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OPINION COMMITTEE



FILE # ML-46199-09

I.D. # 46199

## MIDWESTERN STATE UNIVERSITY

Office of the President

3410 Taft Boulevard Wichita Falls, Texas 76308-2099

Office: 940-397-4211 Fax: 940-397-4010

October 8, 2009

Mr. Greg Abbott  
Attorney General of Texas  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-0830-GA**

Attn: Opinion Committee

Re: **Opinion Request-**

1. To what extent must the investments of undesignated funds received under a will bequest to Midwestern State University, "for its general use", be restricted only to investments permitted under the Texas Public Funds Investment Act, if the funds are used to create an endowment fund?
2. For the purposes of satisfying the \$25 Million threshold requirement of V.T.C.A., Education Code § 51.0031 (c), may the endowment funds of University related ancillary organizations, such as the MSU Foundation and the MSU Charitable Trust, be added to the endowment funds at the University to reach that amount?

Dear Mr. Abbott:

The initial question presented by this request relates to restrictions on investing funds from a will bequest of undesignated funds to Midwestern State University. The extent to which the Public Funds Investment Act applies to these funds as restrictions on their investment is uncertain, as also may be when those restrictions become no longer applicable.

The University intends to transfer a relatively small part of those funds, \$350,000, to become matching funds with endowment funds received from other sources. The remainder of the bequest, in excess of \$7,000,000 will be transferred to establish an MSU endowment fund in the name of the testator. This fund is to be used for any lawful purpose, including, but not limited to scholarships.

Endowment funds received by MSU normally come with the identity of already being identified as dedicated funds by the earlier directions of the donor. In this instance, formerly general use

funds will become endowment funds by acts of the recipient. The incidental effect of becoming endowment funds could include that the funds would become invested under Texas statutes other than the Texas Public Investment Act.

A secondary question is whether the Public Funds Investment Act might be considered as no longer applicable under the facts because of V.T.C.A. Education Code §51.0031. If the endowment funds separately held by university-related 501(c)(3) organizations can be added to and counted with endowment funds held by the University, the exemption threshold of \$25M required by V.T.C.A., Education Code, § 51.0031 (c) may be attained. This could make the earlier question moot.

The following is the background information for this opinion request:

On July 9, 2008, a decedent's will (Enclosure 1) was admitted to probate. The will provided for a testamentary bequest to MSU as follows:

"(b) Formula Charitable Deduction Gift to Midwestern State University: I give, devise, and bequeath in fee to Midwestern State University of Wichita Falls, Texas, *for its general use*, an amount equal to the charitable deduction needed to eliminate any federal estate tax on my estate as more particularly described and as excepted hereinbelow....." (Italic emphasis added.)

The Texas Public Funds Investment Act, V.T.C.A., Gov.Code § 2256.001, et seq, sets forth somewhat restrictive statutory instructions for making investments of general funds of the University. Another statute, the Uniform Management of Institutional Funds Act, V.T.C.A. Prop. Code 163.001 et seq, is the statute used in managing designated endowment funds that have broader investment authority in the granting document.. A third statute, V.T.C.A., Education Code § 51.0031 provides that:

"(a) A governing board may deposit funds under its control as provided in Section 51.003 of this code, may invest funds under its control in accordance with Chapter 2256, Government Code, and with regard to donations, gifts, and trusts, may establish endowment funds that operate as trusts and are managed under prudent person standards....."

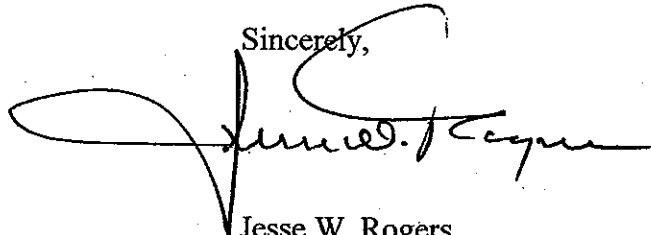
"(c) If a governing board has under its control at least \$25 Million in book value of endowment funds, such governing board may invest *all* funds described in this section under prudent person standards....." (Italic emphasis added).

A greater return on investment is hoped for if those investments may be made under the prudent investor standards of the Uniform Management of Institutional Funds Act, V.T.C.A. Prop.Code §163.001 et seq.. Conversely, it has also been considered that the intent of the donor could have been to make the instrument so worded on purpose to restrict later investment choices to those conservative choices enumerated in the Texas Public Funds Investment Act.

If the PFIA applies, the second question includes a subordinate issue of whether other funds that are held by MSU ancillary 501(c)(3) organizations, such as MSU-related foundations and trusts, can also be counted to meet the \$25M threshold set by V.T.C.A., Education Code §51.0031. Specimen copies of the related organizations' respective articles of incorporation and trust agreements are enclosed to document the funds are dedicated to MSU purposes. (MSU Foundation-Enclosure 2) (MSU Charitable Trust-Enclosure 3).

Your opinion and guidance in regard to this matter is requested. Please let us know if you need any additional documents or information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse W. Rogers", written over a horizontal line.

Jesse W. Rogers  
President

JWR:ca

- enc.: 1. Last Will and Testament of Bruce Redwine, Deceased  
2. Amended Declaration of Trust-MSU Charitable Trust  
3. Original Articles of Incorporation (February 23, 1960); Amended Articles of Incorporation (December 15, 1960); and Second Amended Articles of Incorporation (September 26, 1975); - Midwestern State University Foundation, Inc.

## **ENCLOSURE 1**

**Last Will and Testament of Bruce Redwine, Deceased**

08-25, 196-P

# Last Will and Testament

STATE OF TEXAS

COUNTY OF TOM GREEN

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KNOW ALL MEN BY THESE PRESENTS: that I, BRUCE A. REDWINE, being of sound mind, memory, and understanding and in view of the uncertainty of human life, and for the purpose of making the best disposition of my worldly affairs for my loved ones, do hereby make this my last will and testament, revoking all former wills or other testamentary dispositions by me heretofore made. Therefore, upon my death, the following directions are to be effected:

1. INDEPENDENT EXECUTORSHIP: I hereby designate the following named persons to serve as my independent executors under the terms and conditions set forth hereinbelow:

(a) Appointment Of Independent Executors: I direct that the following three friends be and serve as joint independent executors of this, my last will and estate, to-wit:

- (i) Michael D. Schall  
9911 Kershope Forest Court  
Spring, Texas 77379,
- (ii) Dr. Robert Grant  
5520 Briargrove  
Wichita Falls, Texas 76310,
- (iii) William C. Coffey, C.P.A.  
36 West Beauregard, Suite 400  
San Angelo, Texas 76903,

COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

*Mark Turnbull*

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and who will hereinafter, generally and jointly, be referred to as Executors.

(b) Joint Participation: The Executors shall perform in all administrative decisions, policy making, contracting and all other procedures, whether required by law or performed at their discretion as independent executors, jointly as a body of three by the joint consent of any two or more of them. They shall jointly consult in all things and shall maintain a written record of their meetings, whether in person, telephonic, electronic, or otherwise, or any combination thereof, generally describing their discussions, their decisions and how each of them voted on the issues before them which shall be an informal written record similar to the keeping of the written record of the minutes of a board of directors. They shall designate any bank or banks as a depository for the funds of the estate, to borrow money for the estate and to write checks for withdrawal, transfer, payment of expenses, distributions, payment of indebtedness or otherwise on the signatures of any two of them.

