support thereof would show the Court as follows:

INTRODUCTION

1. This petition seeks a declaratory judgment approving certain of the actions of the Co-Trustees in the administration of the Trust.

2. Specifically, the Trust has fourteen beneficiaries, of which Richard Rogers is but one.

3. Richard was the personal trustee of the Trust until he resigned in 2012 and appointed his son, Ryan, as the personal trustee.

4. In 2009, while still the Trust’s personal trustee, Richard “devised guidelines” for trust distributions, which he intended to govern distributions until “a material change in the assumptions used to formulate the guidelines merit[ed] re-evaluation.”² Richard decreed that, “consistent with their fiduciary duties[,]” trustees could “distribute up to 4% of the liquid non-[Mary Kay Holding Corporation (‘MKHC’)] assets and 20% of expected MKHC dividend income”—because “keeping a larger percentage of the liquid assets invested” would allow the assets to “grow over time at a rate greater than the expected rate of inflation.”³ Richard explained that, by adhering to these guidelines, the Trust assets would “gradual[ly] increase” and have the

¹ A true and correct copy of the Trust, as explained further in paragraph 21, is attached to this petition as Exhibit A.

² See Exhibit B (December 28, 2009 Letter from Richard R. Rogers to Terri, Rick and Ryan Rogers re: 2010 Trust Distributions).

³ See *id.*

“capacity to support more beneficiaries over time as the family [grew],”⁴ which was Richard’s goal for the Trust. Richard recognized that the distributions needed to be “designed to balance three essential elements: provide generously for the adult beneficiaries consistent with the standards provided in the trust; **preserve enough liquid assets to secure similar levels of support for future beneficiaries**; and minimize the amount of GST-Taxes paid over time.”⁵

5. Richard also clearly advised that he did not need or want distributions from the Trust because Richard wanted the Trust to benefit his descendants, not him. Indeed, Richard stayed true to his words after resigning as trustee and, for more than a decade, continued his 35-year streak of neither requesting nor receiving any distributions from the Trust.

6. In 2012, when Richard resigned as co-trustee, he kept these guidelines for operating the Trust in place for the new personal and corporate trustees he appointed—Ryan and Tolleson. Between 2012 and 2020, the Co-Trustees made total annual distributions to Richard’s descendants (the Trust beneficiaries) ranging from 1.55 to 2.59% of the Trust corpus, in line with Richard’s standing instructions.

7. The Co-Trustees operated the Trust based on Richard’s guidelines until 2021, when Richard and his third wife, Nancy Rogers—a non-beneficiary—did an about-face and began requesting substantial monthly distributions.

8. The Co-Trustees owe fiduciary duties, including the duties of loyalty and impartiality, to all the beneficiaries. And Richard and Nancy’s requested monthly distribution—when annualized—is equivalent to the total annual distribution amount to all beneficiaries of the Trust. Nevertheless, the Co-Trustees found a way to meet Richard and Nancy’s request, with the

⁴ See *id.*

⁵ See *id.* (emphasis added).

expectation that it would be temporary.⁶ Today, Richard receives at least 70% of the monthly Trust distributions and the other thirteen beneficiaries split the remainder—less than 30% of the monthly distributions.

9. In addition to the substantial monthly distribution, in November 2022 Richard requested a lump sum “catch-up” payment from the Trust. Richard said that his request was for expenses dating back to 2019, when Richard argues he should have, but did not, receive Trust distributions (even though he did not request distributions in 2019, 2020, or 2021). Richard requested more than 20 percent of the Trust corpus, a payment so large that it would result in several adverse consequences for the Trust. First, Richard’s requested lump sum “catch-up” payment would cause him to receive a distribution that is wholly disproportionate to all other beneficiaries’ distribution requests. Second, distributing Richard’s requested lump sum “catch-up” payment would materially harm the Trust’s ability to support all other current and future beneficiaries. Furthermore, when Richard made this extraordinary request, he refused to provide the Co-Trustees with the financial data needed to evaluate Richard’s need in light of the duties the Co-Trustees owe to all beneficiaries—existing and future. To date, Richard has still opposed all efforts by the Co-Trustees to obtain the financial information they need to consider Richard’s requested lump sum “catch-up” payment.

10. The Co-Trustees endeavored to address Richard’s requested lump sum “catch-up” payment, but the Co-Trustees have been unable to do so given other beneficiaries’ concerns, questions, and demands. Despite the Co-Trustees’ best efforts—including dozens of calls and meetings with the beneficiaries and their counsel, as well as timely responses to the beneficiaries’

⁶ To meet Richard and Nancy’s request, a portion of the requested distribution has been made from other trusts of which Richard is a beneficiary. But these other trusts either are nearly depleted or have distribution caps. These trusts cannot provide continued funding.

information requests—there is no clear resolution. The Co-Trustees desire to fulfill their duties to all beneficiaries and breach their duties to none. Richard’s extraordinary and disproportionate distribution demands, coupled with his refusal to provide useful financial data, have made this impossible.

11. Then, without notice to the Rogers family or the Co-Trustees, Nancy orchestrated the adoption of Olivia Abbott, an adult woman. On February 27, 2025, the 301st District Court of Dallas County entered a Final Order of Adoption, completing Nancy and Richard’s adoption of 22-year-old Olivia Abbott.

12. Accordingly, the Co-Trustees request a declaration:

- a. that on a yearly basis, all beneficiaries are required to provide a budget, balance sheet, income and expense statements, and any other document which the Co-Trustees request in order to assess the distribution amount to be made to each beneficiary based on the “health, education, support and maintenance” (“HEMS”) standard;
- b. that the Trust does not need to make Richard’s requested lump-sum “catch-up” payment, which Richard recently valued at approximately \$154,000,000;
- c. that Co-Trustees can continue providing the \$2,000,000 monthly distributions to Richard, but do not need to make any monthly distributions beyond that amount, unless Richard demonstrates additional need, with such supporting financial documents as the Co-Trustees may request;
- d. that Co-Trustees have appropriately discharged their fiduciary duties by providing distributions to Richard from the Trust since May 2022;

- e. that Co-Trustees have appropriately discharged their fiduciary duties in managing the Trust assets;
- f. that the attempted removal(s) of Tolleson as corporate co-trustee by Richard Rogers or his agents are ineffective and void;
- g. that Richard cannot remove Tolleson as corporate trustee during this litigation; and
- h. determining whether Olivia Abbott is a beneficiary of the Trust.

13. The Co-Trustees further request the Court determine whether Richard's requests for distributions and his positions over the past several years are of his own volition and are voluntary and free from undue influence.

DISCOVERY CONTROL PLAN AND RULE 47 CLAIM FOR RELIEF

14. Petitioners request that discovery, if any, is conducted under Discovery Control Plan Level Three, per Texas Rule of Civil Procedure 190.4. Under Texas Rule of Civil Procedure 47, Petitioners seek monetary relief of attorneys' fees and other non-monetary relief.

PARTIES

15. The Petitioners are serving as the Co-Trustees of the Trust, and the Trust is administered in Dallas County, Texas (presently, and for more than four prior years). The Respondents are as follows:

- a. Ryan Rogers in his individual capacity. Ryan has appeared in this matter.
- b. Richard Rogers is a beneficiary of the Trust. Richard has appeared in this matter.
- c. Terri Rogers is Richard's daughter and a beneficiary of the Trust. Terri has appeared in this matter.

- d. Rick Rogers is Richard's son and a beneficiary of the Trust. Rick has appeared in this matter.
- e. Aaron Ivie is Richard's grandson and a beneficiary of the Trust. Aaron has appeared in this matter.
- f. Geoffrey ("Michael") Ivie is Richard's grandson and is a beneficiary of the Trust. Michael has appeared in this matter.
- g. Brendan Ivie is Richard's grandson and is a beneficiary of the Trust. Brendan has appeared in this matter.
- h. Natalie Ivie is Richard's granddaughter and is a beneficiary of the Trust. Natalie has appeared in this matter.
- i. Richard ("Flip") Rogers III is Richard's grandson and is a beneficiary of the Trust, and his usual place of abode or home is [REDACTED]
[REDACTED]. He may be served with process by personal service at the above address and/or by the clerk of this court mailing a copy of the citation, with a petition attached, to him at that address by certified mail, return receipt requested, delivery restricted to addressee, or by personal service by a private process server.
- j. Renee Rogers is Richard's granddaughter and is a beneficiary of the Trust, and her usual place of abode or home is [REDACTED]
[REDACTED]. She may be served with process by personal service at the above address and/or by the clerk of this court mailing a copy of the citation, with a petition attached, to her at that address by certified mail, return receipt

requested, delivery restricted to addressee, or by personal service by a private process server.

k. Mariah Bay (also known as Mariah Rogers) is Richard's granddaughter via adoption and is a beneficiary of the Trust. Mariah has appeared in this matter.

l. Marissa Rogers is Richard's granddaughter via adoption and is a beneficiary of the Trust. Marissa has appeared in this matter.

m. E.R. is Richard's granddaughter and is a beneficiary of the Trust. E.R. has appeared in this matter.

n. E.I., a minor child, is Richard's great-granddaughter and is a beneficiary of the Trust, and her usual place of abode or home is [REDACTED]. She may be served with process by personal service at the above address and/or by the clerk of this court mailing a copy of the citation, with a petition attached, to her at that address by certified mail, return receipt requested, delivery restricted to addressee, or by personal service by a private process server.

o. Respondent Olivia Abbott is an individual, and her usual place of abode or home is [REDACTED]. Olivia has appeared in this matter.

16. Petitioners and Respondents constitute all necessary parties to this proceeding.

Specifically:

a. Terri, Rick, and Ryan and their descendants are the sole living descendants of Richard. These descendants and Richard are the Trust's beneficiaries.

- b. The Co-Trustees request that the Court appoint one or more attorney and/or guardian ad litem to represent the interest of any minor, incapacitated, unborn or unascertained descendant under Section 115.014(a) of the Texas Trust Code. The Co-Trustees will file a motion setting forth the particulars of this request.
- c. Because there are no charitable beneficiaries of the Trust, notice to the Texas Attorney General is not required.

