

# PRIVATE FOUNDATION ADMINISTRATION AGREEMENT

THIS PRIVATE FOUNDATION ADMINISTRATION AGREEMENT (“Agreement”) is entered into between \_\_\_\_\_ representing the board of directors (“Board”) of the \_\_\_\_\_ (“Foundation”) and Lair Administration Services, L.L.C. (“Administrator”). The Board of the Foundation wishes to engage the Administrator as its agent to perform the administration services specified in this Agreement.

The Board and Administrator hereby agree to the following:

- I. **ADMINISTRATION SERVICES TO BE PERFORMED BY THE ADMINISTRATOR.** The Administrator shall perform the following administration services for the Foundation:
  - A. **Accounting.** From information provided by the Board, the Foundation’s investment advisor or asset custodian, the Administrator shall perform an accounting of the Foundation’s financial activities in accordance with the terms of the Foundation and applicable law. A report of the accounting shall be provided to the Board on an annual basis.
  - B. **Preparation of Tax Forms.** The Administrator shall prepare all applicable federal and state tax forms for the Foundation. Such forms will be forwarded to the Board for signature and filing. The Board shall be responsible for ensuring that all required tax forms are filed on a timely basis once received from the Administrator. The Administrator is authorized by the Board to cooperate fully with and furnish information necessary to the Internal Revenue Service with respect to any audit of the Foundation. In the event of such audit, the Foundation shall be charged additional fees by the Administrator, over and above the standard administration fees.
  - C. **Foundation Minimum Distributions.** The Administrator shall NOT make distributions from the Foundation to any charitable organizations. The Administrator shall, however, communicate to the Board, the Foundation’s investment advisor or asset custodian the amount required to be distributed on an annual basis from the Foundation to charitable organizations. Although the Administrator shall provide such communications, it is the Board’s responsibility to ensure that all required minimum distributions are properly made and that any and all distributions made to charitable organizations from the Foundation are paid to organizations qualified to receive such distributions.
  - D. **Calculation of Tax on Investment Income.** The Administrator shall compute the amount of excise tax due on net investment income (if any) and shall report such amount to the Board. The Board shall be responsible for paying the excise tax.

- E. Maintenance of Records.** The Administrator shall retain and be responsible for the safekeeping of all Foundation accounting records entrusted to it by the Board, the Foundation's investment advisor or asset custodian and shall provide such records to the Board upon reasonable written request. The Administrator is also authorized to release information in its custody as required by law and may also, within its sole discretion, forward copies of documents and records to the person(s) authorized by the Board in Appendix A of this Agreement.
- F. Final Accounting.** Upon termination of this Agreement, the Administrator shall provide to the Board a final accounting of all Foundation activity of which it is aware covering the period from the immediate prior annual accounting through the last calendar quarter preceding the termination date. Upon the conveyance of said accounting to the Board, the Administrator shall be released from any further services with regard to the Foundation. A separate Foundation termination fee may be charged in the event of termination by the Board of this Agreement.
- G. Other Services.** From time to time, the Administrator may perform other services as required or requested by the Board (in writing) in the administration of the Foundation that are not enumerated in A through F above. Upon such time as other services are performed by the Administrator, the Administrator shall be entitled to charge additional fees for such services, over and above the standard administration fees.

**II. DUTIES AND RESPONSIBILITIES OF THE BOARD.** The Board understands and confirms that it shall carry out all required duties and responsibilities as the Board under the terms of the Foundation's corporate records or applicable law and that the Administrator's performance under this Agreement shall be limited to the services set forth above. Without limiting the generality of the above, the Board agrees to the following during the term of this Agreement:

- A. Selection and Management of Foundation Assets.** The Board shall have the sole responsibility to select and manage Foundation assets. The Board shall determine the investment objective(s) of the Foundation and may, in its discretion, select and retain qualified Investment Advisor(s) to manage Foundation assets in accordance with said investment objective(s). The Board has the sole responsibility to ensure that Foundation investments are neither repugnant to the tax-exempt status of the Foundation nor prohibited by applicable law. The Board shall also select the custodian(s) of Foundation assets.
- B. Safekeeping of Information and Provision to Administrator.** In the performance of its services herein, the Administrator solely relies on the information provided to the Administrator by the Board or its representatives and may presume its accuracy and validity. The Board shall be responsible for the safekeeping of all information pertaining to the Foundation. The Board shall, on a timely basis, provide or cause to be provided to the Administrator copies of all pertinent and relevant documents related to the creation, funding, investment and accounting of the Foundation. Such documents may include, but are not limited to, financial reports, cost basis information, securities transaction reports, investment brokerage statements, bank account statements, income and expense

reports, closing statements, legal opinions, tax forms, and any and all other information and documentation required by the Administrator, in its sole discretion, to properly perform its services under this Agreement.