(c) Independent Executorship: No bond or security shall be required of the Executors, and no other action shall be had in the county court or other court of probate

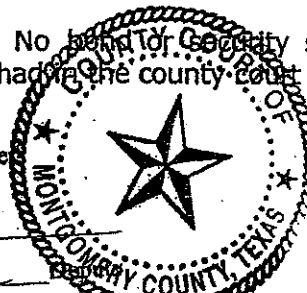
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MARK TURNBULL, County Clerk  
Montgomery County, Texas

Issued

7-22-08

By

*Lisa Aulice*



*[Signature]*  
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jurisdiction in relation to the administration and settlement of my estate than the probating and recording of this, my will, and the return of the statutory inventory, appraisal and list of claims of said estate.

(d) Executor Fees: For and in consideration of their services rendered and to be rendered as my Executors, I direct that the Executors pay themselves from the funds and liquid assets of my estate a two-fold executors' fee consisting of (i) a bonus to be paid in advance in the amount of Twenty Five Thousand Dollars (\$25,000.00) each to be paid at their convenience upon receiving their Letters Testamentary and (ii) an hourly fee in the amount of Two Hundred Dollars (\$200.00) per hour to each of them, which shall be in addition to the pre-paid executor's fee provided in section (i) above, based on time actually devoted by them in administering my estate. For this purpose, the purely mechanical procedures that may be required in administering my estate may be delegated to any one or more of my Executors from time to time so that the time devoted by each, including travel time or any other executorship service, does not necessarily have to be equal as among the three of them. In addition to the payment of such executors' fees, they shall also be entitled to reimburse themselves for all reasonable expenses that they will incur in administering my estate including, but not limited to, travel, telephone, copying, storing, office, secretarial, legal fees, accounting fees, appraisal fees, and others that may be required of them. I have complete confidence in the integrity and professional competence of my executors, and the executors' fees and reimbursement of expenses herein allowed shall not be restricted in any manner by the provisions for normal executor fees as provided by law. All executors' hourly fees shall be invoiced by each of the Executors on a monthly or other regular basis by means of a written statement setting forth the date, the time, and a general summary of all services rendered; and all expenses for reimbursement shall be accompanied by copies of statements, charges, invoices or other authentication duly reflecting the date, amount and nature of the expense.

(e) Less Than Three Executors: In the event any one of the Executors should fail to serve as independent executor for any reason, then the remaining two Executors shall serve as such and shall, in all things, be required to agree and to join in all administrative decisions and procedures except those of a purely mechanical nature. In the event any two of the Executors should fail to serve as independent executor for any reason, then the sole remaining Executor shall serve as such alone without joinder and without the need for further appointment of any successor or additional independent executor.

(f) Interim Distributions: The Executors are instructed to provide the beneficiaries of the Redwine Family Trust, which is established hereinbelow, during the administration of the estate with such distributions as they shall deem proper as though the estate had been distributed in accordance with the terms hereof so that the administration of the estate and the trust may exist contemporaneously.

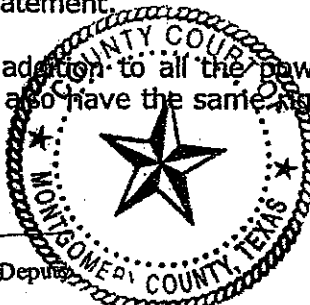
(g) Distribution of Estate: I direct my Executors to distribute my estate as soon as practical following my death, and I further direct and authorize the Executors to make such distribution in cash or in kind, partly in cash and partly in kind, and/or subject to any indebtedness created by me or by my Executors which in their opinion need not first be paid, and/or to distribute any assets in whole or in part or in undivided fractional interests, or any combination thereof, as my Executors shall determine without regard to the usual rules of abatement.

(h) Powers of Executors: In addition to all the powers given to independent executors by law, my Executors shall also have the same rights, powers and authority

By, I hereby certify  
IRNBULL, County Clerk  
New County, Texas

7-22-08

By Lisa Anglin Deputy



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conferred upon trustees of an express trust under Texas law and all those additional powers conferred upon the trustees of the Redwine Family Trust hereinafter provided for the broadest possible rights, powers and authority.

(i) Designation of Attorney: I recommend that my Executors employ the legal services of Pat Hall of San Angelo, Texas for the legal requirements of my estate, recognizing that this recommendation is not compulsory but that such attorney has served me well during my life and that he is familiar with my testamentary intentions.

2. SPECIFIC BEQUESTS: I hereby bequeath the following, specific gifts to Graciela Suliga Redwine, my wife, to-wit:

(a) Residence and Household Contents: My residential home and property (i) located at 5247 Westway in San Angelo, Tom Green County, Texas, or (ii) located at or near Houston, Texas, in Montgomery County, if I have purchased prior to my death a residential home and property there as I presently plan to do so, and all of my tangible personalty located in either or both of such residential homes and property including, but not limited to, furniture, furnishings, appliances, machinery, equipment, supplies, personal effects, sporting goods, automobiles, and other tangible personalty. In the event I should die having acquired the replacement residential home and property in Montgomery County but prior to having moved all such personalty to it, I further direct my Executors to complete such move in full cooperation with the wishes of my wife and to sell the residential home and property in Tom Green County, the sale proceeds of which shall pass under the terms of paragraphs 3 and 4 below.

(b) Cash: The sum of Five Hundred Thousand Dollars (\$500,000) in cash and/or other liquid assets.

In the event she should predecease me, then these bequests shall lapse and shall pass with the residue of my estate in accordance with the provisions provided in paragraph 4 below.

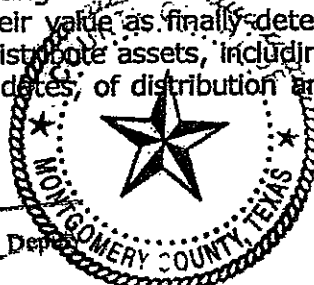
3. SPECIFIC, CHARITABLE BEQUESTS: I hereby bequeath the following specific, charitable bequests, to-wit:

(a) The M. D. Anderson Cancer Center of Houston: I direct that my Executors shall pay from my estate the sum of One Hundred Thousand Dollars (\$100,000.00) in cash and/or liquid assets of my estate to the M. D. Anderson Cancer Center of Houston, Texas, for its general use.

(b) Formula Charitable Deduction Gift to Midwestern State University: I give, devise and bequeath in fee to Midwestern State University of Wichita Falls, Texas, for its general use, an amount equal to the charitable deduction needed to eliminate any federal estate tax on my estate as more particularly described and as excepted hereinbelow. My Executors shall satisfy this charitable deduction gift by making distributions in cash or in kind, or by making distributions partly in cash and partly in kind, and/or subject to any indebtedness and using and distributing different properties according to their values or undivided interests in the same properties, either or both, or in any combination as the Executors deem advisable; and for any reason, including division or distribution, my Executors shall value any property or interest therein reasonably and in good faith, and the valuation is to be conclusive. In making distributions in kind and in computing the amount of this charitable deduction gift, my Executors shall value assets at their value as finally determined for federal estate tax purposes except that they must distribute assets, including cash, having an aggregate fair market value at the date, or dates, of distribution amounting to no less than the

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amount of the charitable deduction gift as finally determined for federal estate tax purposes. In no event shall the gift be satisfied with property or the proceeds of property with respect to which the federal estate tax charitable deduction would not be allowable if the property or the proceeds of the property were so used, and the amount of the charitable deduction gift shall be reduced to the extent that it cannot be satisfied with property that qualifies for the deduction. The "charitable deduction needed to eliminate any federal estate tax on my estate" means an amount equal to (i) the unlimited federal estate tax charitable deduction allowable to my estate minus (ii) the value for federal estate tax purposes of all items in my gross estate which qualify for the deduction and which pass or have passed from me in a form qualifying for the deduction otherwise than under this charitable deduction gift; and this gift shall further be reduced (i) by the amount, if any, needed to increase my taxable estate to the largest amount that will result in no federal estate tax being payable by my estate after allowing for the unified credit against the federal estate tax but no other credit and (ii) by the amount, if any, needed to fund the minimum capital contribution in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) as required in paragraph 4 below even if it makes my estate taxable. Nothing herein shall be construed in such a manner as to adversely affect the qualification of this gift for the unlimited charitable deduction allowed by the federal estate law applicable to my estate; and in the event any such provision is thus adversely construed, then such provision shall be deemed not to apply to this gift.

