

**Amended  
RESOLUTION AND DECLARATION OF TRUST CREATING  
STARK COMMUNITY FOUNDATION  
Updated to November 2008**

**TRUSTEE BANKS [Trust Affiliate]**

(Listed alphabetically with date of adoption or admission)

|  |           |
|--|-----------|
| FirstMerit Bank, NA/Citizens                 | Successor |
| The Huntington National Bank                 | Successor |
| JPMorgan Chase Bank, NA                      | Successor |
| Key Bank, NA [Key Trust Company of Ohio, NA] | Successor |
| National City Bank                           | Successor |

**PREDECESSOR TRUSTEES (\*original Trustee)**

|   |                      |
|---|----------------------|
| Ameritrust Company, NA<br>01-92<br>(acquired by Society Corporation)  | 04-01-76 to 07-      |
| Bank One, NA [Bank One Trust Company, NA]<br>16-04<br>(merged with JPMorgan Chase Bank, NA)   | 05-19-97 to 07-      |
| Bank One, Akron, NA<br>19-97<br>(name changed to Bank One, NA through merger of all Ohio entities)  | 09-14-91 to 05-      |
| Bank One, Alliance, NA<br>25-88<br>(merged into Bank One, Akron, NA)  | 11-01-83 to 01-      |
| Canton National Bank<br>(merged into United National Bank & Trust Co.)  | 12-11-69 to 09-30-72 |
| Central Trust Company of Northeastern Ohio, NA<br>14-91<br>(acquired by Bank One, Akron, NA)  | 10-31-75 to 09-      |
| Citizens National Bank<br>21-98<br>(FirstMerit Bank, NA/Citizens organized into a single charter;<br>previously Citizens National Bank had been separately chartered) | 03-18-95 to 03-      |
| First National Bank in Canton*<br>31-75<br>(name changed to Central Trust Company of Northeastern Ohio, NA)   | 12-27-63 to 10-      |
| First National Bank in Massillon<br>18-95<br>(merged into Citizens National Bank)   | 11-08-69 to 03-      |
| First National City Bank of Alliance*<br>01-83<br>(acquired by Bank One, Alliance, NA)  | 12-27-63 to 11-      |
| Harter Bank & Trust Company, NA*<br>(acquired by Society Corporation)   | 12-30-63 to 09-30-84 |
| The Mount Union Bank – Alliance*  | 12-18-63 to 09-30-72 |

(merged into United National Bank & Trust Co.)  
National City Bank, Northeast 01-26-93 to 11-01-97  
(name changed to National City Bank through reorganization as a state-wide bank)  
The Peoples Merchants Trust Co.\* 12-19-63 to 04-01-76  
(acquired by Ameritrust Company, NA)  
Sky Bank, NA [Sky Trust, NA] 08-22-01 to 07-01-07  
(acquired by The Huntington National Bank)  
Society National Bank 09-08-89 to 06-17-96  
(name changed to Key Bank, NA through merger)  
Society Bank of Eastern Ohio, NA 09-30-84 to 09-08-89  
(named changed to Society National Bank)  
United National Bank & Trust Company 09-30-72 to 03-08-02  
(merged with First National Bank of Zanesville; merged bank now Unizan Bank, NA)  
Unizan Bank, NA [Unizan Financial Services Group, NA] 03-08-02 to 03-01-06  
(acquired by The Huntington National Bank)

**AMENDED ON**

August 10, 1977, October 20, 1977, June 11, 1980, August 31, 1993,  
February 24, 1995, October 3, 1997, and November 2, 2004

**TITLE** 1 page  
**INDEX** 1 page  
**AMENDED RESOLUTION & DECLARATION OF TRUST** 32 pages  
**AMENDED**

**RESOLUTION AND DECLARATION OF TRUST CREATING  
STARK COMMUNITY FOUNDATION**

WHEREAS, the Last Will and Testament of Edward A. Langenbach provided for a charitable trust for the purpose of maintaining the sound health and general welfare of the citizens of Canton and its immediate environs, of which trust the First National Bank of Canton is Trustee and James L. Amerman, Paul B. Belden and Dale C. Hall are presently serving as advisors; and

WHEREAS, The Timken Foundation has offered to establish a trust for similar charitable purposes; and