JURISDICTION AND VENUE

17. This Court has jurisdiction of the subject matter of this petition under Section 115.001(a) of the Texas Trust Code and Section 37.005 of the Texas Civil Practice and Remedies Code. The Texas Property Code describes the following jurisdiction of district courts regarding trust disputes: “[A] district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts” Tex. Prop. Code § 115.001(a).

18. This Court has *in rem* jurisdiction over the Trust because the Trust is administered in Texas.

19. To the extent necessary, this Court has personal jurisdiction over Respondents. Each Respondent has sufficient contacts with Texas. For those Respondents who are adults, other than Olivia, each has been aware that the Trust has been administered in Texas for more than a decade, have received distributions from the Trust in Texas, and have continuously sent and received communications to and from the Co-Trustees about the Trust from Texas. Respondents who were minors during that period nonetheless received Trust-related communication from the Texas Co-Trustees and received distribution on their behalf originating from Texas. Additionally, given the *in rem* nature of this proceeding, and that all necessary parties to this matter have been

properly named, notified and provided an opportunity to participate in the proceeding, personal jurisdiction over Respondents is established.

20. Venue is proper in this Court under Section 115.002(b)(2) of the Texas Trust Code because the situs of the administration of the Trust is maintained and has been maintained in Dallas County, Texas, during the four-year period preceding the filing of this action. Tex. Prop. Code § 115.002.

FACTS

21. The Trust was created by the 1975 Trust Agreement as modified by that certain Final Judgment Modifying Trusts and Approving Settlement Agreement, dated August 5, 2011, in Case No. 05-542-P2 in Probate Court Number Two of Dallas County, Texas, and as subsequently modified by the Order Granting Application to Modify Trusts, dated February 9, 2012, in Cause No. 11-4021-P2 in Probate Court Number Two of Dallas County, Texas.

22. The Co-Trustees file this Petition under Chapter 37 of the Texas Civil Practice and Remedies Code and Section 115.001(a) of the Texas Trust Code.

23. Mary Kay Ash, settlor, created the Trust for her son, Richard, and his lineal descendants. Richard's lineal descendants are Terri Rogers, Richard ("Rick") Rogers II, Ryan Rogers, Aaron Ivie, Geoffrey ("Michael") Ivie, Brendan Ivie, Natalie Ivie, Richard ("Flip") Rogers III, Renee Rogers, Mariah Bay, Marissa Rogers, E.R., and E.I.

24. Mary Kay Ash also created other trusts (not at issue in this Petition) for her other children and their descendants, which divided into eleven other trusts. Mary Kay Ash originally conveyed stock of the family business to each trust. The assets in the trusts have grown and diversified over time. Eventually some of the trusts split, and new trusts were created, ultimately becoming sixteen family trusts.

25. All sixteen family trusts were separately managed. In late 2021, Mary Kay Holding Corporation formed Golden Rule Management LLC to create administrative ease and efficiencies in managing the family's trust-owned investment portfolios. Golden Rule Management is the general partner of Golden Rule Investments, LP, the limited partnership to which the sixteen family trusts, including the Trust at issue here, transferred assets in exchange for limited partnership interests on January 1, 2022. Mary Kay Holding Corporation owns Golden Rule Management, and Ryan is Golden Rule Management's Manager.

26. Until October 22, 2025, Richard was on the Mary Kay Holding Corporation's Board of Directors. In that capacity, Richard received information regarding the creation of Golden Rule Management and Golden Rule Investments. And, as a Mary Kay Holding Corporation Board Member, Richard approved the establishment of Golden Rule Management and Golden Rule Investments. He also approved the initial \$2 million that funded Golden Rule Management.

27. Under the Trust, neither notice to, nor consent of, the beneficiaries is required to invest Trust property in Golden Rule Investments. Section 2(A)(2) of the Trust provides:

[T]he Trustee shall have as wide a latitude in the selection, retention, or making of investments as an individual would have in retaining or investing his own funds (including the power to manage, compromise, adjust, indulge, extend, renew, invest and re-invest) and shall not be limited to, nor be bound by or governed by, any rules of law, statutes, or regulations respecting investments by trustees.

28. The Co-Trustees provided the beneficiaries with notice about the creation of the Golden Rule entities—even though they were not required to do so. The Co-Trustees also provided the beneficiaries with an opportunity to ask questions about the structure of the Golden Rule entities.

29. Turning back to the Trust at issue in this Petition, Richard and Republic National Bank of Texas were the original co-trustees from 1975 to 2012. Having served as co-trustee for close to four decades, Richard is fully aware of the Trust, its terms, and its assets. In 2012, Richard appointed Tolleson as the corporate trustee and Ryan as the personal trustee. Neither Richard nor any beneficiary has contributed any personal assets to the Trust. By virtue of its partnership interest, the Trust owns an interest in the assets and investments that Golden Rule Investments holds.

30. The Trust allows for the distribution of income and principal to Richard and his descendants. Regarding the distribution of the Trust's income, the Trust provides that the Co-Trustees may distribute net income to Richard, as the primary beneficiary, and his lineal descendants in the Co-Trustees' sole discretion, without regard to the equality of any distributions. Section 1(A)(1) of the Trust provides:

[D]uring the existence of the Trusts, my Trustees are authorized and empowered, but are not required, within their discretion, to pay the net income of each Trust to or among one or more or all or none of the following persons: (a) the Primary Beneficiary for whom such Trust is named; (b) the lineal descendants of such Primary Beneficiary; in such amounts and proportions as the Trustee, in their sole and absolute discretion, shall deem advisable from time to time and as believed by the Trustee to be required or necessary for their health, education, support or maintenance in their accustomed manner of living, without regard to equality of distribution; or the Trustee may, in their discretion, accumulate all or any part of said net income.

31. Similarly, regarding distributions of the Trust's corpus, the Trust provides that the Co-Trustees may distribute amounts out of the corpus to Richard, as the primary beneficiary, and his lineal descendants in the Co-Trustees' discretion, based on the same standard applicable to distributions of income. Section 1(A)(1) of the Trust provides:

It is also my desire, and I do direct that the Trustee, in such Trustee's sole discretion may, from time to time, pay to such persons, or any of them, such sums out of the corpus of the Trust as the Trustee may believe, in Trustee's

sole discretion, is required and necessary for their health, education, support or maintenance in their accustomed manner of living; provided, however, that this provision giving the Trustee discretionary power to pay, from time to time, a part of the corpus to such persons for such ascertained purposes, shall be within the sole discretion of the Trustee, exclusively, and shall not be construed as vesting any right, title or claim of any kind or character on the part of any beneficiary in and to the corpus of the Trust Estate.

32. The Trust also provides that in making distributions from the corpus, the Co-Trustees may take into consideration “any other income or property” available to each beneficiary:

In exercising their discretion as to the amount (if any) of such net income or corpus which is to be paid to any of the aforesaid beneficiaries, my Trustee may, but is not required to, take into consideration any other income or property which is available to any such beneficiary from any other source.

33. The Trust also empowers the Co-Trustees to determine all questions about the Trust’s execution and administration. Section 2(A)(7) of the Trust provides:

The Trustee shall have the fullest power to determine all matters as to which any doubt, difficulty, or question may arise, under or in relation to the execution of the Trusts, and every determination of the Trustee, irrespective of whether the same be made upon a question formally or actually raised, involved in any of the actual proceedings of the Trustee, shall bind the beneficiaries and shall not be objected to or questioned upon any ground whatsoever.

34. Finally, the Trust provides that the Trustee Appointer may remove a corporate trustee through delivery of “a written instrument signed and acknowledged by the Trustee Appointer.”⁷ The Trust designates the primary beneficiary (Richard) as the Trustee Appointer. If the primary beneficiary “is deceased or incapacitated” Trustee Appointer duties fall to the primary beneficiary’s “sui juris descendants (with each such descendant’s vote determined on a per stirpes basis)” who “shall act by majority vote.”⁸ The primary beneficiary “shall be deemed to be

⁷ See Subparagraph 4 of Paragraph B of Section Two of the Trust.

⁸ See Subparagraph 3 of Paragraph B of Section Two of the Trust.

‘incapacitated’ ” if “two licensed physicians” opine that the primary beneficiary of the Trust is “unable to effectively manage his or her property.”⁹ That is, if two licensed physicians opine that the primary beneficiary is unable to effectively manage his property, he loses Trustee Appointer power to appoint and remove trustees, which power is placed in the surviving beneficiaries who exercise it by majority vote.¹⁰

35. Richard did not request distributions from the Trust from 1975 through March/April 2021. In fact, Richard made several statements that he expressly did not want any distributions and that the Trust should not distribute more than (i) 4% of the liquid, non-Mary Kay Holding Corporation assets and (ii) 20% of expected Mary Kay Holding Corporation dividend income in any given year to protect the Trust assets for future generations. As a seasoned trustee, Richard was fully aware of his right to seek a distribution for his support and maintenance.

36. In April 2021, Richard for the first time requested distributions from the Trust for his support and maintenance. The Co-Trustees approved \$2,000,000 monthly distributions, which began in May 2021 and have continued to present day.¹¹ These distributions have caused the Co-Trustees to decrease the distributions made to the other beneficiaries (Richard’s children, Rick, Ryan, and Terri).

⁹ *See id.*

¹⁰ *See id.*; *see also* Subparagraph 4 of Paragraph B of Section Two of the Trust.

¹¹ Adding further insult to injury, in or around January 2023, Richard requested an additional \$5,000,000 tax distribution. Kris Johnson, Executive Assistant to Richard, wrote to Tolleson on behalf of Richard: “The distributions I received in 2022 from the 1975 trust resulted in an increased tax liability. I would like to receive an additional distribution of \$5MM to assist with payment of this corresponding tax liability. This distribution is necessary to maintain my standard health and living expenses. This request is in addition to my \$2MM monthly distribution from the Richard R. Rogers 1975 Trust, and also in addition to the monthly health care expenses.”

37. These recent distributions did not include distributions for Richard's extraordinary medical expenses. These medical distributions, together with the \$2 million monthly distributions described above, result in Richard receiving 70% of the Trust distributions, leaving all other beneficiaries to split the remaining 30%.