4. GIFT OF RESIDUE: I give, devise and bequeath all of the rest and residue of my estate of whatever nature and wherever situated, but in no event less than the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00), to the Trustees of the Redwine Family Trust as principal, hereinafter sometimes called the Trust Property, to have, hold, manage, invest and reinvest the same as a single trust in the manner, and subject to the terms and conditions set forth herein, as follows:

(a) Trustees: The same persons named as Executors in paragraph 1 above shall serve, and are hereby designated, as trustees and shall serve in the same manner as provided in paragraphs 1(a), (b), (e) and (f) above ("Trustees"). No bond or other security shall be required of any trustee.

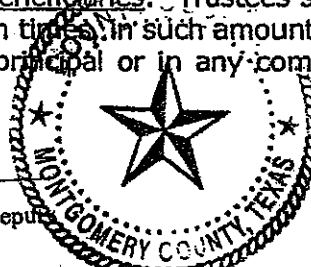
(b) Trustees Fees: For all services to be rendered as trustee, the Trustees shall pay themselves an hourly fee in the amount of Two Hundred Dollars (\$200.00) per hour to each of them based on time actually devoted by them in administering the trust as well as reimburse themselves for expenses in the same manner provided in paragraph 1(d) above. No pre-paid bonus, however, shall be paid for their services as trustee. Like the executors' fees, the trustee fees do not necessarily have to be equal. The trustees' fees and reimbursement of expenses herein allowed shall not be restricted in any manner by the provisions, if any, for trustee fees by law or by the standard of what, if anything, constitutes a normal trustee fee.

(c) Name of Trust: The name of the trust shall be the Redwine Family Trust, sometimes herein referred to as the trust.

(d) Life Beneficiaries: The life beneficiaries of the trust are Vernon Henson (a cousin) and his wife, Bernice Henson, whose present mailing address is Box 1542, Abilene, Taylor County, Texas 79601 ("Mr. and Mrs. Henson").

(e) Distributions To Life Beneficiaries: Trustees shall make such distributions to or for the life beneficiaries at such times, in such amounts, and for such purposes, from both income and, if necessary, principal or in any combination thereof, as they shall

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determine at their sole and exclusive discretion in accordance with the following, general guidelines, to-wit:

(1) Support: For both of them, and the survivor of them, for their support, health, and maintenance requirements in the standard of living to which they are accustomed at the date of my death only as any such needs are supplemental to, and cannot be provided by, their social security, medicare, and medicaid benefits, or any other governmental entitlements, and the support that can be provided for them by their own children without, however, causing a financial hardship on such children.

(2) Discretionary Authority: The guidelines herein provided for the Trustees in administering the Redwine Family Trust constitute a statement of preference but are not mandatory. In situations of hardship for the life beneficiaries and/or their estates and/or their immediate families, the Trustees shall have the power and authority to make exceptions at their sole and exclusive discretion in such manner as they may deem best for all parties under all of the circumstances involved.

(3) Costs of Burial: As a part of the above stated support requirements for the life beneficiaries shall be included the reasonable costs of their burial and a place of interment.

(f) Remainder Interest: Upon the death of the last of the life beneficiaries to die and when all costs of the administration of the trust and any of its debts have been fully satisfied, the trust shall thereupon be terminated and its remaining assets, whether principal or income, shall be distributed to the said Midwestern State University in fee for its general use as a charitable bequest in addition to that provided in paragraph 3(b) above.

(g) General Powers Of Trust: Also at the sole discretion of Trustees for whatever terms and conditions Trustees may elect for whatever purpose, Trustees shall have the following described powers and authority, to-wit:

(1) Investment: To invest and reinvest the Trust Property and to receive the income, profits, rents and sale proceeds thereof and to collect and receipt for the same. All Trust Property shall be considered as proper trust investments and may be retained by the Trustees.

(2) Sale, Lease and Exchange: To sell, lease or exchange the Trust Property, including any real property contributed to the trust, at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relating to the Trust Property as Trustees shall deem advisable, and to maintain, care for and improve real estate, and to execute deeds, assignments, transfers, leases, contracts, releases and other instruments relating to the Trust Property, whether or not any such leases or contracts may extend beyond the duration of the trust.

(3) Powers of Ownership: To exercise all the powers of ownership of the Trust Property, and, without limiting the generality of the foregoing, Trustees may vote upon or in respect of any securities or otherwise consent to any action on the part of the issuer thereof or participate in its reorganization, recapitalization, consolidation or merger or in the purchase, sale or lease of its assets and may exchange securities for other securities, and may give or cause to be given proxies

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M. K. K. IRNBULL, County Clerk  
Montgomery County, Texas

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by Lisa Aujou Deputy



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or powers of attorney, which may be discretionary or not and with power of substitution or not, for voting or acting on behalf of Trustees or their nominee as legal owner of any securities.

(4) Abandonment of Trust Assets: To abandon any trust asset or interest therein that has become worthless or of nominal value at the discretion of Trustees if continued ownership is not economically or otherwise feasible.

(5) Option: To grant an option involving disposition of a trust asset and to take an option for the acquisition of any asset by the trust.

(6) Property Management: To manage, control, improve, and repair real and personal property belonging to the trust.

(7) Borrowing and Encumbering: To borrow money for any trust purpose from any person, firm, or corporation, including any trustee, on the terms and conditions deemed appropriate by Trustees and to obligate the trust for repayment; to encumber the trust or any of its property or income by mortgage, deed of trust, pledge or otherwise to secure any loan, using whatever procedures to consummate the transaction may be deemed advisable by Trustees; to replace, renew, and extend any loans or encumbrance and to pay loans or other obligations of the trust deemed advisable by Trustees.

(8) Insurance: To procure and carry at the expense of the trust insurance of the kinds, forms, and amounts deemed advisable by Trustees to protect the trust against any hazard or to insure any life and to have and to hold, and to exercise, all incidents of ownership thereof.

(9) Enforcement of Hypothecations: To enforce any deed of trust, mortgage, or pledge held by the trust and to purchase at any sale thereunder any property subject to any such hypothecation.

(10) Extending Time of Payment of Obligations: To extend the time of payment of any note or other obligation held in the trust, including accrued or future interest.

(11) Adjustment of Claim: To litigate, compromise, submit for mediation or arbitration, release with or without consideration, or otherwise adjust claims in favor of or against the trust.

(12) Litigation: To commence or defend at the expense of the trust any litigation affecting the trust or any property of the trust deemed advisable by Trustees.