WHEREAS, the Trustee and the Advisors of the Edward A. Langenbach Trust and The Timken Foundation desire to encourage gifts, grants, devises and bequests by others for such charitable purposes and to establish a permanent, flexible organization and plan within which all such charitable trusts can be operated, with capable, experienced and continuous management, through any bank or trust company in Stark County authorized to accept and execute trusts for the purposes hereinafter specified; and

WHEREAS, such an organization can constantly study the needs of the community for charitable and educational facilities and services and apply funds available for such purposes in a manner which will accomplish the greatest good for the community, thus enabling the persons making the gifts, grants, devises and bequests to designate the specific charitable beneficiary to receive the income and/or principal thereof, while at the same time permitting application of such funds to other charitable purposes, if the use originally designated becomes unwise or unnecessary;

NOW, THEREFORE, it is hereby resolved and declared by the Board of Directors of the (Name of Bank) as follows:

**ARTICLE I. NAME OF TRUST.**

The trust hereby provided for shall be known as ' Stark Community Foundation."

**ARTICLE II. GIFTS OR BEQUESTS TO THE TRUST,**

(Name of Bank adopting resolution)

will accept any gift, grant, devise or bequest in trust for public charitable uses and purposes, including in such term all educational or charitable purposes of a public character, created by any Last Will, Trust Agreement or other instrument which shall provide for a trust upon the terms and conditions of this Resolution and Declaration, either by annexing thereto a copy of this Resolution

and Declaration, or by identifying and incorporating the same by reference, and in either such case thereby conclusively assent to and adopt all the provisions herein specified, or assent to and adopt all of the provisions herein specified and in connection therewith express a desire of the testator or donor of the trust (a) as to the time when and the purpose for which the principal shall be distributed, and/or (b) as to the purpose for which the income shall be used for a definite or indefinite period.

Such assent and adoption of the provisions hereof shall be deemed to include the express assent and direction that any such expressed desire of the testator or donor as to the use and/or disposition of income or principal shall be respected and observed subject, however, in every case, to the condition that if and whenever it shall appear to the Distribution Committee herein provided for that circumstances have so changed since the execution of the instrument containing any gift, grant, devise or bequest as to render unnecessary, undesirable, impractical or impossible a full and direct compliance with the terms of such instrument, or that said circumstances have so changed as to render said expressed desires no longer wise or beneficial, said Committee, by resolution adopted by affirmative vote of a majority of its members, may at any time, or from time to time, direct the application of such gift, grant, devise or bequest to such other public charitable or educational purpose as, in their judgment, will most effectually accomplish the general purposes expressed in Section A of Article VI hereof, without regard to and free from any specific restriction, limitation or direction contained in such instrument (excepting only any geographical limitations as to the area within which such income or principal may be distributed, which shall in all events be observed).

Any charitable trust which has been created under any Will or other instrument executed prior to the establishment of this Foundation may be brought within the operation of the Foundation to any extent permissible under the Will or other instrument creating such trust and subject to any limitations or conditions contained therein. Directions and/or recommendations for distributions of funds made by the Distribution Committee to the Trustees of any such trust shall be governed by the terms and conditions of such trust instrument.

### **ARTICLE III. THE TRUSTEES.**

#### **Section A. Trustees not Co-Trustees.**

All of the trust companies or other financial institutions authorized to accept and execute trusts for the purposes specified in Article VI hereof, whether originally named herein or hereafter permitted to accept trusts in accordance with this Resolution and Declaration as herein provided, are sometimes collectively referred to as the Trustees or severally as Trustee or one of the Trustees; but neither their concerted action hereunder, nor such collective reference, nor anything herein contained, shall be deemed to make them or any of them co-trustees, joint tenants, or tenants in common of any estate or property given, granted, devised or bequeathed for the uses and purposes and upon the conditions herein expressed.

#### **Section B. Each Trust an Estate in Severalty.**

Except as hereinafter provided in Section C of this Article, the estate in any property, real or personal, from time to time given, granted, devised or bequeathed to any one of the Trustees for the uses and purposes, upon the conditions and subject to the provisions herein expressed, shall be deemed to be a separate trust estate to be held in severalty and shall be held and administered by the Trustee to which such gift, grant, devise or bequest shall be made; but, except as hereinafter in

Article VI provided, or except as required by the provisions of any instrument creating a charitable trust which was executed prior to the establishment of this Foundation and has been brought within the operation hereof, the Trustees shall have no power of disposition over, or to select or appoint the beneficiaries of the rents, profits and income of any such property or to allot the amount to be paid to any of them, such power of selection, appointment and allotment and the duty to exercise it being conferred and imposed upon the Distribution Committee, except as otherwise stated herein.