38. On November 3, 2022, Richard's attorney forwarded to the Co-Trustees a request for a \$103,000,000 catch-up distribution for the periods Richard allegedly should have, but did not, receive distributions—the fourth quarter of 2019 through the first quarter of 2021. During this catch-up period, Richard regularly received detailed Trust statements, knew of distributions to other beneficiaries, and made no objections to those distributions. He also never requested any distributions, and his last communication about distributions indicated that he did not want to receive any distributions. The Co-Trustees relied on Richard's decision to forgo distributions in making investment and distribution decisions, including making distributions to Richard's descendants—decisions they would not have made had they known Richard intended to retroactively seek substantial distributions dating back to 2019. In December 2022, the Co-Trustees responded to Richard's demand and asked Richard for information about his current and historical assets, income, and expenses so that the Co-Trustees could evaluate Richard's "catch-up" payment demand in accordance with their fiduciary duties to all beneficiaries. Richard provided incomplete, vague, and incorrect information.

39. In 2023, Richard, Nancy, and their attorneys met with the Co-Trustees at Richard's house to discuss his \$2,000,000 monthly distribution. The Co-Trustees explained that the Trust was making the monthly distributions to Richard on an emergency basis, and that they needed to evaluate Richard's financial situation for the distributions to continue. The Co-Trustees were not singling Richard out. Around that time, the Co-Trustees made similar requests to Ryan, Rick, and

Terri. But Richard produced only a limited summary of his expenses, and has yet to provide any information to support his recent claim that he has depleted his savings account. In fact, the documents he provided created more questions than they answered. Certain categories of information were vague and broad. The Co-Trustees had reason to believe that the information Richard provided was, at the very least, incomplete because it did not include any information regarding Richard's financial situation prior to 2022, including the dividend payments he received from Mary Kay Holding Corporation. Nevertheless, out of concern for Richard's health and maintenance, and with his children agreeing to temporarily decrease their distributions to less than half of what they received in 2021, the Co-Trustees temporarily approved continued monthly distributions to Richard through the end of 2024.

40. Given the unsustainable nature of Richard's requests, the Co-Trustees sought additional, more detailed information to allow them to more completely assess Richard's financial need, and develop a workable, long-term solution. But Richard did not provide any more information until April 2024, and the information he provided conflicted with what he provided previously. Richard has not provided any additional information since April 2024, despite the Co-Trustees' additional requests.

41. The Co-Trustees also distributed the \$5,000,000 Richard requested in 2023 to help him pay his personal taxes.

42. Since May 2023, the Co-Trustees repeatedly have asked Richard for face-to-face meetings to discuss his health and his needs. Richard has declined each of those invitations. As a result, the Co-Trustees have been largely cut-off from Richard. This is especially concerning given that Ryan is Richard's son.

43. In the fall of 2023, through his attorneys, Richard asked questions about the creation of Golden Rule Investments, which Richard approved as a Mary Kay Holding Corporation Board Member and which had been operating for over a year at that point. Nevertheless, the Co-Trustees held a meeting with Richard's attorneys to discuss Golden Rule Investments, its creation, its operation, and the benefits that it provides to the Trust and Golden Rule Investments' other owners. The Co-Trustees also provided additional documents and information to Richard's attorneys.

44. In November 2023, the Co-Trustees received correspondence from new attorneys acting on behalf of Richard. This correspondence made various, unjustified allegations against Ryan. The Co-Trustees responded to the correspondence, demonstrating that Richard's attorneys' allegations were false, and providing documents to Richard's new attorneys that substantiated the Co-Trustees' response.

45. In April 2024, Richard's new attorneys sent additional correspondence, which once again made unfounded accusations and allegations. The attorneys increased Richard's catch-up distribution request to \$138,181,228. Yet again, Richard's new attorneys did not provide any factual support for this huge financial request and did not provide any information about Richard's personal financial position during the relevant time period.

46. On April 29, 2024, Richard's new attorneys provided information about Richard's income and expenses from 2019 to 2023.¹² But Richard still has not provided information about his personal assets, his joint assets, or his wife's assets to which he has access, or any information pertaining to his savings account. Considering the \$138,000,000 catch-up distribution request

¹² For the avoidance of doubt, the information provided on April 29, 2024, is the same information set forth in paragraph 39. Richard only provided "financial" information on two occasions—once in May 2023 and once in April 2024. Neither document supports Richard's claim that his savings are being depleted, as neither provides any information related to his savings account(s).

(raised to \$154,000,000 in Richard's counterclaim), the \$2,000,000 monthly distributions, the \$66,600 monthly medical payments¹³, and other miscellaneous requests (including the \$5,000,000 tax liability payment), if Richard continues at this pace for another five years, he will have requested more than 39.5% of the Trust's corpus and 54% of the Trust's liquid assets since 2021. The Co-Trustees believe that Richard has a substantial personal estate, though they have not received information to substantiate his net worth. The Co-Trustees also believe that the requested "catch-up" distribution is sought to increase Richard's personal estate, which, based on information and belief, individuals or entities who are not Trust beneficiaries (like his third wife, Nancy) will inherit. Making the requested catch-up distribution to Richard would exclude the other Trust beneficiaries, violate the Trust's purpose, and defy Richard's previously stated intentions.

47. As detailed above, the Co-Trustees endeavored to address Richard's requested "catch-up" distribution, but they have been unable to do so given other beneficiaries' concerns, questions, and demands. Despite the Co-Trustees' best efforts—including dozens of calls and meetings with the beneficiaries and their counsel, as well as timely responses to the beneficiaries' information requests—there is no clear resolution. Now, the Co-Trustees are caught in a gridlock: they must discharge their fiduciary duties to both Richard and the other beneficiaries, who have polarizing views on Richard's requested distributions. Furthermore, the Co-Trustees have independent reasons to believe that Richard is not acting solely of his own volition and have moved for an independent medical examination.

¹³ Until 2024, medical expenses were reimbursed on a request-by-request basis. However, starting in 2024, the Trustees began providing monthly medical expenses based on an average of prior years' requests.

48. Presently, Richard has not provided the Co-Trustees with information sufficient to support his enormous “catch-up” distribution demand. That, when coupled with other beneficiaries’ concerns regarding a lump sum payment to Richard and the Co-Trustees’ own concerns regarding Richard’s mental and physical health, has led the Co-Trustees to this Court for a determination of whether the Trust must pay Richard the more than \$130,000,000 he has requested.

49. The Co-Trustees are also concerned that the large “catch-up” distribution request by Richard is not a voluntary request made by him alone, because it is contrary to Richard’s own prior guidelines, statements, and actions. The Co-Trustees are concerned that non-beneficiaries are unduly influencing Richard, resulting in his large distribution demands.

50. Of utmost concern, Richard is 82 years old and in poor health. He is wheelchair bound, medicated, and relies on others to care for him. Richard’s visitations and conversations have been limited and restricted.

51. For the past three years, Nancy is frequently, if not always, present when Richard meets with the Co-Trustees. She is not a Trust beneficiary, nor does she have any children who are descendants of Richard who would require her to be involved in the Trust. In December 2023, Richard attended one meeting of the beneficiaries of the Trust, and Nancy was also present. Richard appeared via Zoom and, shortly after logging in, his camera was turned off and he was muted. The Co-Trustees asked Richard a question, and he provided a one-word answer before his sound was again muted for him.

52. In 2022, Richard undertook estate planning changes, including gifting half of his Mary Kay Holding Corporation stock to Nancy.

53. Other concerns include sudden changes in Richard’s advisors. Richard had retained and worked with the same attorneys for nearly twenty years. Suddenly, in November 2023, new, non-Dallas based attorneys appeared on Richard’s behalf to pursue meritless claims. These new lawyers have made complaints about another trust’s investments that were originally made at *Richard’s* request, complained about investment-vehicle structures that *Richard* himself previously approved, and directed vicious, *ad hominem* attacks against Ryan—Richard’s own son, attacks that Richard later asserted he was not aware of.

54. In November 2024, Richard’s attorneys and Nancy attempted to remove Tolleson as the Trust’s corporate Trustee. The removal was ineffective under the Trust document,¹⁴ and was otherwise ineffective both because Richard lacked sufficient mental competence to execute the removal and because he was under undue influence.

55. Richard’s lineal descendants are Terri Rogers, Rick Rogers, Ryan T. Rogers, Aaron Ivie, Michael Ivie, Brendan Ivie, Natalie Ivie, Flip Rogers III, Renee Rogers, Mariah Bay, Marissa Rogers, E.R., and E.I. In February 2025—months after the Co-Trustees initiated the present suit—the 301st District Court of Dallas County entered a Final Order of Adoption, finalizing Richard and Nancy’s adoption of a 22-year-old, adult woman: Olivia Abbott. Notably, neither Richard nor his counsel informed the Co-Trustees about the adoption until well after it was finalized.

56. The Trust indicates that the Co-Trustees have the discretion to distribute net income and corpus to the primary beneficiary and his “lineal descendants.” Upon Richard’s death, the Co-Trustees are to divide the Trust into equal shares so that a share is set aside for each of Richard’s children who is then living and for each of Richard’s children who is not then living but who leaves

¹⁴ Tolleson’s counsel specifically informed Richard’s counsel that the purported removal did not comply with either the Trust’s terms or Texas law, but Richard’s counsel never attempted to cure these errors—presumably because they cannot.

one or more living “lineal descendants.” A deceased child’s share is further divided into equal shares for such deceased child’s living children or lineal descendants.

57. The Trust states, “The words ‘child’, ‘children’, ‘Primary Beneficiary’, ‘issue’, ‘lineal descendant’, or ‘descendant’, wherever used in this Trust Instrument shall be deemed and held to include adopted persons; however, the natural heirs of any adopted person shall not inherit through such adopted person in ascending degree.”¹⁵ This provision does not say anything about adult adoptees and does not state that Mary Kay Ash intended for adult adoptions to create new Trust beneficiaries.