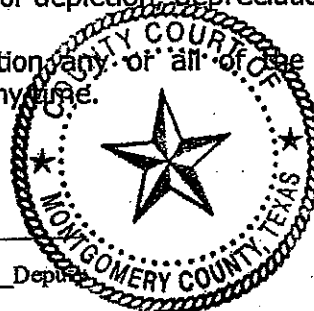
(13) Administration Expenses: To pay all property, income and other taxes, assessments, compensation of Trustees, professional fees, and all other reasonable expenses incurred in the collection, care, administration, and protection of the trust, all payments to service any debt, any litigation, and any expense in protecting the Trustees as provided in paragraph(23) below, and to establish any reasonable reserves for depletion, depreciation or otherwise.

(14) Partitioning: To partition any or all of the Trust Property, real or personal, for any purpose and at any time.

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MARK TURNBULL, County Clerk  
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By Lisa Auger Deputy



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(15) Manner of Making Distributions: To make any distribution from the trust either directly to the beneficiary or to the legal representatives of the beneficiary as more particularly required or permitted hereinbelow.

(16) Investment Requirements: To hold, invest and reinvest the Trust and Property in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not limited to, corporate obligations of every kind, preferred or common stocks, and oil, gas other mineral and royalty interests, without requirement of diversification or any other requirement as to investments for trusts, but, to the contrary, Trustees may hold, purchase or acquire any asset or investment of a speculative nature and/or any asset or investment in any ratio and without regard to its capability of producing income or of appreciating in value. Trustees may hold, acquire or retain assets in the form of cash and/or any other non-income-producing property for any periods of time as Trustees deem advisable, and no portion of the proceeds from the sale of any such property shall be considered as income to the trust.

(17) Determination of Principal and Income: To determine what shall constitute, and what shall be charged or credited to, the principal and income on any reasonable basis as may be fair and equitable.

(18) Allocation of Special Costs Among Trust Beneficial Interests: To charge or otherwise allocate to the beneficial interests of the beneficiaries on any reasonable basis as may be fair and equitable any special costs, expenses, or expenditures that might be incurred which are peculiar to one or more, but less than all, of the beneficiaries including any costs of defense of claims as provided in paragraph (23) below.

(19) Employment of Agents: To employ for, and at the expense of, the trust, the services of any and all professional agents for legal, accounting, tax consultation, investment consultation, engineering, surveying, geological, geographical, or other type of professional services, to rely upon the advice thereof and to determine the reasonable compensation to be paid therefor, whether a set fee, an hourly fee, a contingent fee or otherwise.

(20) Manner of Distribution: To make distributions to the beneficiaries in cash or in kind, or partly in cash and partly in kind, in divided or undivided interests, and/or subject to any indebtedness created or assumed by Trustees or to which the Trust Property may be subject which need not first be paid, whether such distributions be principal or income. Any distribution, however, shall be subject to the special allocation as provided in paragraph (18) above.

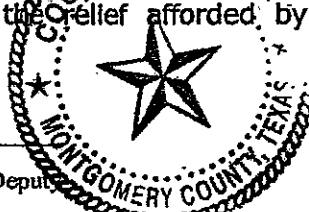
(21) Reserve For Depletion and Depreciation: To establish a reserve for depletion and depreciation, which shall be added to principal, for depletion in the amount of the maximum amount or percentage provided by the Texas Trust Code or for depreciation in the maximum amount provided by and under the Internal Revenue Code and the regulations promulgated therefor, respectively.

(22) Declaratory Judgments: To file for a declaratory judgment in the appropriate state district court pursuant to the provisions of the Texas Uniform Declaratory Judgments Act at the expense of the trust to determine any question arising in the administration of the trust, including questions of construction, whenever the Trustees determine that a valid question exists that has the need for, or is otherwise entitled to the relief afforded by the act, a declaratory

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by Lisa A. [Signature] Deputy



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judgment. The costs thereof shall not be charged to the Trustees individually notwithstanding the fact that the declaratory judgment may be adverse to the position, contention, or allegations of the Trustees unless the court makes a finding of bad faith against the Trustees. The Trustees may rely upon the advice of their attorney or attorneys on the question of whether there exists such a reasonable degree of legal uncertainty on any question that they should petition the court under the act. The Trustees, however, shall not be liable for their failure to file any such petition.

(23) Defense Against Claims: To defend themselves against any demands, claims or litigation ("claims"), whether made against them in their capacity as trustees or in their individual capacity whenever the claims result from or relate to their service for the trust, at the expense of the trust to be funded by the trust on a current basis as the Trustees employ independent counsel, and incur related expenses, to respond to, to be advised concerning and to litigate, and, in their sole and absolute discretion, to have independent counsel to represent them in their capacity as trustees and to have separate independent counsel to represent them in their individual capacity. In the event, however, any such claim that is made against them individually is concluded by a court finding that they or any of them were guilty of willful misconduct, bad faith, self-dealing or dishonesty as those terms are defined by law, then the Trustees, in their or his individual capacity, shall become obligated, and hereby agree, to reimburse the trust for all legal fees and related costs advanced or expended by it on their or his behalf in the defense of such claim, respectively.

(24) General: To do all the acts, to engage in all the proceedings, and to exercise all the rights, powers, and privileges which an absolute owner of the property would have, subject always to the discharge of its fiduciary obligations; the enumeration of certain powers in this trust shall not limit the general or implied powers of Trustees; Trustees shall have all additional powers that may now or hereafter be conferred on them by law or that may be necessary to enable Trustees to administer the trust in accordance with the provisions of this trust, subject to the limitations, if any, specified in this trust; and nothing herein shall be construed as a limitation of any power granted by law to trustees of an express trust.

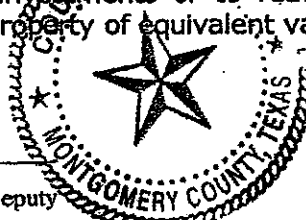
(25) Exercise of All Rights And Discretions: To do all things permitted to be done in the management of an express trust under the Texas Trust Code, whether expressly or impliedly, including, but not limited to, all rights and discretions under the Texas Trust Code which require specific authorization, and the trust shall be construed as if each were specifically enumerated and authorized herein; and the powers and authority vested in Trustees by and under the terms of the trust and by and under the Texas Trust Code shall be, in all things, liberally construed.

(h) Limitation On Powers: All powers given to Trustees by this trust are exercisable by Trustees only in a fiduciary capacity. No power given to Trustees hereunder shall be construed (1) to enable any person to purchase, exchange, or otherwise deal with or dispose of Trust Property for less than an adequate consideration in money or money's worth, or (2) to permit any person to borrow income or principal from the trust, except on the basis of an adequate interest charge and with adequate security. No person, other than Trustees, shall have or exercise the power to control the investment of this trust either by directing investments or reinvestments or by vetoing proposed investments or reinvestments or to reacquire or to exchange any Trust Property by substituting other property of equivalent value.

A true copy, I hereby certify  
M. J. K. FURNBULL, County Clerk  
Montgomery County, Texas

Issued 7-22-08

By Lisa Anglin Deputy



BAR C

(i) Spendthrift Provision: No beneficiary shall have the power to anticipate the income or the principal of the trust by sale, assignment, gift, mortgage, encumbrance or other method, whether voluntarily or involuntarily, or to sell or otherwise dispose of his or her interest in the trust estate, and said interest shall not otherwise be subject to levy of execution, attachment, garnishment or other involuntary proceedings for debts or liabilities of any beneficiary.