**Section C. General Trust for Miscellaneous Gifts.**

Any Trustee may accept or create a trust to which any person, firm or corporation may make gifts, grants, devises and bequests for the uses and purposes specified in Article VI hereof without the creation of a separate, individual trust for each such gift, grant, devise or bequest, any such property to be held rather as a combined, single, and general trust, under all the terms and conditions of this Resolution and Declaration.

**ARTCILE IV. THE DISTRIBUTION COMMITTEE**

**Section A. Members.**

The Distribution Committee shall consist of nine citizens of the United States, residents of Stark County, selected for their knowledge of and familiarity with the social and economic conditions of the community, the character and functions of existing charitable and educational organizations, facilities and activities within the community, and the needs of the community for educational, relief, charity and welfare facilities and services, and for their sound judgment, good character and experience in community affairs and their willingness and ability

to serve diligently as members of the Committee. In no event shall more than three members belong to the same religious sect or denomination. No person holding a public office of a partisan political nature shall be a member of said Committee, and if any member of said Committee shall be elected or appointed to any such public office, such member shall thereupon, and without further action or proceedings whatever, cease to be a member of the Committee. The term public office as used herein shall not be intended to include an office of entirely non-political and non-partisan character, nor shall the holding of such purely nonpolitical office preclude the holder from membership on said Committee. The Committee shall be constituted, nominated, appointed and classified as follows:

Class (1) Two members by the Trustees Committee provided for in Article V hereof;

Class (2) One member by the judges of the Common Pleas Court of Stark County, Ohio, acting by majority vote;

Class (3) One member by the Judge of the Probate Court, or the court for the time being having jurisdiction of the settling of estates in Stark County;

Class (4) One member by the United Way of Greater Stark County, Inc., acting through its Board of Trustees, except that such member shall not be a paid employee of the United Way or of any of the agencies receiving financial support through the United Way;

Class (5) Four members by The Stark Community Foundation, Inc., acting on recommendation of its Nominating Committee; one of said four (4) members preferably shall live or work in Western Stark County (the Cities of Massillon and Canal Fulton, the Villages of Beach City, Brewster, Hills and Dales, Navarre and Wilmot, and the Townships of Jackson, Lawrence, Perry, Sugarcreek and Tuscarawas) and one of said four (4) members preferably shall live or work

in Eastern Stark County (the City of Alliance, the Villages of Minerva, Robertsville, and Louisville and the Townships of Lexington, Marlboro, Washington and Paris).

In making the appointments of the members of the Distribution Committee, the persons upon whom such power of appointment is conferred shall be the incumbents for the time being of the several offices specified, but act solely in their individual capacity and by virtue of the power and authority herein conferred. Without so limiting or restricting the qualifications of members otherwise appointed, no member appointed by the Trustees Committee shall be an executive officer of any Trustee.

**Section B. Term of Office.**

All members shall hold office during a term of five (5) years, from and after the first day of February succeeding their respective appointments, except those first appointed as the third and fourth members in Class (5), whose first terms shall begin with the dates of their respective appointments, and end with the first day of February of the fourth year (for the third member appointed in such class) and the fifth year (for the fourth member appointed in such class) succeeding their respective appointments.

Provided, however, that any member appointed to fill a vacancy in the Committee caused by death, resignation or any cause other than expiration of term, shall hold office only for the unexpired portion of the term for which the predecessor in office was originally appointed. Provided, further, that no person shall be eligible for reappointment after serving two full terms of five (5) years.

The Trustees Committee shall request the persons upon whom power is conferred to appoint the members of the Committee in Class (5) to confer in respect to the membership of the Distribution Committee so that the qualifications by this article prescribed for members of said

Committee may be observed, and duplication of nominees or violation of the restrictions of this Article may be avoided and to appoint the four members of said Committee in Class (5) and notify the Trustees Committee in writing of the persons appointed. The Trustees Committee shall thereupon appoint the two members in Class (1). Thereafter, the persons charged with the appointment of the members of the Distribution Committee in Classes (2) to (5), inclusive, shall whenever required, either on their own motion or upon the request of the Trustees Committee, confer in regard to the filling of vacancies in the Distribution Committee caused by expiration of term, death, resignation or refusal to serve. All such vacancies shall, nevertheless, be filled by the authority which made the original appointment, except as hereinafter provided.