- C. **Valuation of Assets.** The Board shall be responsible for all Foundation valuations and shall select, as needed, qualified appraisers to appraise assets that do not have a readily ascertainable market value or are otherwise deemed to be hard to value assets.
- D. **Payment of Charitable Distributions, Expenses and Excise Taxes.** The Board shall be responsible for paying all distributions (minimum or otherwise) to qualified charitable organizations, for paying all Foundation expenses and for paying any required excise taxes (if applicable).
- E. **Dealing with Legal Claims.** The Board shall have sole responsibility to settle, abandon, pursue, compromise or contest any claims, demands or lawsuits brought by or against the Foundation.
- F. **Tax-Exempt Qualification.** The Board has the sole responsibility for ensuring that any contribution of assets to the Foundation or any investment of the Foundation will not be repugnant to the tax-exempt status of the Foundation or qualification of the Foundation under any section of the Internal Revenue Code (the “Code”) or related regulations. The Board agrees to provide to the Administrator any documents, such as legal or Internal Revenue Service opinions, related to the initial or ongoing qualification or disqualification of the Foundation as a tax-exempt private foundation. Further, the Administrator shall assume that the Foundation does qualify as a tax-exempt private foundation under the Code unless notified otherwise, in writing, by the Board.
- G. **Reporting of Certain Transactions.** The Board shall be responsible for reporting (in writing) any acts to the Administrator that might result in the assessment of excise taxes, including any acts of self-dealing, any failure by the Board to distribute income, any presence of excess business holdings or investments that jeopardize the foundation’s charitable purpose, any payment of taxable or political expenditures and/or any payment of personal benefit contracts by the foundation. The Board shall report such activities to the Administrator within fifteen (15) days after the Board becomes so aware of such acts and agrees to report such acts on the appropriate Foundation tax forms. The Board shall also report any unrelated business income or debt-financed income, as defined by the Code or related regulations, of the Foundation to the Administrator.
- H. **Filing of Tax Forms.** The Board shall be responsible for executing and timely filing Foundation tax forms prepared by the Administrator and provided to the Board pursuant to this Agreement.

### **III. OTHER PROVISIONS RELATED TO THE ADMINISTRATOR.**

- A. **Tax and Legal Advice.** The Administrator does NOT provide tax and legal advice. The Board understands and agrees to consult its own tax and legal counsel on matters that require such consultation.

**B. Retention of Agents or Counsel.** In order to carry out the services herein, the Administrator, in its sole discretion, may employ outside agents or counsel. The Administrator shall give the Board advance written notice of its intention to retain an agent and the estimated expense to be incurred. In the event the Board objects by written notice delivered to the Administrator within ten (10) days of the receipt of the Administrator's notice, the Administrator shall NOT be authorized to employ such agent. Absent an objection within the ten (10) day period, the Administrator shall engage such agent and the Foundation shall be responsible for reimbursing the Administrator's costs of employing the agent.

**IV. COMPENSATION.** Compensation of the Administrator for the services specified herein is as follows:

**A. One-time set-up fee.** \$500

**B. Administration fees.** Administration fees are payable annually, in advance, in January of each year. The fees are computed based upon the asset size of the Foundation as of December 31 of the previous yearend. Initial administration fees are payable upon execution of the administration agreement (based upon Foundation asset size at that time for foundations already fully funded or based upon the anticipated asset size once fully funded) and are for the full, annual amount and are not pro-rated.

<b>Foundation Asset Size</b>	<b>Annual Administration Fee</b>
\$0 - \$500,000	\$2,000
\$500,001 - \$1,000,000	\$2,750
\$1,000,001 - \$2,500,000	\$4,000
\$2,500,001 - \$5,000,000	\$6,500
\$5,000,001 - \$7,500,000	\$10,000
\$7,500,001 - \$10,000,000	\$17,500
\$10,000,001 – over	\$25,000

**C. Termination fee.** \$500

If the Board terminates this Agreement within three (3) years of the initial effective date, the Foundation shall pay a one-time termination fee to the Administrator in addition to the standard administration fees noted in IV.B. above.

Note about Compensation: All fees paid to the Administrator pursuant to this Agreement are non-refundable once paid. In a year that the Foundation dissolves or in a year in which this Agreement is terminated by either the Administrator or the Board, there will be no pro-ration of administration fees, regardless of the date of dissolution or termination. Fees may be changed by the Administrator at any time. Notice of such change(s) will be communicated in writing to the Board no less than sixty (60) days prior to such change(s).