(j) Trustee Reports and Trust Records: Trustees shall keep accurate books, records and accounts of the trust and its administration and shall render annually a statement thereof either to the beneficiaries or to their legal representatives consisting, as a minimum, of a balance sheet of the assets, liabilities and net worth, a statement of profits or losses, and a statement of the cash receipts and disbursements in accordance with generally accepted accounting procedures without audit. Trustees, further at their election, may call for audited statements as they may deem appropriate. Trustees may employ the services of an accountant and a bookkeeper at the expense of the trust to perform such services as well as any other secretarial or clerical services. All such books, records and accounts, as well as all accounting documents, data, invoices, bank statements, deposit slips and cancelled checks, contracts and all other trust records shall be made available to the beneficiaries or to their legal representatives and agents for their examination and copying at all reasonable times and upon receipt of a reasonable, written notice to Trustees. All such examination and all such copying shall be in the Trustees' principal office or other place designated by them and shall be subject to their reasonable control; but all costs of copies and making and delivering the copies shall be borne by the person conducting the examination and requesting the copies.

(k) Exoneration Of Trustee: Trustees shall not be liable for mistakes or errors in judgment, for depreciation in value of any Trust Property or decline in the revenues therefrom, for economic reverses of any nature, for bank failures, for the mistakes or errors in judgment of others, for any losses in operating the trust or any business interest included in the Trust Property, for the exercise of any discretion in good faith, or for any other act, whether of commission or omission, in the administration of this trust except that they shall be liable only in the case of willful misconduct, bad faith, self-dealing or dishonesty as those terms are defined by law. No person dealing with the Trustees shall be required to look to the application made by the Trustees of the proceeds arising from any transaction. Trustees may rely on the advice of their professional agents. Whenever the judgment or discretion of the Trustees may be exercised in good faith in all matters in the administration of the trust, it shall be binding and conclusive upon the beneficiaries and all other persons interested in, or dealing with, the trust.

(l) Governing Law: The situs of the trust shall be in the State of Texas in the county of such location or locations as the Trustees shall determine from time to time, and the provisions of the trust shall be construed, administered, controlled and governed by and in accordance with the laws of the State of Texas.

(m) Resignation Of Trustee: Any trustee may resign as such without the necessity of a court proceeding by giving sixty (60) days' written notice thereof to all other trustees, and to each beneficiary or their legal representative, a signed and acknowledged copy of which shall be filed of record in the records of probate court of the county in which I am domiciled at the date of my death; and an independently certified accounting, without audit, of the trustee's administration shall be made thereafter at the expense of the trust with copies to be furnished to each beneficiary or

I, the undersigned, do hereby certify  
that the foregoing is a true and correct copy of the original  
as the same appears from the records of the County Clerk  
of Montgomery County, Texas

Issued 7-22-08

By Lisa Ouf Deputy



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their legal representative and to the other trustees. The other trustees shall be fully protected in relying on such accounting.

(n) Distributions To Or For The Beneficiaries: During the term of trust, the Trustees may make any distribution from the trust (i) directly to any beneficiary or (ii) if the beneficiary is under a legal disability or if the Trustees determine that the beneficiary is unable properly to manage his or her affairs because of illness, physical or mental disability, or any other cause, to any person or entity furnishing health care, education, support or maintenance for the beneficiary or with whom the beneficiary is residing for the prompt expenditure or application for the benefit of the beneficiary. Alternatively, the Trustees may apply all or a part of any such distribution for the beneficiary's benefit.

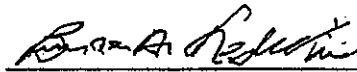
(o) Miscellaneous Conditions: Following are the miscellaneous terms and conditions of the trust, to-wit:

(1) Words And Gender: Words of any gender used in this trust will be held and construed to include any other gender, and the words in the singular number will be held to include the plural and vice versa unless the context clearly requires otherwise.


(2) Partial Invalidity: The invalidity or unenforceability of any particular provision of this trust will not affect the other provisions hereof or thereof, and the trust will be construed in all respects as if such invalid or unenforceable provisions were omitted.

(3) Headings: The headings of the paragraphs of this trust are for the convenience of reference only and do not form a part hereof and no way modify, interpret or construe the meaning of the provisions contained herein.

EXECUTED this 20th day of February, 2007.

  
BRUCE A. REDWINE

The foregoing instrument consisting of 11 pages and signed on the 10th page was first published and declared, and then signed, by the said BRUCE A. REDWINE, testator, to be his last will and testament in the presence of us and each of us who at his request and in his presence and in the presence of each other have hereunto subscribed our names as attesting witnesses on the day and date last above written.

  
Pat Hall

2808 Dena Drive  
San Angelo, TX 76904

  
Jennifer Juarez

5301 Lawndale Drive  
San Angelo, TX 76903

A true copy, I hereby certify  
M. R. K. TURNBULL, County Clerk  
Montgomery County, Texas

Issued 7-22-08

By  Deputy



STATE OF TEXAS

COUNTY OF TOM GREEN

5555

BEFORE ME, the undersigned authority, on this day personally appeared BRUCE A. REDWINE, Pat Hall and Jennifer Juarez, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument, in their respective capacities, and all of said persons being by me duly sworn, the said BRUCE A. REDWINE, testator, declared to me and to the said witnesses, in my presence that said instrument is his Last Will and Testament, and that he had willingly made and executed it as his free act and deed for the purposes therein expressed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his Last Will and Testament, and that he executed the same as such and wanted each of them to sign it as a witness; and upon their oaths, each witness stated further that they did sign the same as witnesses in the presence of said testator and at his request; that he was at that time eighteen (18) years of age or over and was of sound mind; and that each of the said witnesses was then at least fourteen (14) years of age.

*Bruce A. Redwine*  
TESTATRIX

*Pat Hall*  
WITNESS

*Jennifer Juarez*  
WITNESS

SUBSCRIBED AND ACKNOWLEDGED BEFORE ME by the said BRUCE A. REDWINE, testator, and subscribed and sworn to before me by the said Pat Hall and Jennifer Juarez, witnesses, this 20th day of February, 2007.

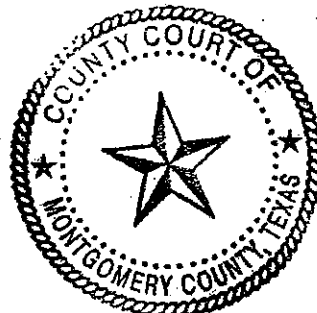
[Seal]



*Myra B. Estep*  
Notary Public, State of Texas

A true copy, I hereby certify  
MARK TURNBULL, County Clerk  
Montgomery County, Texas

Issued 7-22-08  
By *Lisa Ayala* Deputy



## **ENCLOSURE 2**

### **MSU Charitable Trust**



AMENDED  
THE MSU CHARITABLE TRUST  
DECLARATION OF TRUST

STATE OF TEXAS       )  
                              )  
COUNTY OF WICHITA    )

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION OF TRUST, by and between MINNIE RHEA WOOD, hereinafter referred to as "Donor" and NCNB TEXAS NATIONAL BANK, a National Banking Association, with an office at Wichita Falls, Wichita County, Texas, MINNIE RHEA WOOD, CLIFFORD G. TINSLEY, HERBERT B. STORY, FRANK GIBSON, DR. LOUIS RODRIGUEZ and KAY P. YEAGER, all of Wichita Falls, Wichita County, Texas, hereinafter referred to as "Trustees,"

W I T N E S S E T H :

The Trustees, NCNB Texas National Bank, Minnie Rhea Wood, Clifford G. Tinsley, Herbert B. Story, Frank Gibson, Dr. Louis Rodriguez and Kay P. Yeager, declare and agree that they have received this day the sum of One Thousand Dollars (\$1,000.00) from Minnie Rhea Wood, as Donor, and that they will hold and manage the same, and any additions to it, in trust as follows:

First: This trust shall be called "The M S U Charitable Trust" and shall be operated for the exclusive support of Mid-western State University, an educational organization within the meaning of Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986.