58. In 1975, when the Trust was created, an adult adoptee could only inherit *from* her adopting parents—not *through* them. See *In re Ray Ellison Grandchildren Trust*, 261 S.W.3d 111, 122–24 (Tex. App.–San Antonio 2008, pet. denied). That is, when it came to the adopting parents or their estates, an adult adoptee had all of the rights of a natural child. *Id.* But when it came to everyone else other than the adoptive parents, Texas courts applied the “stranger to the adoption rule,” under which the adult adoptee was treated as if no adoption had occurred. *Id.* So the adult adoptee could inherit *from* their adoptive parents, but not *through* them from someone who was a “stranger to the adoption.” *Id.*

59. There is a genuine dispute among the other beneficiaries regarding whether Olivia Abbott is a beneficiary of the Trust as it is likely that Mary Kay Ash did not contemplate or intend for adult adoptees to be “adopted persons” under the definition of descendant.

REQUEST FOR DECLARATORY RELIEF

60. The Co-Trustees seek declaratory relief. Under Texas Civil Practice and Remedies Code Section 37.005, a “trustee” may “have a declaration of rights or legal relations in respect to

¹⁵ See Paragraph C of Section One of the Trust.

the trust . . . to determine any question arising in the administration of the trust” or to direct the “trustees to do or abstain from doing any particular act in their fiduciary capacity.” Tex. Civ. Prac. & Rem. Code § 37.005; *see also id.* § 37.004 (“A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.”).

61. In addition, the Texas Trust Code provides: “[A] district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to: (1) construe a trust instrument; . . . (4) determine the powers, responsibilities, duties, and liability of a trustee; . . . (6) make determinations of fact affecting the administration, distribution, or duration of a trust; (7) determine a question arising in the administration or distribution of a trust; (8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle; (9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts” Tex. Prop. Code § 115.001(a).

62. The Co-Trustees request a declaration:

- a. that on a yearly basis, all beneficiaries are required to provide a budget, balance sheet, income and expense statements, and any other document which the Co-Trustees request in order to assess the distribution amount to be made to each beneficiary based on the “health, education, support and maintenance” (“HEMS”) standard;

- b. that the Trust does not need to make Richard's requested lump-sum "catch-up" payment, which Richard recently valued at approximately \$154,000,000;
- c. that Co-Trustees can continue providing the \$2,000,000 monthly distributions to Richard, but do not need to make any monthly distributions beyond that amount, unless Richard demonstrates additional need, with such supporting financial documents as the Co-Trustees may request;
- d. that Co-Trustees have appropriately discharged their fiduciary duties by providing distributions to Richard from the Trust since May 2022;
- e. that Co-Trustees have appropriately discharged their fiduciary duties in managing the Trust assets;
- f. that the attempted removal(s) of Tolleson as corporate co-trustee by Richard Rogers or his agents are ineffective and void;
- g. that Richard cannot remove Tolleson as corporate trustee during this litigation; and
- h. determining whether Olivia Abbott is a beneficiary of the Trust.

The Co-Trustees further request the Court determine whether Richard's requests for distributions and his positions over the past several years are of his own volition and are voluntary and free from undue influence.

REQUEST FOR ATTORNEYS' FEES AND COSTS

63. The Co-Trustees also request that they be awarded their costs and reasonable and necessary attorneys' fees from Richard individually and/or the assets of the Trust pursuant to

Section 37.009 of the Texas Civil Practice and Remedies Code and Section 114.064 of the Texas Trust Code, and would show that such an award is just and equitable under the circumstances.

PRAYER

Petitioners ask the Court to enter judgment awarding them the requested declaratory relief set forth herein, award Petitioners their attorneys' fees and costs of suit; and award any and all other relief to which Petitioners are justly entitled.

Dated: December 2, 2025

Respectfully submitted,

By: /s/ John T. Cox III

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**ATTORNEYS FOR PETITIONERS
RYAN ROGERS AND TOLLESON
PRIVATE BANK**

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 2025, the foregoing document was filed and served on all counsel of record by electronic case filing in accordance with the Texas Rules of Civil Procedure.

/s/ John T. Cox III

John T. Cox III

Exhibit A

TRUST INSTRUMENT¹ GOVERNING

the

MARY KAY ASH 1975 TRUSTS

Dated: October 3rd, 1975

As Modified by:

Final Judgment Modifying Trusts and Approving Settlement Agreement

Dated August 5, 2011

and

Order Granting Application to Modify Trusts

Dated February 7, 2012 (the "Order")

NOTE: This instrument applies to all separate 1975 Trusts except for the separate 1975 Trust established for the benefit of Kathlyn Elizabeth Reed Kerr.

¹ All references to "this instrument" herein shall mean the 1975 Trust Agreement as modified by that certain Final Judgment Modifying Trusts and Approving Settlement Agreement, dated August 5, 2011, in Case No. 05 542 P2 in Probate Court Number Two of Dallas County, Texas (the "Judgment"), and as subsequently modified by the Order Granting Application to Modify Trusts, dated February 7, 2012, in Cause No. 11-4021-P2 in Probate Court Number Two of Dallas County, Texas.

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

KNOW ALL MEN BY THESE PRESENTS:

That I, MARY KAY ASH, of Dallas, Dallas County, Texas, do hereby irrevocably establish and declare these Trusts as follows:

SECTION ONE

I hereby assign, transfer and convey unto my son, RICHARD R. ROGERS, and REPUBLIC NATIONAL BANK OF DALLAS, as "Trustee," such singular term, unless otherwise indicated, referring to one or more Trustees, and their successors in trust, all of my right, title and interest in and to the following separate properties, to-wit: TWO HUNDRED FIFTY THOUSAND (250,000) shares of the Common Capital Stock (ten cents par value) of Mary Kay Cosmetics, Inc., a Texas corporation, evidenced by Certificate Number DU 13113 of the stock book of said Corporation, dated, delivered and being issued in the name of said Trustee concurrently with the execution of this Trust Instrument, upon the terms and conditions herein set forth.

My son, Richard R. Rogers, and his successor individual Trustee is sometimes hereinafter called "Personal Trustee." Republic National Bank of Dallas, and its successor corporate Trustee is sometimes hereinafter called "Corporate Trustee."

Additional property and assets, acceptable to the Trustee including, without limitation, policies of insurance, may hereafter be added to the Trusts herein created by supplemental instruments describing such additional property and declaring the intention that such additional property and assets shall be and become a part of said Trusts, the same as if originally included herein. All properties and assets contributed to the Trusts, including both initial and any subsequent contributions, shall be considered proper Trust Investments and may be retained by the Trustee. The uses, purposes, conditions, provisions and limitations of these Trusts are as follows, to-wit:

A. I direct that the properties comprising these Trusts shall be divided in kind, so far as possible, into three (3) equal shares by my said Trustee, each such share to be administered as a separate and distinct trust, and named after a child of mine as follows:

"MARY KAY - RICHARD R. ROGERS 1975 TRUST";
"MARY KAY - J. BEN ROGERS, JR. 1975 TRUST"; and
"MARY KAY - MARYLYN YVONNE REED 1975 TRUST"².

In making a division of the properties into the Trusts herein created, it being my will and desire that each Trust be comprised of properties of equal value, the Trustee is expressly authorized and permitted to allocate to any particular Trust undivided interests in properties in which the other Trusts may also have and own undivided interests, whether of real or personal property. Each such share shall be held, handled and finally distributed for the benefit of the descendants of mine for whom the particular Trust is named and his or her lineal descendants. The descendants of mine for whom any particular Trust is named is and shall be the Primary Beneficiary of such Trust, and may hereafter be referred to in this instrument, from time to time, as Primary Beneficiary. The Trusts thus created shall be held, handled and disposed of in the following manner:

1. Subject to the limitation set out below with respect to the power of the Personal Trustee to cause distributions of income or corpus to be made to the Personal Trustee or to his or her lineal descendants, during the existence of the Trusts, my Trustees are authorized and empowered, but are not required, within their discretion, to pay the net income of each Trust to or among one or more or all or none of the following persons:

- (a) the Primary Beneficiary for whom such Trust is named;
- (b) the lineal descendants of such Primary Beneficiary;

in such amounts and proportions as the Trustee, in their sole and absolute discretion, shall deem advisable from time to time and as believed by the Trustee to be required or necessary for their health, education, support or maintenance in their accustomed manner of living, without regard to equality of distribution; or the Trustee may, in their discretion, accumulate all or any part of said net income. Any income not so disbursed shall be incorporated into the corpus of the trust fund as an integral part thereof, to be held, administered and distributed in accordance with all the terms,

² Effective August 5, 2011, the assets comprising the Mary Kay – Marylyn Yvonne Reed 1975 Trust are divided into five (5) equal shares with each such share to be administered as a separate trust named for each of Marylyn Yvonne Reed's children: the Mary Kay- Rosslyn Kay Reed Alexander 1975 Trust; the Mary Kay – Dayna Gene Reed Manning 1975 Trust; the Mary Kay – Gena Lynn Reed Tadewald 1975 Trust; the Mary Kay – Mary Kay Yvonne Reed Bair 1975 Trust; and the Mary Kay – Kathryn Elizabeth Reed Kerr 1975 Trust ("Beth's Trust"). The Judgment made additional revisions to Beth's Trust which are not reflected in this instrument.