Failure of any member of the Distribution Committee to attend three (3) consecutive meetings of the Committee, without excuse, or inability to perform his or her duties by reason of incompetency or other cause, shall, in the discretion of the Committee, operate as a resignation from membership on the Committee. In the event that any of the persons herein authorized to appoint members of said Committee shall, for sixty (60) days after request to appoint a member of said Committee, fail to exercise the power of appointment herein conferred, then and in any such event such power of appointment may be exercised by action of the Trustees Committee, evidenced by instrument in writing filed with the President of The Stark Community Foundation appointed as hereinafter provided.

**Section C. Designation of New Sources of Appointment.**

In the event that any office, the holder of which, or organization which, is designated to nominate and appoint a member of the Distribution Committee, shall cease to exist, then the Trustees Committee shall designate the holder of another office, or another organization, of similar

functions or jurisdiction, with power to nominate and appoint a member of the Committee of the same class.

Section D. Organization.

The Distribution Committee first appointed shall organize as soon as may be convenient, and the Committee shall thereafter annually meet upon the first day in February or at such other annual date as may be fixed and provided for in its own regulations. At the first and subsequent annual organization meetings the Committee shall elect a Chairman from among its members. The Distribution Committee shall appoint a President whose title shall be "President of The Stark Community Foundation" and who shall hold office subject to the will of the Distribution Committee. Such President and any successor shall be appointed and may be removed at any time by the affirmative vote of three-fifths (3/5ths) of all members of the Distribution Committee. The President shall receive such compensation and perform such duties as the Distribution Committee determines, and shall keep a complete record of the proceedings of said Committee, which record shall be at all times available and open to the inspection of the Trustees Committee. Such President shall also serve as Secretary of the Trustees Committee unless otherwise provided by said Committee.

Section E. Authentication of Orders.

Any written order or direction to a Trustee for the payment of money, made pursuant to a resolution adopted at a meeting of the Distribution Committee, shall be deemed sufficiently made and executed if signed by the Chairman, Vice-Chairman, President or other member, officer or agent duly authorized thereunto by the Committee.

Section F. Quorum.

A majority of the members of the Distribution Committee shall constitute a quorum for the transaction of any business at any meetings of said Committee, but the affirmative votes or action of at five members of the Committee shall be required for the making of any order or direction for the payment of money. The Committee shall have power to adopt regulations and by-laws not inconsistent with this resolution and declaration, providing for meetings, regular or special, the appointment of sub-committees for special purposes and for the government of its action, and may, at pleasure, amend such regulations or by-laws. The Committee shall, as a rule of action, as far as possible, carry on its investigations through existing agencies or through specially appointed temporary committees or agents, and shall avoid bureaucracy and complicated machinery, and consequent expense.

Section G. Expenses.

The reasonable expenses of the Distribution Committee, as herein provided, and the compensation of the President and other employees, agents or attorneys of the Committee, shall be paid out of the income certified by the Trustees as available for distribution, as provided in Section C of Article VI, or out of funds contributed for the purpose; but the members of the Committee shall serve without compensation.

Section H. Power to Remove Trustee

- (1) Notwithstanding any provision in this Resolution and Declaration of Trust or in any instrument making a transfer creating or adding to a fund or trust under this Resolution and Declaration of Trust, the Distribution Committee shall have the power:
  - (a) to replace any participating trustee for breach of fiduciary duty under Ohio law;

and

(b) to replace any participating trustee for failure to produce over a reasonable period of time (as determined by the Distribution Committee), a reasonable (as determined by the Distribution Committee) return of net income (or appreciation where not inconsistent with the Foundation's need for current income), with due regard to safety of principal, in furtherance of the exempt purposes of the Foundation (except for assets held for the active conduct of the Foundation's exempt activities).

(2) In applying the power described in this Section, the determination with respect to a reasonable return of net income (or appreciation where not inconsistent with the Foundation's need for current income) shall be made separately with respect to each restricted trust or fund and shall be made in the aggregate with respect to unrestricted trusts or funds of the Foundation. As used herein, the term "restricted trust or fund" means a trust or fund, the income of which has been designated by the donor of the gift or bequest as being available only for the use or benefit of a named charitable organization or agency or for the use or benefit of a particular class of charitable organizations or agencies the members of which are readily ascertainable and are less than five in number.