Second: The Trustees may receive and accept property, whether real, personal or mixed, by way of gift, bequest or devise, from any person, firm, trust or corporation, to be held, administered and disposed of in accordance with and pursuant to the provisions of this Declaration of Trust; but no gift, bequests or devise of any such property shall be received and accepted if it is conditioned or limited in such manner as to require the disposition of the income or its principal to any person or organization other than a "charitable organization" or for other than "charitable purpose" within the meaning of such terms as defined in Article Third of this Declaration of Trust, or as shall in the opinion of the Trustees, jeopardize the federal income tax exemption of this trust pursuant to Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Third: A. The principal and income of all property received and accepted by the Trustees to be administered under

this Declaration of Trust shall be held in trust by them, and the Trustees may make payments or distributions from income or principal, or both, to or for the use of such charitable organizations, within the meaning of that term as defined in paragraph C, in such amounts and for such charitable purposes of the trust as the Trustees shall from time to time select and determine; and the Trustees may make payments or distributions from income or principal, or both, directly for such charitable purposes, within the meaning of that term as defined in paragraph D, in such amounts as the Trustees shall from time to time select and determine without making use of any other charitable organization. The Trustees may also make payments or distributions of all or any part of the income or principal to states, territories, or possessions of the United States, any political subdivision of any of the foregoing, or to the United States or the District of Columbia but only for charitable purposes within the meaning of that term as defined in paragraph D. Income or principal derived from contributions by corporations shall be distributed by the Trustees for use solely within the United States or its possessions. No part of the net earnings of this trust shall inure or be payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of this trust shall be the carrying on of propaganda, or otherwise attempting, to influence legislation. No part of the activities of this trust shall be the participation in, or intervention in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

B. The trust shall continue forever unless the Trustees terminate it and distribute all of the principal and income, which action may be taken by the Trustees in their discretion at any time. On such termination, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding Section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a

public purpose. The donor authorizes and empowers the Trustees to form and organize a nonprofit corporation limited to the uses and purposes provided for in this Declaration of Trust, such corporation to be organized under the laws of any state or under the laws of the United States, as may be determined by the Trustees; such corporation when organized to have power to administer and control the affairs and property and to carry out the uses, objects, and purposes of this trust. Upon the creation and organization of such corporation, the Trustees are authorized and empowered to convey, transfer, and deliver to such corporation all the property and assets to which this trust may be or become entitled. The charter, bylaws, and other provisions for the organization and management of such corporation and its affairs and property shall be such as the Trustees shall determine, consistent with the provisions of this paragraph.

C. In this Declaration of Trust and in any amendments to it, references to "charitable organizations" or "charitable organization" mean corporations, trusts, funds, foundations, or community chests created or organized in the United States or any of its possessions, whether under the laws of the United States, any state or territory, the District of Columbia, or any possession of the United States, organized and operated exclusively for charitable purposes, no part of the net earnings of which inures or is payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which do not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office. It is intended that the organization described in this paragraph C shall be entitled to exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or corresponding Section of any future federal tax code.

D. In this Declaration of Trust and in any amendments to it, the term "charitable purposes" shall be limited to and shall

include only religious, charitable, scientific, literary, or educational purposes within the meaning of those terms as used in Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, but only such purposes as also constitute public charitable purposes under the law of trusts of the State of Texas.

Fourth: This Declaration of Trust may be amended at any time or times by written instrument or instruments signed and sealed by the Trustees, and acknowledged by any of the Trustees, provided that no amendment shall authorize the Trustees to conduct the affairs of this trust in any manner or for any purpose contrary to the provisions of Sections 501(c)(3) and 509(a)(3) of the Internal Revenue Code, or corresponding sections of any future federal tax code. An amendment of the provisions of this Article Fourth (or any amendment to it) shall be valid only if and to the extent that such amendment further restricts the Trustees' amending power. All instruments amending this Declaration of Trust shall be noted upon or kept attached to the executed original of this Declaration of Trust held by the Trustees.

Fifth: Any Trustee under this Declaration of Trust may, by written instrument, signed and acknowledged, resign his or her office. The number of Trustees shall be at all times not less than three, and whenever for any reason the number is reduced to two, the remaining Trustees shall appoint one or more Successor Trustees as approved by the Board of Regents of Midwestern State University. Appointments shall be made by the Trustee or Trustees for the time in office by written instruments signed and acknowledged. Any succeeding or additional Trustee shall, upon his acceptance of the office by written instrument signed and acknowledged, have the same powers, rights and duties, and the same title to the trust estate jointly with the surviving or remaining Trustee or Trustees as if originally appointed.

Dr. Louis Rodriguez, one of the Trustees named herein, is President of Midwestern State University. It is the intent that the President of Midwestern State University will always be a Trustee of this trust and, therefore, in the event that Dr. Louis Rodriguez should vacate the office of President of Midwestern State University for any cause, such vacation of office shall serve as a resignation of Dr. Louis Rodriguez as Trustee hereunder and the newly named President shall automatically be a

successor Trustee hereunder.

All of the Trustees shall serve under the direction of the Board of Regents of Midwestern State University and the Board of Regents of Midwestern State University shall, at all times, have the power by majority vote to appoint or remove any or all of the Trustees of this Trust.

None of the Trustees shall be required to furnish any bond or surety. None of them shall be responsible or liable for the acts or omissions of any other of the Trustees or of any predecessor or of a custodian, agent, depository or counsel selected with reasonable care.

The one or more Trustees, whether original or successor, for the time being in office, shall have full authority to act even though one or more vacancies may exist. A Trustee may, by appropriate written instrument, delegate all or any part of his powers to another or others of the Trustees for such periods and subject to such conditions as such delegating Trustee may determine.

The Trustees serving under this Declaration of Trust are authorized to pay to themselves amounts for reasonable expenses incurred and reasonable compensation for services rendered in the administration of this trust, but in no event shall any Trustee who has made a contribution to this trust ever receive any compensation thereafter.

Sixth: In extension and not in limitation of the common law and statutory powers of Trustees and other powers granted in this Declaration of Trust, the Trustees shall have the following discretionary powers:

(a) To invest and reinvest the principal and income of the trust in such property, real, personal or mixed, and in such manner as they shall deem proper, and from time to time to change investments as they shall deem advisable; to invest in or retain any stocks, shares, bonds, notes, obligations or personal or real property (including, without limitation, any interest in or obligations of any corporation, association, business trust, investment trust, common trust fund, or investment company) although some or all of the property so acquired or retained is of a kind or size which but for this express authority would not be considered proper and although all of the trust funds are invested in the securities of one company. No principal or income, however, shall be loaned, directly or indirectly, to any Trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to this trust, nor to anyone except on the basis of an adequate interest charge and with adequate security.

(b) To sell, lease or exchange any personal, mixed or real property, at public auction or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relating to

the trust property, as they consider advisable, whether or not such leases or contracts may extend beyond the duration of the trust.

(c) To borrow money for such periods, at such rates of interest, and upon such terms as the Trustees consider advisable, and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; to acquire or hold any real or personal property, subject to any mortgage or pledge on or of property acquired or held by this trust.

(d) To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases and other instruments, sealed or unsealed, incident to any transaction in which they engage.

(e) To vote, to give proxies, to participate in the reorganization, merger or consolidation of any concern, or in the sale, lease, disposition or distribution of its assets; to join with other security holders in acting through a committee, depository, voting Trustee, or otherwise, and in this connection to delegate authority to such committee, depository or Trustees and to deposit securities with them or transfer securities to them; to pay assessments levied on securities or to exercise subscription rights in respect of securities.