conditions and limitations applying thereto. The Trustee shall pay such income which is disbursed in accordance with their discretion and for such ascertained purposes in such installments and at such times as, in their judgment, are deemed proper. It is also my desire, and I do direct that the Trustee, in such Trustee's sole discretion may, from time to time, pay to such persons, or any of them, such sums out of the corpus of the Trust as the Trustee may believe, in Trustee's sole discretion, is required and necessary for their health, education, support or maintenance in their accustomed manner of living; provided, however, that this provision giving the Trustee discretionary power to pay, from time to time, a part of the corpus to such persons for such ascertained purposes, shall be within the sole discretion of the Trustee, exclusively, and shall not be construed as vesting any right, title or claim of any kind or character on the part of any beneficiary in and to the corpus of the Trust Estate. In exercising their discretion as to the amount (if any) of such net income or corpus which is to be paid to any of the aforesaid beneficiaries, my Trustee may, but is not required to, take into consideration any other income or property which is available to any such beneficiary from any other source. NOTWITHSTANDING THE BROAD DISCRETION HEREIN GRANTED TO MY TRUSTEES REGARDING THE PAYMENT OF INCOME AND CORPUS, I DO DIRECT THAT DURING THE TIME THAT THE PRIMARY BENEFICIARY OR ANY OF THE PRIMARY BENEFICIARY'S LINEAL DESCENDANTS SHALL BE ACTING AS A PERSONAL TRUSTEE HEREUNDER, HE OR SHE SHALL HAVE NO DISCRETIONARY POWER OR AUTHORITY WHATSOEVER INsofar AS THE TRUST BEARING SUCH PRIMARY BENEFICIARY'S NAME IS CONCERNED WITH RESPECT TO DECISIONS REGARDING THE PAYMENT OF INCOME OR CORPUS TO SUCH PERSONAL TRUSTEE OR TO HIS OR HER LINEAL DESCENDANTS. ALL SUCH DISCRETIONARY POWER OR AUTHORITY WITH RESPECT TO SUCH DECISIONS, INsofar AS THE TRUST BEARING SUCH PRIMARY BENEFICIARY'S NAME IS CONCERNED, SHALL REST ENTIRELY AND EXCLUSIVELY IN THE CORPORATE TRUSTEE. IF THE CORPORATE TRUSTEE SHALL EXERCISE ITS DISCRETIONARY AUTHORITY AND POWER TO PAY INCOME OR CORPUS TO OR FOR THE BENEFIT OF THE PERSONAL TRUSTEE OR THE PERSONAL TRUSTEE'S LINEAL DESCENDANTS, SUCH PAYMENTS SHALL BE MADE, AS STATED ABOVE, ONLY FOR THE ASCERTAINED PURPOSE OF PROVIDING FOR THEIR HEALTH, EDUCATION, SUPPORT OR MAINTENANCE IN THEIR ACCUSTOMED MANNER OF LIVING.

2. In the event that the Primary Beneficiary is my child or my grandchild, upon the death of the Primary Beneficiary (the "Deceased Primary Beneficiary"), the Trustee shall divide the trust bearing the Deceased Primary Beneficiary's name into equal shares so that a share is

set aside (i) for each child of the Deceased Primary Beneficiary who is then living; and (ii) for each child of the Deceased Primary Beneficiary who is not then living but who leaves one or more lineal descendants who is then living, with each such share to be administered as a separate and distinct trust (each a "Divided 1975 Trust") named after the child of the Deceased Primary Beneficiary for whom (or for the descendants of whom) such separate trust is established. In the event that the deceased child of the Deceased Primary Beneficiary is my grandchild (a "Deceased Grandchild"), the Divided 1975 Trust shall be further divided into equal shares so that a share is set aside (i) for each child of such Deceased Grandchild who is then living; and (ii) for each child of the Deceased Grandchild who is not then living but who leaves one or more lineal descendants who is then living, with each such share to be administered as a separate and distinct trust (each also a "Divided 1975 Trust") named after the child of the Deceased Grandchild for whom (or for the descendants of whom) such separate trust is established.

Each such Divided 1975 Trust shall be held, handled and disposed of for the benefit of the child or grandchild, as applicable, of the Deceased Primary Beneficiary for whom the particular Divided 1975 Trust is named and his or her lineal descendants. The child or grandchild, as applicable, of the Deceased Primary Beneficiary for whom any particular Divided 1975 Trust is named is and shall be the Primary Beneficiary of such Divided 1975 Trust, and may be referred to in this instrument, from time to time, as Primary Beneficiary. The Divided 1975 Trusts thus created by such division shall be held, handled and disposed of as described in Paragraph 1. above.

In the event that all of the issue and lineal descendants of the Deceased Primary Beneficiary of the Trust are not living at the time of the Deceased Primary Beneficiary's death, so that there are no beneficiaries of said Trust created and named for such Deceased Primary Beneficiary, then and in that event only, the properties comprising the Trust Estate bearing the name of such Deceased Primary Beneficiary shall be distributed as follows:

- (a) If the Deceased Primary Beneficiary is my child, to my then living lineal descendants, per stirpes, provided, however, that if any trust for the benefit of such living descendants is then in existence pursuant to this instrument, such remaining properties comprising the Trust Estate bearing the name of such Deceased Primary Beneficiary shall not be paid outright to such then living descendants, but shall instead be added to the trust established pursuant to this instrument for the benefit of such living descendant to be held, handled and disposed

of as a part of such separate trust as though originally included therein.

- (b) If the Deceased Primary Beneficiary is my grandchild, to the then living lineal descendants of the parent of the Deceased Primary Beneficiary who is my child, per stirpes, or if no such descendant is living, to my then living lineal descendants, per stirpes. Notwithstanding the foregoing, if any trust for the benefit of such then living descendants is then in existence pursuant to this instrument, such remaining properties comprising the Trust Estate bearing the name of such Deceased Primary Beneficiary shall not be paid outright to such then living descendants, but shall instead be added to the trust established pursuant to this instrument for the benefit of such then living descendant to be held, handled and disposed of as a part of such separate trust as though originally included therein.

3. In the event that any Primary Beneficiary of a Divided 1975 Trust and all of his or her issue and lineal descendants shall die prior to termination of the Divided 1975 Trust created and named for said Primary Beneficiary, so that there are no beneficiaries of said Divided 1975 Trust created and named for a Primary Beneficiary, then and in that event only, the properties comprising the Divided 1975 Trust Estate bearing the name of such Primary Beneficiary shall be disposed of as follows:

- (a) If the Deceased Primary Beneficiary of a Divided 1975 Trust is my grandchild, to the then living lineal descendants of the parent of the Deceased Primary Beneficiary who is my child, per stirpes, or if no such descendant is living, to my then living lineal descendants, per stirpes. Notwithstanding the foregoing, if any trust for the benefit of such then living descendants is then in existence pursuant to this instrument, such remaining properties comprising the Trust Estate bearing the name of such Deceased Primary Beneficiary shall not be paid outright to such then living descendants, but shall instead be added to the trust established pursuant to this instrument for the benefit of such then living descendant to be held, handled and disposed of as a part of such separate trust as though originally included therein.
- (b) If the Deceased Primary Beneficiary of a Divided 1975 Trust is my great grandchild, to the then living

lineal descendants of the parent of the Deceased Primary Beneficiary who is my grandchild, per stirpes, or if no such descendant is living, to the then living lineal descendants of the grandparent of the Deceased Primary Beneficiary who is my child, per stirpes, or if no such descendant is living, to my then living lineal descendants, per stirpes. Notwithstanding the foregoing, if any trust for the benefit of such then living descendants is then in existence pursuant to this instrument, such remaining properties comprising the Trust Estate bearing the name of such Deceased Primary Beneficiary shall not be paid outright to such then living descendants, but shall instead be added to the trust established pursuant to this instrument for the benefit of such then living descendant to be held, handled and disposed of as a part of such separate trust as though originally included therein.

4. If not sooner terminated because of failure of beneficiaries, each particular Trust created hereunder shall terminate upon the expiration of twenty one (21) years from and after the date of death of the last survivor of myself; my children, MARYLYN YVONNE REED, RICHARD R. ROGERS and J. BEN ROGERS, JR.; and such of my grandchildren as are living at the date of execution of this Trust, same being, as of the date of execution of this Trust, ROSSLYN KAY REED ALEXANDER, GENA LYNN REED, MARY KAY YVONNE REED, KATHLYN ELIZABETH REED KNIGHT, DAYNA GENE REED, TERRI KATHERINE ROGERS, RICHARD R. ROGERS, II, DEAN ALAN ROGERS, KAREN LYNN ROGERS and ANTHONY DAVID ROGERS. Upon termination of each particular Trust, the Trustee shall divide, deliver and distribute the trust properties, including any accumulated but undistributed income of the particular Trust, in fee simple unto the Primary Beneficiary of such trust, if living, and, if not unto the then living lineal descendants of the Primary Beneficiary for whom such particular Trust is named, in equal shares, per stirpes, so that the descendants, collectively of any deceased Primary Beneficiary shall take such properties. In respect of properties whose situs is in a state other than Texas, no Trust herein provided for shall extend beyond the period provided for under the rule against perpetuities or other laws in effect in such state.

5. In the event all beneficiaries of all trusts shall fail, then I direct that these trusts shall terminate and the assets thereof shall be distributed to my heirs at law as determined as if I had died immediately after the event causing such termination, not survived by spouse or descendants, pursuant to the Statutes of Descent and Distribution then in effect in the State of

Texas relating to personal property only.³

During minority or physical or mental incapacity of any beneficiary to whom the income or corpus of this Trust may be paid by the terms hereof, the Trustee may make such payments in any one or more of the following ways as in their opinion shall be most desirable:

1. To such beneficiary directly;
2. To a duly qualified legal representative of such beneficiary;
3. To a relative or friend of such beneficiary, to be applied for the benefit of such beneficiary;
4. By the Trustee's expending the same directly for the care, support, maintenance or education of such beneficiary;
5. Purchase for said beneficiary any form of annuity or life insurance policy on his or her life or on the lives of any one in whom said beneficiary may have an insurable interest.

The Trustee shall not be responsible for the application of any payment after the same has been made to any person in accordance with the provisions of the Trusts herein created, and the Trustee's determination of such minority or incapacity, physical or mental, of any beneficiary hereunder shall be exclusive for the purpose of this trust.

C. The words "child", "children", "Primary Beneficiary", "issue", "lineal descendant", or "descendant", wherever used in this Trust Instrument shall be deemed and held to include adopted persons; however, the natural heirs of any adopted person shall not inherit through such adopted person in ascending degree.

D. No beneficiary of any Trust shall have the right or power to alienate, dispose of, anticipate, or in any way encumber, or create a charge upon, the income or corpus to which such beneficiary may be or become entitled under any of the provisions of this Trust Instrument and neither the income nor the corpus of these trust estates shall be subject to attachment, garnishment, execution, receivership, nor in any manner ever be subjected to any indebtedness of any beneficiary hereunder or be liable to be taken over by the legal process whatever, and the bankruptcy of any beneficiary or the assignment

³ Order, at Section A, pp. 4-10.

for the benefit of creditors by any beneficiary, of any anticipated income or corpus to be or which may be received by any such beneficiary shall be wholly null and void, and of no force and effect, and in like manner, any attempted transfer or conveyance by any beneficiary of such income or corpus shall be of no force and effect.