**V. INDEMNIFICATION AND LIMITATION ON RECOVERY.**

- A. Indemnification.** The Administrator shall have NO responsibility for, and the Board and the Foundation will hold harmless, indemnify and defend the Administrator together with its officers, directors, employees and agents, from and against any claims, demands, losses, expenses, judgments, causes of action or other claims of any kind whatsoever which arise from or relate directly or indirectly to any of the following: any review of the Foundation initially, on an ongoing basis or at any time or under any circumstance to verify its tax-exempt qualification under the Code; any choice of or performance by any Foundation Investment Advisor(s) or asset custodian(s); any selection of investment objectives or specific investments; any transfer of assets to or retention of assets by the Foundation; any decisions, directions, recommendations or other actions or failures to act by the Board, the Foundation's Investment Advisor(s) or the Foundation's custodian; any claims arising from the investment experience of the Foundation; any selection by the Board or the Foundation's Investment Advisor(s) of any investment, the attributes of which render the investment repugnant to the tax-exempt status of the Foundation; any act of self-dealing by any disqualified person; any failure by the Board to pay Foundation excise taxes or required minimum distributions to charitable organizations; any act of negligence, misfeasance or nonfeasance with respect to the administration of the Foundation that was committed by the Board, any predecessor administrator or any of the Foundation's other agent(s) or representative(s); any breach of the Administrator's duty under this Agreement, the proximate cause of which is either incorrect, incomplete and/or untimely information provided by the Board, the investment advisor(s) or any other party on whom the Administrator is dependent in carrying out its duties under this Agreement; any payment of Foundation distributions to an organization not qualified to receive such payments; loss for any reason of the tax-exempt status of the Foundation; and any intentional or unintentional withholding of information from the Administrator needed by it to properly perform the services described herein.
- B. Limitation on Recovery.** Under no circumstances shall the liability of the Administrator to the Board or Foundation exceed the fees paid by the Board or the Foundation to the Administrator.

**VI. MISCELLANEOUS PROVISIONS.**

- A. Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas. The invalidity or non-enforceability of any provision of this Agreement in any respect shall not affect the validity or enforceability of such provision in any other respect or of any other provisions of this Agreement. In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and the parties agree that to the fullest extent permitted by law, the court shall reform this Agreement to extent necessary make such provisions fully enforceable.

- B. Authority Relative to This Agreement.** The Administrator and Board hereby represent that each has full power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby.
- C. Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the Board (and its successors and assigns) and the Administrator (and its successors and assigns).
- D. Notices.** All notices or other communications required or permitted to be made or given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if given by (a) United States certified mail, return requested, (b) by facsimile or similar means (with signed confirmed copy to follow by mail), or (c) expedited delivery service.
- E. Headings.** The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not be construed to enlarge, diminish or otherwise change the express provisions hereof.
- F. Arbitration.** Each party to this Agreement agrees that any dispute of controversy arising between any of the parties to this Agreement, or any person or entity in privity therewith, out of the transactions effected and relationships created pursuant to this Agreement and each other agreement created in connection herewith, including any dispute or controversy regarding the formation, terms, or construction of this Agreement, regardless of kind or character, must be resolved through binding arbitration. Each party to this Agreement agrees to submit such dispute or controversy to arbitration before the American Arbitration Association in Dallas, Texas, and further agrees to be bound by the determination of any arbitrator or arbitration panel empaneled by the American Arbitration association to adjudicate the dispute. Judgment or any arbitration award may be entered in any court of competent jurisdiction. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any such dispute or controversy in a court of competent jurisdiction and, further, may seek provisional ancillary remedies including temporary or injunctive relief in connection with such dispute or controversy in a court of competent jurisdiction, provided that the dispute or controversy is ultimately resolved through binding arbitration conducted in accordance with the terms and conditions of this Section.
- G. Entirety and Modification.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and may not be modified, amended or supplemented in whole or in part except as provided herein.
- H. Amendments.** Either the Board or the Administrator may propose amendments to this Agreement at any time by giving written notice to the other at least sixty (60) days in advance of the proposed amendment's effective date. Such notice of proposed amendment shall specify the desired effective date and describe the terms of the proposed amendment. A proposed amendment will not take effect until both parties agree to it in writing.

**I. Termination.** The Board or the Administrator may terminate this Agreement without cause by giving written notice at least sixty (60) days in advance of such termination. However, if in the sole opinion of the Administrator, the Board performs an act in violation of this Agreement or the Foundation corporate documents, the Administrator may, in its sole discretion, immediately terminate this Agreement. Upon termination, the rights and obligations of each party shall automatically cease and terminate, provided that such action shall not relieve either party of obligations imposed upon it for services rendered or to be rendered prior to such termination.

This Agreement is effective on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**Administrator:**

Lair Administration Services, L.L.C.  
By: Keith D. Lair  
Its: President

\_\_\_\_\_  
Signature

**Board Member(s):**

\_\_\_\_\_  
Board Member name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Board Member name

\_\_\_\_\_  
Signature

Address of the Administrator:

Lair Administration Services, L.L.C.  
1701 N. Collins Blvd., Suite 220  
Richardson, TX 75080  
(972) 238-5770 (972) 238-5865 facsimile

Address of the Foundation:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Facsimile \_\_\_\_\_

# Appendix A

**1. Ongoing Correspondence.** The Board authorizes the Administrator to provide information and send correspondence pertaining to the administration of the Foundation to the following parties:

**Board:**

Name(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_

**Professional Advisor:**

Name(s): \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
Email \_\_\_\_\_

**Other:**

Name(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
Relationship: \_\_\_\_\_

**2. Others to Receive Information Upon Request.** The Board authorizes the Administrator to release information pertaining to the Foundation to the following parties (the information will only be released upon request of such parties):

Name(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
Relationship: \_\_\_\_\_

Name(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
Relationship: \_\_\_\_\_

The above shall be considered in force until such time as changed or modified, in writing, by the Board. Written notification should be provided to the Administrator.