(f) To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deem appropriate; to hold trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the trust property is at all times identified as such on the books of the trust; to keep any or all of the trust property or funds in any place or places in the United States of America; to employ clerks, accountants, investment counsel, investment agents and any special services, and to pay the reasonable compensation and expenses of all such services in addition to the compensation of the Trustees.

Seventh: This trust shall be for the exclusive benefit of Midwestern State University and the Trustees' powers are exercisable solely in the fiduciary capacity consistent with an in furtherance of the charitable purposes of this trust as specified in Article Third and not otherwise.

Eighth: Any person may rely on a copy, certified by a notary public, of the executed original of this Declaration of Trust held by the Trustees, and of any of the notations of it and writings attached to it, as fully as he might rely on the original documents themselves. Any such person may rely fully on any statements of fact certified by anyone who appears from such original documents or from such certified copy to be a Trustee under this Declaration of Trust. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do. No one dealing with the Trustees need see to the application of anything paid or transferred to or upon the order of the Trustees of the trust.

Ninth: This trust is being organized for the exclusive purpose of providing support for Midwestern State University, a

State of Texas tax supported institution, situated in Wichita Falls, Texas. In the event that the said Midwestern State University should cease to exist as a state supported institution of higher learning, then the Trustees shall administer the trust for other beneficiaries in accordance with paragraph Third above.

Tenth: This Declaration of Trust is to be governed in all respects by the laws of the State of Texas.

Dated this 20th day of July, 1989.

NCNB TEXAS NATIONAL BANK

BY: [Signature]

Corporate Trustee

[Signature]  
MINNIE RHEA WOOD, Trustee

[Signature]  
CLIFFORD G. TINGLEY, Trustee

[Signature]  
HERBERT B. STORY, Trustee

[Signature]  
FRANK GIBSON, Trustee

[Signature]  
DR. LOUIS RODRIGUEZ, Trustee

[Signature]  
KAY P. YEAGER, Trustee

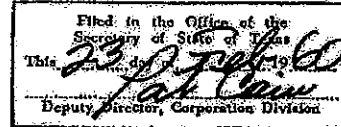
[Signature]  
MINNIE RHEA WOOD, Donor

## **ENCLOSURE 3**

### **Midwestern State University Foundation, Inc.**

- a. Original Articles of Incorporation (February 23, 1960)
- b. Amended Articles of Incorporation (December 15, 1960)
- c. Second Amendments-Articles of Incorporation (September 26, 1975)





**ARTICLES OF INCORPORATION  
OF  
MIDWESTERN UNIVERSITY FOUNDATION, INC.**

We, the undersigned natural persons of the age of twenty-one (21) years or more, all of whom are citizens of the State of Texas, acting as incorporators of a Corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such Corporation:

I.

The name of the Corporation is **Midwestern University Foundation, Inc.**

II.

The Corporation is a non-profit Corporation.

III.

The period of its duration is perpetual.

IV.

The purposes for which the corporation is organized are: the support of any charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural and horticultural undertaking.

V.

The street address of the initial registered office of the Corporation is **3410 Taft Street, Wichita Falls, Texas**, and the name of its initial registered agent at such address is **Dr. D. L. Ligon**.

**VI.**

The number of Directors constituting the Initial Board of Directors of the Corporation is Five (5), and the names and addresses of the persons who are to serve as the Initial Directors are:

E. B. Clark, Sr.	2707 Ninth Street Wichita Falls, Texas
Rhea Howard	2105 Berkley Wichita Falls, Texas
Jerry Vinson	2209 Clarinda Wichita Falls, Texas
W. Erle White	3200 Hamilton Wichita Falls, Texas
Guy Rogers	1806 Grant Wichita Falls, Texas

**VII.**

The name and street address of each Incorporator is:

E. B. Clark, Sr.	2707 Ninth Street Wichita Falls, Texas
Rhea Howard	2105 Berkley Wichita Falls, Texas
Jerry Vinson	2209 Clarinda Wichita Falls, Texas
W. Erle White	3200 Hamilton Wichita Falls, Texas
Guy Rogers	1806 Grant Wichita Falls, Texas

**VIII.**

The Corporation is to have no members.

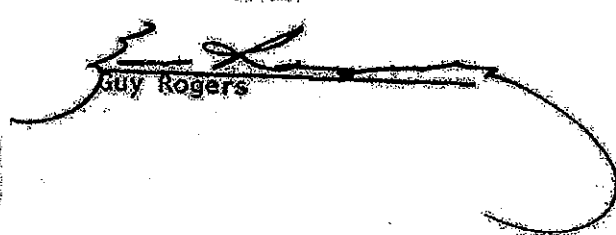
IN WITNESS WHEREOF, we have hereunto set our hands, this 19th day of February, A. D. 1960.

  
E. B. Clark, Sr.

  
Rhea Howard

  
Jerry Vinson

  
W. Erle White

  
Guy Rogers

THE STATE OF TEXAS  
COUNTY OF WICHITA }

I, a Notary Public, do hereby certify that on this 19th day of February, 1960, personally appeared before me, E. B. Clark, Sr., Rhea Howard, Jerry Vinson, W. Erle White and Guy Rogers, who each being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

  
Notary Public in and for  
Wichita County, Texas



OFFICE OF THE SECRETARY OF STATE

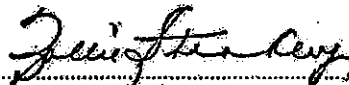
**CERTIFICATE OF INCORPORATION**  
**OF**

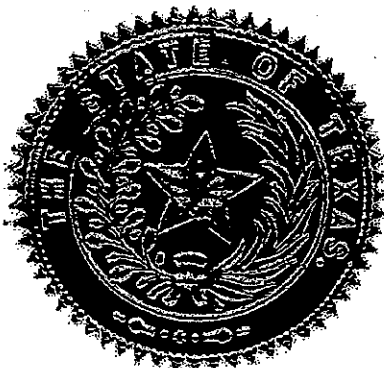
MIDWESTERN UNIVERSITY FOUNDATION, INC.  
CHARTER NO. 163039

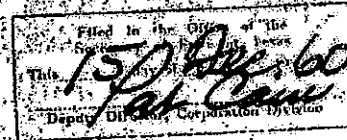
The undersigned, as Secretary of State of the State of Texas, hereby certifies that duplicate originals of Articles of Incorporation for the above corporation duly signed and verified pursuant to the provisions of the Texas Non-Profit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Incorporation and attaches hereto a duplicate original of the Articles of Incorporation.

Dated FEBRUARY 23rd, 19 60

  
Secretary of State





**ARTICLES OF AMENDMENT**  
**TO THE**  
**ARTICLES OF INCORPORATION**  
**OF**  
**MIDWESTERN UNIVERSITY FOUNDATION, INC.**

Pursuant to the provisions of Article 4.03 of the Texas Non-Profit Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation which are designed to make the corporation a tax exempt organization with its assets passing to an exempt institution of higher learning upon dissolution.

I.

The name of the corporation is Midwestern University Foundation, Inc.

II.

The following amendment to the Articles of Incorporation was adopted by the corporation on December 12, 1960.

A. The Articles of Incorporation are hereby amended by deleting therefrom Article IV. which reads as follows:

The purposes for which the corporation is organized are: the support of any charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural and horticultural undertaking.

and substituting therefor as Article IV. the following:

The purpose for which the corporation is organized is to receive contributions by means of donations, gifts and bequests and to expend such funds for the advancement of the literary, scientific and other educational endeavors of Midwestern University, a tax exempt institution of higher learning.