E. Distributions may be made in money or in property other than money or in both. Distributions to one beneficiary need not be composed, either individually or in the aggregate, of the same kinds or proportions of property as distributions to any other beneficiary. Distributions in property other than money shall be at the fair market value of such property at the time they are made, as determined by the Trustee. The reasonable business discretion of the Trustee as to valuation and distribution shall be binding and conclusive upon any party in interest.

SECTION TWO

A. Except as otherwise specifically indicated below, the Trustees jointly, and their successors, while acting hereunder, shall have and exercise the following rights, powers and privileges which exercise shall be subject to the following conditions, provisions, duties, and limitations, which shall be in addition to and not in limitation of their common law and statutory powers, including all powers granted to trustees by the Texas Trust Act , Article 7425(b) R.C.S., 1925, and any amendments thereto:

1. The Trustee may employ and compensate, out of principal or income or both as the trustee deems proper, agents, attorneys-in-fact, accountants, broker, investment counsel, attorneys-at law, appraisers, custodians, and other specialists, advisers, and assistants whose services are deemed by the trustee to be desirable for the proper administration of the Trust. No Trustee shall be liable for the acts, omissions or defaults of any, agent or other person to whom duties may be properly delegated hereunder (except officers or regular employees of any Corporate Trustee) if such agent or person was appointed with due care. No Trustee shall be liable for failure to contest the accounts of any Trustee or otherwise to compel any Trustee to redress a breach of trust, unless in writing requested to do so by a beneficiary or a guardian or guardian-ad-litem thereof.

2. Subject to the limitations, conditions and trusts hereinafter specified, the Trustee shall have as wide a latitude in the selection, retention, or making of investments as an individual would have in retaining or investing his own funds (including the power to manage,

compromise, adjust, indulge, extend, renew, invest and re invest) and shall not be limited to, nor be bound or governed by, any rules of law, statutes, or regulations respecting investments by trustees. Investments of the Trust estate may be of a wasting nature and may be made or retained with a view to possible increase in value. The Trustee shall not be required to comply (and shall not be liable for failing to comply) with the "prudent investor rule" set forth in the Texas Uniform Prudent Investor Act in making its investment and management decisions with regard to the Trust estate, but shall be subject to the duties of loyalty and impartiality prescribed in the Texas Uniform Prudent Investor Act. The Trustee is expressly authorized to invest and reinvest all or any part of the trust property without regard to any requirement to diversify investments under the Texas Trust Code or other applicable law, and the Trustee shall not be liable for loss due to lack of diversification of investments. Further, the Trustee may retain any property or interest in property transferred to the Trustee under this instrument or otherwise by a grantor or testator (provided always that such property is acceptable to the Trustee), regardless of the nature of that property and regardless of any requirement under the Texas Trust Code or other applicable law to diversify investments, and the Trustee shall not be liable for loss due to lack of diversification of investments attributable to the retention of that property.⁴

3. Stock dividends and capital gains shall be treated as principal. Except as herein provided, the Corporate Trustee shall have full power to determine in all questionable cases, the manner in which expenses are to be borne, and in which receipts are to be credited as between corpus and income, and also to determine what shall constitute income or net income, and what shall constitute corpus. In determining such matters, the Corporate Trustee may give consideration to the provisions of Articles Twenty-Six to Thirty-Six, inclusive, of the Texas Trust Act, but shall not be bound by such provisions.

3A. The Corporate Trustee shall have full power and authority, out of rents, profits, or other income received, to set up reserves for taxes, assessments, insurance premiums, repairs, improvements, depreciation, obsolescence and general maintenance of buildings or other property; and to set up reserves also for the equalization of payments to or for beneficiaries of the Trusts.

4. The Trustee shall have absolute discretion to pay, compromise, or settle any claims of any character that may be presented against the trust estates, whether allegedly based on legal, or solely on moral obligations.

⁴ Order, at Section A, pp. 10-11.

5. The Corporate Trustee shall keep records of proceedings, and such records shall be open at all times to the inspection of the beneficiaries of these Trusts or, if the beneficiaries are under legal disability, of their legal representatives. The Corporate Trustee shall retain physical possession of the assets comprising the Trusts. The Corporate Trustee, furthermore, shall render the beneficiaries, or their legal representatives, annually, complete detailed statements of receipts, expenditures and proceedings for the past year and shall give information relative to these Trusts to the beneficiaries hereof, at the request of such beneficiaries.

6. The powers and authority granted to any Trustee shall not be limited by the fact that such Trustee is a bank or financial institution and no Trustee shall be subject to limitations or restrictions imposed upon a bank or financial institution or upon fiduciaries generally with respect to the type of investment any such institution or Trustee may make of its own funds or the funds of others. Specifically, such a Trustee may retain, acquire, or otherwise deal in any of its own capital stock, may deposit trust funds with itself as a bank, may contract or otherwise enter into transactions between itself as Trustee and as a bank or any of its affiliates or any other trusts for which it is acting as Trustee.

7. The Trustee shall have the fullest power to determine all matters as to which any doubt, difficulty, or question may arise, under or in relation to the execution of the Trusts, and every determination of the Trustee, irrespective of whether the same be made upon a question formally or actually raised, involved in any of the actual proceedings of the Trustee, shall bind the beneficiaries and shall not be objected to or questioned upon any ground whatsoever.

8. Notwithstanding anything contained elsewhere in this Trust (except paragraph 21 of this Section Two which shall control with respect to life insurance), in making determinations and taking action with respect to any and all investments of the Trust, any and all purchases and sale of assets, any and all loans, any and all changes in investments and any and all details of management of the Trust assets, including the making of leases and other contracts affecting the Trust property, the handling of rentals, the borrowing and lending of money, and the making and changing of improvements on the Trust property and the voting of corporate stocks held by the Trust, the Corporate Trustee shall be guided by and follow the judgment, advice and direction of the Personal Trustee. The Corporate Trustee shall not be liable to any person whomsoever on account of any action or nonaction which results from following the judgment, advice, and direction of the Personal Trustee as above provided in any of the matters specified in this Paragraph A.

9. The Trustee may invest and re-invest any and all monies in real and/or personal property of any character including, without limitation,

securities, stocks, or bonds of any character, in the absolute discretion of the Trustee, without restriction to the class of investments which the Trustee is or hereafter may be permitted by law to make; or may loan monies with or without security. Without by inference limiting the general and unlimited powers of investment herein given, the Trustee is expressly authorized in Trustee's sole discretion to invest in petroleum properties of any nature, and at any time to make, execute and deliver oil and gas leases for any term covering any of the properties comprising the trust estates; to pool and/or unitize any part or all of the lands, mineral leaseholds, or mineral, royalty, or other interests in the trust estate with the lands, mineral leaseholds, mineral, royalty, or other interests of other persons, corporations or trusts for the purpose of developing and producing oil, gas and other minerals (or any one or more of them) therefrom, and to make leases or assignments granting to the lessee or assignee the right to pool and/ or unitize.

10. Generally, the Trustee may have any kind of dealing which he could have with any other person (including lending money to, borrowing money from, selling assets to, and purchasing assets from); with any beneficiary of the Trust, with the personal representative of any beneficiary of the Trust itself; or with any corporation, estate, trust, or other entity or organization in which it has an interest or to which it stands in any fiduciary or other relationship or which it represents in any foregoing, specifically, the Trustee may deal with and purchase property from, or sell property to, or make loans to or from the trustee, or any of them, in their individual or fiduciary capacity, any beneficiary, or the estate of any beneficiary hereunder, or any other person or trust, whether existing for any beneficiary of a trust hereunder, and whether or not the Trustee hereunder is also the Trustee of any such other trust. Any transactions pursuant to this sub-paragraph shall be on an "arm's length" basis, so that a loan of any part of the income or corpus of the Trust shall be supported by adequate security and a reasonable rate of interest; a purchase of any property shall not be for more than an adequate consideration in money or money's worth; and a sale of any property shall not be for less than an adequate consideration in money or money's worth.

11. The Trustee may retain any and all real and/or personal property which may come into his hands as Trustee, in the form and condition in which it may be, notwithstanding the same be deemed not appropriate for the original investment of trust funds; or may sell and/or exchange all or any of the same if and whenever the Trustee shall deem advisable.

12. The Trustee may sell, lease (for such periods as the Trustee shall deem for the best interests of the Trust), convey, transfer, or exchange, or purchase all or any real and/or personal property, at such prices, and/or for such other consideration, and upon such terms and conditions, as the Trustee shall deem advisable. No purchaser of any property from the

Trustee, and no person who shall loan or advance money to the Trustee, shall be bound to ascertain or to inquire into, the necessity or propriety of any sale or loan, or shall be bound to see to the application of all or any portion of the purchase monies, or the monies loaned or advanced, or other considerations paid, delivered, or advanced to the Trustee. The receipt in writing, of the Trustee for the purchase money or other consideration for any property sold, or money loaned or advanced, shall effectively discharge the purchaser or lender from being answerable for the application thereof.

13. The Trustee may improve and/or repair all or any real property; erect new buildings on all or any real property, or as an addition to or in substitution for buildings at any time existing thereon, of such character and cost and upon such terms of payment as the Trustee shall deem advisable.

14. The Trustee may consent to the extension, refunding, or renewal of any security, obligation, lien, contract or right.

15. The Trustee may borrow money and mortgage real and/or personal property to such extent and upon such terms and considerations and for such purposes as the Trustee shall deem advisable.

16. The Trustee may organize, or cause to be organized, or participate in the organization of, any corporation which, in the opinion of the Trustee, is necessary or proper for the administration of any portion of the trust property.

17. The Trustee may make, execute, and deliver proper receipts, bills of sale, conveyances, assignments, transfers, proxies, powers of attorney, agreements, and other instruments of writing, as the Trustee shall deem advisable in the management and control of the securities and properties constituting the trust estates.

18. The Trustee may acquire or invest in an undivided interest in any property, real or personal, and own, hold, or invest in undivided interests in any property, real or personal, for any trust estate hereunder in which any other trust estate hereunder, or any other trusts, may own or hold undivided interests, or which the Trustee in his individual capacity as distinguished from his capacity as Trustee may own or hold undivided interests, or in which any beneficiary hereunder may own or hold undivided interests.