B. The Articles of Incorporation are hereby amended by adding thereto a new Article IX. reading as follows:

Upon dissolution of Midwestern University Foundation, Inc., all assets, both personal and real, shall automatically become the personal and real property of Midwestern University and shall be expended by Midwestern University in accordance with the purposes established in the charter and by-laws of Midwestern University Foundation, Inc.


III.

The amendment was adopted in the following manner:

The amendment was adopted at a meeting of the board of directors held on December 12, 1960, and received the vote of a majority of the directors in office, there being no members having voting rights in respect thereof.

IN WITNESS WHEREOF, we have hereunto set our  
hands this the 12th day of December, A.D. 1960.

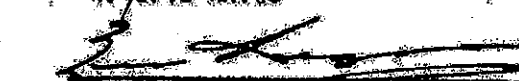
MIDWESTERN UNIVERSITY FOUNDATION, INC.

  
E. B. Clark, Sr.

  
Rhea Howard

  
Jerry Vinson

  
H. Erle White

  
Guy Rogers

DIRECTORS OF THE CORPORATION

THE STATE OF TEXAS }  
COUNTY OF WICHITA }

I, a Notary Public, do hereby certify that on  
this 12th day of December, 1960, personally appeared be-  
fore me, E. B. Clark, Sr., Rhea Howard, Jerry Vinson, H.  
Erle White and Guy Rogers, who each being by me first du-  
ly sworn, severally declared that they are the persons  
who signed the foregoing document as the sole and only  
directors of Midwestern University Foundation, Inc., and  
that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal of office the day and year above written.

  
Notary Public In and for  
Wichita County, Texas

My Commission expires June 1, 1961.





OFFICE OF THE SECRETARY OF STATE

**CERTIFICATE OF AMENDMENT  
OF**

MIDWESTERN UNIVERSITY FOUNDATION, INC.

The undersigned, as Secretary of State of the State of Texas, hereby certifies that duplicate originals of Articles of Amendment to the Articles of Incorporation of the above corporation duly signed and verified pursuant to the provisions of the Texas Non-Profit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Amendment to the Articles of Incorporation and attaches hereto a duplicate original of the Articles of Amendment.

Dated December 15, 1960.

  
Secretary of State

ARTICLES OF AMENDMENT BY  
THE BOARD OF DIRECTORS  
TO THE  
ARTICLES OF INCORPORATION OF  
MIDWESTERN UNIVERSITY FOUNDATION, INC.

FILED  
In the Office of the  
Secretary of State of Texas

SEP 26 1975

*James B. Chate*  
Deputy Director, Corporation Division

Pursuant to the provisions of Article 4.03 of the Texas Non-Profit Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation which change the name of the corporation.

ARTICLE I: The name of the Corporation is MIDWESTERN  
UNIVERSITY FOUNDATION, INC.

ARTICLE II: The following amendment to the Articles of Incorporation was adopted by the Board of Directors of the Corporation on July 15, 1975:

(A) Article I of the Articles of Incorporation is hereby amended to read as follows:

ARTICLE I

The name of the Corporation is MIDWESTERN STATE  
UNIVERSITY FOUNDATION, INC.

ARTICLE III: The amendment was adopted at a meeting of the Board of Directors held on July 15, 1975, and received the vote of a majority of the Directors in office, there being no members having voting rights in respect thereof.

DATED: July 15, 1975.

MIDWESTERN UNIVERSITY FOUNDATION, INC.

By *E. B. Clark, Sr.*  
E. B. Clark, Sr.  
Its Chairman (Principal Executive Officer)

By *W. Erle White*  
W. Erle White  
Its Secretary

STATE OF TEXAS       )  
                          )  
COUNTY OF WICHITA    )

I, Dee Green, a Notary Public,  
do hereby certify that on this 10th day of September,  
1975, personally appeared before me E. B. Clark, Sr.,  
being duly sworn, declared that he is chairman of the  
Corporation executing the foregoing document, that he signed  
the foregoing document in the capacity therein set forth, and  
that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and  
seal the day and year before written.

  
\_\_\_\_\_  
DEE GREEN  
Notary Public in and for  
Wichita County, Texas.

My Commission Expires:  
June 1, 1977



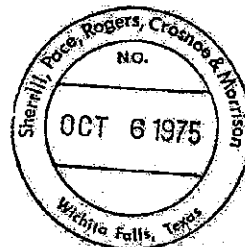
STATE OF TEXAS  
OFFICE OF THE SECRETARY OF STATE  
AUSTIN, TEXAS 78701

MARK WHITE.  
SECRETARY OF STATE.

OCT 01 1975

BRUCE HUGHES  
ASST. SECRETARY OF STATE

JOSEPH N. SHERRILL, JR.  
P O DRAWER 8008  
WICHITA FALLS, TEXAS 76307



RE: MIDWESTERN STATE UNIVERSITY FOUNDATION, INC.  
FORMERLY MIDWESTERN UNIVERSITY FOUNDATION, INC.  
CHARTER NO. 163039-1

DEAR SIR:

IT HAS BEEN OUR PLEASURE TO APPROVE AND PLACE ON RECORD YOUR ARTICLES  
OF AMENDMENT. THE APPROPRIATE EVIDENCE IS ATTACHED FOR YOUR  
FILES, AND THE ORIGINAL HAS BEEN FILED IN THIS OFFICE.

THE RECEIPT OF YOUR REMITTANCE IN PAYMENT OF THE FILING FEE IS  
ACKNOWLEDGED BY THIS LETTER.

IF WE CAN BE OF FURTHER SERVICE AT ANY TIME, PLEASE ADVISE.

VERY TRULY YOURS,  
MARK WHITE  
SECRETARY OF STATE

BY: BILL KIMBROUGH  
DIRECTOR  
CORPORATION DIVISION

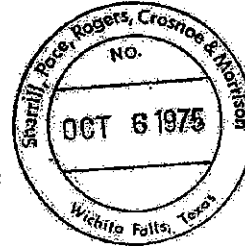


The State of Texas  
Secretary of State

CERTIFICATE OF FILING  
OF  
ARTICLES OF AMENDMENT  
FOR

MIDWESTERN STATE UNIVERSITY FOUNDATION, INC.  
FORMERLY

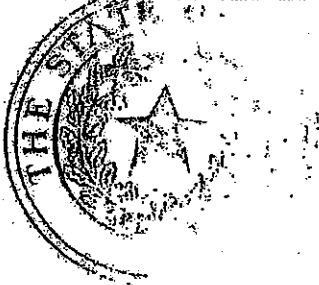
MIDWESTERN UNIVERSITY FOUNDATION, INC.  
CHARTER NO. 163039



THE UNDERSIGNED, AS SECRETARY OF STATE OF THE STATE OF TEXAS,  
HEREBY CERTIFIES THAT DUPLICATE ORIGINALS OF THE ATTACHED FOR THE  
ABOVE, DULY SIGNED AND VERIFIED, HAVE BEEN RECEIVED IN THIS OFFICE  
AND ARE FOUND TO CONFORM TO LAW.

ACCORDINGLY THE UNDERSIGNED, AS SUCH SECRETARY OF STATE, AND BY  
VIRTUE OF THE AUTHORITY VESTED IN HIM BY LAW, HEREBY ISSUES THIS  
CERTIFICATE AND ATTACHES HERETO THE DUPLICATE ORIGINAL.

DATED SEP. 26, 1975



*Mark W. White Jr.*  
Secretary of State

WLR