19. The Trustee may cause any security comprising part of the trust estate to be registered in his name as Trustee or in the name of a nominee (with or without disclosure that the security is part of the assets of the trust estate and with or without a power of attorney for the transfer of the

security attached) or may take and keep any such security in unregistered form and in such condition that it will pass by delivery. The Trustee may exercise all rights and powers incident to the ownership of any security comprising part of the trust estate, including, without limitation, the following rights and powers: to attend corporate meetings and act upon any and all questions that may come before such meetings; to grant proxies (whether general or special, discretionary or nondiscretionary, personal or assignable); to exercise, dispose of, or waive subscription, conversion, and other similar rights and options; to become a party to voting trust agreements; to consent to or dissent from mergers, consolidations, reorganizations, readjustments of capital structures and sales of assets; to serve as a member of any stockholders' or bondholders' protective or other committee; to delegate discretionary powers to any such committee; and, in connection with any of the foregoing, to pay money, incur obligations, deposit securities, execute and deliver any and all assignments, and other instruments, and take any and all other action which to the Trustee may appear to be necessary, desirable, or expedient. No issuer, transfer agent or other agent of any issuer of any securities to which any transaction with any Trustee shall relate shall be under any obligation to ascertain or inquire into the power of such Trustee to purchase, sell, exchange, transfer, mortgage, pledge, lease, distribute, or otherwise in any manner dispose of or deal with any securities or other property held by any Trustee or comprising part of the trust estate.

20. In the event any of the property which is or may become a part of the assets of the Trust is situated in any state other than the State of Texas, in which the Trustee is not qualified to act as Trustee, the Trustee is empowered to name an individual or Corporate Trustee qualified to act in such state in connection with the property situated in that state, as Trustee of such property, and to require such security regarding the performance of duties in that state as may be designated by the Trustee. The Trustee so appointed shall have the rights, powers, privileges and duties and shall be subject to the conditions and limitations of this Trust, except where the same may be modified by the laws of the other state, in which case the laws of the state in which such Trustee is acting shall prevail to the extent necessary. Such Trustee shall be answerable to the Trustee herein appointed for all monies, assets and other properties which may be received by it in connection with the administration of such property. The Trustee hereunder may remove said Trustee, and appoint a successor Trustee at any time upon thirty days written notice given to such appointed Trustee.

21. The Corporate Trustee may retain, buy, and/or maintain policies of life insurance or annuity contracts upon the life of or for the benefit of any beneficiaries of a particular trust or for the benefit of the Trust upon the life of any other person in whom the particular Trust or the beneficiary thereof shall have an insurable interest (except that no part of the corpus or

income of the Trust shall ever be utilized for the purpose of insuring the life of the Settler), including the Trustee's own life, and may make loans upon said policies of life insurance or borrow monies, for the purpose of premium payment or otherwise. The Corporate Trustee shall own and control all incidents of ownership therein to the exclusion of the Personal Trustee. Upon being advised of the death of any person under circumstances such that it will be entitled to receive any proceeds of any policy of insurance upon the life of such person, the Corporate Trustee shall take appropriate steps to obtain such sums of money as shall be due to it under such policy, including double indemnity benefits, if any, and then shall hold the same in trust pursuant to the provisions of this agreement. If any policy of life insurance upon the life of any person has been pledged as collateral for a loan, the Corporate Trustee shall collect only the net proceeds of such policy after the amount due on the loan has been deducted by the lender and shall not seek reimbursement from the executor or administrator of the borrower on account of payment of the amount due on the loan out of the gross proceeds of such policy. The Corporate Trustee may utilize and exercise each and every option and privilege existing after the death of an insured by virtue of the terms and provisions of any policy of insurance on the life of such insured, and may enter into any extra contractual settlement arrangement he deems appropriate with any insurance company carrying any such policy, and may delay making claim for the proceeds of any such policy until it has had such time as it deems necessary to decide whether to exercise any option or privilege therein or to arrive at an extra contractual arrangement with respect thereto. If any payment on any policy of life insurance is contested, the Corporate Trustee shall not be obligated to take any action for collection unless and until it shall have been indemnified to its satisfaction against any loss, liability, or expense, including, without limitation, attorneys' fees, incurred in taking such action. The Corporate Trustee may reimburse itself from any funds which it collects on any policy of life insurance for any advance which it makes for the purpose of effecting collection.

22. The Trustee may do and perform such further acts or things, and take such further steps for the conservation of the trust estates as in Trustee's judgment Trustee may deem necessary or appropriate for the best interests of the estate, and to that end, the Trustee shall have such general powers not limited by the foregoing clauses as may be necessary or proper therefor, and the enumeration of specific powers hereinbefore granted shall not be a limitation upon the exercise of other and further powers reasonably necessary in the management and control of said Trusts, whether the same be of like kind and character to those hereinabove enumerated or not, it being my intention to vest full control and management of the estate hereunder conveyed in the hands of my Trustee during the full term of existence of the Trust herein created.

23. Notwithstanding anything to the contrary contained elsewhere in this agreement: (a) the Trustee shall not lend money to the grantor or any corporation or other entity or organization in which the grantor has a substantial interest, except on adequate security and at an adequate rate of interest; (b) the Trustee shall not otherwise deal with the grantor or any corporation or other entity or organization in which the grantor has a substantial interest, except on terms at least as favorable to the Trust as the terms the Trustee could obtain from strangers; (c) the Trustee shall not arbitrarily take any action which would favor one beneficiary or group of beneficiaries over any other beneficiary or group of beneficiaries; and (d) the Trustee shall not be required to surrender any assets of the trust estate upon being rendered substitute assets in exchange therefor, regardless of the relative values of the assets involved.

B.

1. Resignation of Trustee and Successor Trustee. Any Trustee (whether originally designated herein or appointed as successor) is authorized to resign by filing a written instrument duly acknowledged of record in the Deed Records of Dallas County, Texas, which filing shall immediately deprive the resigning Trustee of all powers as Trustee hereunder, except those powers appropriate to the administration of the Trust during the time required for the transfer of the Trust assets; provided, nevertheless, that thirty (30) days prior to such filing such resigning Trustee shall give written notice thereof to such beneficiaries who are sui juris and could at such time receive income from the Trusts herein created. No purchaser from or other person dealing with any Trustee is obligated to examine such Deed Records and any such person shall be protected in all transactions with any Trustee whether or not any such resignation has taken place.

2. Personal Trustee. In the event of the death or resignation of RICHARD R. ROGERS as Personal Trustee, then and in that event, RYAN THOMAS ROGERS shall act as Personal Trustee hereunder. In the event of the death, resignation, failure, refusal to act or refusal to qualify of the last of RICHARD R. ROGERS and RYAN THOMAS ROGERS to serve as Personal Trustee hereunder, then and in that event the Trustee Appointer shall have the right to:

- a. designate one or more successor Personal Trustees, but only one Personal Trustee may serve at any one time; and
- b. revoke any designation and appointment made under this paragraph B. until such appointment by its terms becomes effective.

Any designation and appointment of a successor Personal Trustee, if any, or a revocation, if any, shall be effected by an inter vivos

instrument duly signed and acknowledged by the Trustee Appointer. Upon the written and acknowledged acceptance of a designation and appointment by a successor Personal Trustee, the instrument designating and appointing such successor Personal Trustee and such successor Personal Trustee's acceptance shall be filed in the Deed Records of Dallas County, Texas. In the event of the death, resignation, failure, refusal to act or refusal to qualify of all of the designated successor Personal Trustees, then and in that event the Corporate Trustee shall act as sole Trustee hereunder until such time as the Trustee Appointer designates a successor Personal Trustee who accepts such appointment.

3. Trustee Appointer. The following persons, in the following order, are designated to serve as Trustee Appointer: (a) the Primary Beneficiary of the trust bearing such Primary Beneficiary's name; or (b) if such Primary Beneficiary is deceased or incapacitated, all of the sui juris descendants (with each such descendant's vote determined on a per stirpes basis) of the Primary Beneficiary of the trust bearing such Primary Beneficiary's name who shall act by majority vote. Thus, for example, if a child of an incapacitated Primary Beneficiary is deceased but at least one other child of the incapacitated Primary Beneficiary is living, all of the sui juris children of such deceased child shall be entitled collectively to one vote. A Primary Beneficiary shall be deemed to be "incapacitated" whenever, in the opinion of two licensed physicians, the Primary Beneficiary is unable to effectively manage his or her property.

4. Removal of Corporate Trustee and Successor Corporate Trustee. A Corporate Trustee may at any time, with or without cause, be removed from its office as trustee hereunder by delivery to it of a written instrument signed and acknowledged by the Trustee Appointer.

5. Appointment of Corporate Trustee. In the event of the removal, resignation, failure or refusal to qualify or act of a Corporate Trustee, the Trustee Appointer shall have the right to appoint a successor Corporate Trustee by an inter vivos instrument duly signed and acknowledged by the Trustee Appointer. Upon the written and acknowledged acceptance of an appointment by a successor Corporate Trustee, the instrument appointing such successor Corporate Trustee and such successor Corporate Trustee's acceptance shall be filed in the Deed Records of Dallas County, Texas. Any successor Corporate Trustee shall be a Qualified Corporation (as defined below). In the event the Trustee Appointer shall for any reason fail to designate a successor Corporate Trustee within a reasonable period of time, the then acting Trustee, or any other interested person, may apply to a court of competent jurisdiction for the appointment of a Qualified Corporation as successor Corporate Trustee.

6. Qualified Corporation. For all purposes of this instrument, the term "Qualified Corporation" means any national or state bank, trust company or other financial institution in the United States (1) having trust

powers and a capital and surplus of at least Ten Million Dollars (\$10,000,000) or assets under management in excess of Two Hundred Fifty Million Dollars (\$250,000,000) and (2) who is not "related or subordinate," as defined in Section 672(c) of the Internal Revenue Code of 1986, as amended, to any beneficiary of a separate Trust established herein.

7. Compensation and Bond. The Trustee shall receive such compensation for its services as Trustee as is reasonable and appropriate for the duties performed and responsibilities assumed not to exceed the amounts charged for comparable services by other fiduciaries in the same general geographic area. Neither the Trustee nor any successor Trustee shall be required to furnish bond.

8. Successor Trustee. Any successor Trustee hereunder shall possess and exercise all powers and authority herein conferred on the original Trustee, unless he be appointed by a court and the court otherwise decrees in the order of appointment. Such successor Trustee named herein shall be responsible only for the assets delivered by the preceding Trustee or his legal representative, and may accept as correct the statement of such predecessor or his legal representative that these constitute all of the assets of the trust estate, without any duty to inquire into the administration or accounting by the preceding Trustee. No successor Trustee shall be held responsible for or by reason of any act or omission of a predecessor in trust.⁵

SECTION THREE

The Trust created hereunder is a Texas trust made in the State of Texas and is to be governed and construed and administered according to the laws of the State of Texas and shall continue to be so governed and construed and administered under the laws of the State of Texas even though administered elsewhere within the United States or abroad.

SECTION FOUR

To the same effect as if it were the original, anyone may rely upon a copy certified by a Notary Public to be a true copy of this Instrument (and of the writing, if any, endorsed or attached hereto) . Anyone may rely upon any statement of facts certified by anyone who appears from the original document or a certified copy thereof to be a Trustee hereunder.

⁵ Order, at Section A, pp. 11-15.

SECTION FIVE

The Trustees hereby accept the Trust herein created , acknowledge receipt of an executed copy of such instrument and of the properties described above as of the date below written, accept appointment as Trustees under such instrument, and agree to fulfill the terms and conditions imposed upon the Trustee thereby.

SECTION SIX

This Trust shall be irrevocable and the Grantor, MARY KAY ASH, hereby expressly acknowledges that she shall have no right or power, whether alone or in conjunction with others, in whatever capacity, to alter, revoke, or terminate these Trusts, or any of the terms of this Trust Instrument, in whole or in part, or to designate the persons who shall possess or enjoy the trust property, or the income therefrom. By this instrument the Grantor intends to and does hereby relinquish absolutely and forever all possession or enjoyment of, or right to, the income from the trust property, whether directly, indirectly or constructively, and every interest of any nature, present or future, in the trust property.

SECTION SEVEN

The trustees of any separate trust established under this instrument for the benefit of a descendant of MARYLYN YVONNE REED shall have no duty to inform, or to respond to a demand for an accounting from, any beneficiary who is not a First Tier Beneficiary (as defined below) of such trust. Only First Tier Beneficiaries shall be entitled to demand an accounting of or other information concerning such separate trust. First Tier Beneficiaries of such separate trust shall be the only beneficiaries who are considered "interested persons" for purposes of Section 115.011 of the Texas Trust Code. The term "First Tier Beneficiary" shall mean: (i) a then permissible current beneficiary of such separate trust; or (ii) a beneficiary who would receive a distribution if such separate trust were terminated at the time in question.⁶

IN TESTIMONY WHEREOF, the Settlor, MARY KAY ASH, and the "Personal Trustee", RICHARD R. ROGERS and REPUBLIC NATIONAL BANK OF DALLAS, "Corporate Trustee", have executed this Trust Instrument in triplicate originals this 3rd day of October, 1975.

⁶ Judgment, pp. 5-7, Section (f)(1)-(4).

Exhibit B

December 28, 2009

Terri Rogers

[REDACTED]
[REDACTED]

Rick Rogers

[REDACTED]
[REDACTED]

Ryan Rogers

[REDACTED]
[REDACTED]

Re: 2010 Trust Distributions

Dear Terri, Rick and Ryan:

The trusts created by Mary Kay Ash both during her lifetime and through her will are a huge component of our family's wealth. Dramatic improvement in both the financial condition and operating consistency of Mary Kay Holding Corporation (the trusts' largest single investment) has greatly increased the value of these trusts in recent years. In addition, dividends accumulated on the Mary Kay Stock have made the assets of the trust much more liquid than in years past. The Trustees of the 1975 and Article V trusts have discussed distributions from these trusts going forward, and, beginning in 2010, will implement some new policies with regard to trust distributions.

As you are aware, a key difference between the Article V trust created by Mary Kay's will and the family trust she created in 1975 relates to its status for the purpose of Generation Skipping Transfer Taxes ("GST-Taxes"). The Article V trust is not exempt from GST-Taxes. Therefore, the assets remaining in that trust will be taxed at the maximum estate tax rate in effect with the passing of each generation of beneficiaries. The impact of these taxes could be very significant over the term of the trust. On the other hand, the 1975 trust is not subject to GST-taxes because it was established and irrevocable prior to September 25, 1985. Generally, any trust established after that date whether by will or by trust agreement is subject to GST-Taxes.

It would not be tax efficient for you or your children to receive distributions from the Article V trust because those distributions would be subjected to GST-Taxes. Instead it is best for you and your children to be supported by the GST-exempt 1975 family trust. Thankfully, the trusts have accumulated sufficient liquid assets to support the beneficiaries and also provide for the long term growth of the trusts' assets.

With those key points as a backdrop, the trustees have devised guidelines for trust distributions in 2010. The trustees' intent is that these guidelines be used to determine your distributions until a material change in the assumptions used to formulate the guidelines merits re-evaluation. These

guidelines have been designed to balance three essential elements: provide generously for the adult beneficiaries consistent with the standards provided in the trust; preserve enough liquid assets to secure similar levels of support for future beneficiaries; and minimize the amount of GST-Taxes paid over time.

The trustees have two readily available sources of cash to consider in planning distributions for any given calendar year: the amount of liquid non-MKHC assets held in the trust at the end of the calendar year, and the expected dividend income on the MKHC stock held in the trust for the coming year.

For the 1975 family trust, the trustees believe that they can distribute up to 4% of the liquid non-MKHC assets and 20% of expected MKHC dividend income for the upcoming calendar year, consistent with their fiduciary duties. This allows the liquid assets of the trust to grow more quickly by reinvesting a greater percentage of the dividend income and keeping a larger percentage of the liquid assets invested to grow over time at a rate greater than the expected rate of inflation.

Going forward, the trustees expect to consider phasing in a trailing 3-year average of year-end liquid assets in order to smooth out potential volatility and avoid dramatically increasing or decreasing the level of distributions from year to year.

Applying these guidelines, the monthly distributions determined for each of you for 2010 is \$260,000 per month. The trustees believe this will meet your needs in the near term, with an objective of enabling you to maintain your standard of living for years to come.

The assumptions used to determine these guidelines indicate that the distributions from the 1975 family trust will grow at a rate slightly greater than the expected rate of inflation. Ultimately, this will allow for a gradual increase in the purchasing power of this support as well as the capacity to support more beneficiaries over time as the family grows. Similarly, the liquid assets in the trust are expected to grow at a rate greater than the expected rate of inflation, allowing for larger distributions and the ability to support a larger number of future beneficiaries.

The distributions from the trust are going to be subject to income taxes to the extent that the trust has taxable income. Under the guidelines in place for 2010, income taxes associated with the distributions and other taxes will **not** be reimbursed by the trust. You are strongly encouraged to plan ahead for tax payments. If you so desire, a portion of your monthly distribution can be made to a separate account in your name in order to reserve for tax payments.

There is an exception to the GST Tax that permits qualifying medical and educational expenses to be paid directly by the Article V trust for the benefit of beneficiaries that would otherwise be subject to GST-Taxes had they received a distribution directly from the Article V trust. In order to minimize future GST-Taxes, the trustees will encourage everyone in your family to arrange for any qualifying medical and educational expenses to be paid directly from the Article V Trust, beginning in 2010, rather than those amounts being distributed from the 1975 trust. Please be aware of this opportunity and make sure that Tolleson Wealth Management is contacted if you believe an

anticipated expense may qualify. This exception does not permit reimbursement of the expense once paid by the beneficiary.

The Co-Trustees of the Article V trust have also decided to appoint Tolleson Private Bank as an additional Co-Trustee of the Article V trust. In addition to providing insightful advice and excellent service to the trust and its beneficiaries, as Co-Trustee, Tolleson will be able to exercise certain powers given to the Trustees under Mary Kay's will that are not exercisable by family members serving as Co-trustee. Specifically, Mary Kay's will provides that Trustees that are not issue of Mary Kay have the power to make distributions in excess of health, education, maintenance and support, and also have the power to grant a general testamentary power of appointment. The Co-Trustees believe that it is in the best interest of the beneficiaries to have a trustee in place that is permitted to exercise these discretionary powers available should it be advantageous to do so for tax or other planning for your families.

US Trust is co-trustee of the 1975 trust. Distributions from the trust are made for the health, education, maintenance and support of the beneficiaries in their accustomed manner of living. If special needs should arise, please apprise the trustees.

The trustees hope you are pleased with this news and find that the new distribution guidelines give you and your family a better sense of clarity going forward as to what to expect in terms of distributions from the trusts and growth of the trusts' assets. If you have any questions or concerns, please do not hesitate to contact any of the Trustees for further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Rogers", with a long, sweeping horizontal line extending to the right.

Richard Rogers

Co-Trustee, 1975 Family Trust and Article V Trust

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Ashley Hodson on behalf of John Cox

Bar No. 24003722

ahodson@gibsondunn.com

Envelope ID: 108627343

Filing Code Description: Amended Petition

Filing Description: 3RD/ FOR DECLARATORY RELIEF

Status as of 12/3/2025 9:55 AM CST

Associated Case Party: RICHARD ROGERS

Name	BarNumber	Email	TimestampSubmitted	Status
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K. McKenzie Anderson		mckenzieanderson@quinnemanuel.com	12/2/2025 3:37:06 PM	SENT
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Ashley Hodson on behalf of John Cox

Bar No. 24003722

ahodson@gibsondunn.com

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Associated Case Party: RICHARD ROGERS

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kelly Martin		kmartin@winstead.com	12/2/2025 3:37:06 PM	SENT
David Reynolds		dreynolds@winstead.com	12/2/2025 3:37:06 PM	SENT

Associated Case Party: TERRI ROGERS

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Gregory Yost		greg@buys-law.com	12/2/2025 3:37:06 PM	SENT
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Ashley Hodson on behalf of John Cox

Bar No. 24003722

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Associated Case Party: RYAN ROGERS

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Jennifer R.Poe		jpoe@hallettperrin.com	12/2/2025 3:37:06 PM	SENT
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