(3) If it appears that there may be grounds for exercising the power described in this Section with respect to any fund or trust, the Distribution Committee shall notify the participating trustee involved and provide a reasonable opportunity for explanation and/or correction. Before exercising the power granted to the Distribution Committee under this Section, the Distribution Committee may seek advice of legal counsel as to whether a breach or failure has been committed under Ohio law. The Distribution

Committee shall exercise a power described in this Section upon a majority vote of its members.

- (4) Upon the exercise of the foregoing power to replace any participating trustee, the Distribution Committee shall have the power, upon application to an appropriate court, to select a successor trustee to which a fund or funds held by the former trustee shall be transferred.

#### **ARTICLE V. TRUSTEES COMMITTEE.**

To insure unity of purpose and concert of action among the Trustees, to complete the organization and provide for the continuance of STARK COMMUNITY FOUNDATION, and for the other purposes in this article mentioned, the persons who shall be the Chief Executive Officers for the time being of each of the Trustees shall constitute a committee which shall be known as the "Trustees Committee." The Trustees Committee shall have such powers as may be necessary to effectuate the foregoing objects, including power (1) to select the two members of the Distribution Committee herein provided to be appointed by the Trustees, (2) from time to time to approve in writing and permit other trust companies or financial institutions of the State of Ohio located in Stark County and authorized by law to accept and execute trusts for the purposes specified in Article VI to join Stark Community Foundation, (3) in event of any gift, devise or bequest intended for Stark Community Foundation but under or in connection with which the particular Trustee intended to take the title to and management of the property, is not designated, or is incorrectly described, to determine which of the Trustees shall seek the appointment and/or secure the trust assets, to the end that the intended charitable gifts, devises or bequests shall not fail for lack of a Trustee to undertake the control and management

thereof, and (4) from time to time to take such other action and perform such duties as are herein provided to be taken or performed by said Committee.

The Trustees Committee shall have no power to interfere with the management or disposition of any property vested in or held by the Trustees, or with the distribution of the rents, profits or income thereof.

Each member of the Trustees Committee shall be entitled to one vote. The Trustees Committee may take action at a meeting of the members, by resolution adopted by a majority of the votes of all the members, or by writing subscribed by all the members of such Committee without a meeting thereof; but no action shall be taken by writing without a meeting, except with the unanimous consent of the members of said Committee. Subject to the foregoing, the Trustees Committee may prescribe such rules and regulations of procedure as it may deem expedient. The Board of Directors of any Trustee shall have power to appoint one of the Vice Presidents or other executive officers as alternate for the Chief Executive officer, who shall have all the powers and duties and be entitled to all the immunities herein specified in respect of a member of said Committee. In the event the members of the Trustees Committee are not able by majority action to select the members of the Distribution Committee herein provided to be appointed by the Trustees Committee, or are not able by such majority vote to take action upon any other matter herein provided to be taken or performed by said Committee, excepting only the question of permitting other trust companies or empowered financial institutions to join The Stark Community Foundation, such appointments or such other actions shall be made or undertaken by resolution adopted by a majority vote of all the persons then constituting the members of the Distribution Committee and the Trustees Committee at a meeting of which reasonable notice of the time and place of holding the same shall have been given to all of such persons.

The members of the Trustees Committee shall receive no compensation for their services. No member of the Trustees Committee shall in any event or in any manner be or become liable for any act done or omitted to be done or for any consent or approval given or withheld, except only each for his own intentional bad faith, nor shall the Trustees be responsible for any action of the Trustees Committee or any member thereof.

**ARTICLE VI. DISTRIBUTION OF TRUST FUNDS.**

Subject to the particular terms of any gift, grant, devise or bequest as and only to the extent provided in Article II and III:

**Section A. Appropriation of Income.**

The Distribution Committee shall, after receipt of certificates from the Trustees, as provided for in Section C of this Article VI, appropriate any part or all of the net income so certified, subject to the provisions hereinafter made, to such public charitable or educational uses and purposes as will, in the absolute and uncontrolled discretion of the Committee, most effectively assist and promote the sound health and general welfare of citizens of the City of Canton, Ohio, and its immediate environs (which may be construed to include the geographical limits of Stark County unless the terms of any instrument creating a trust hereunder require a more narrow interpretation) regardless of race, color, or creed; and without any way limiting or restricting the generality of the foregoing nor, on the other hand, intending to enlarge or extend the same or include therein any uses and purposes other than such as are now or may hereafter be considered or held to be of a public charitable nature, but rather in illustration and explanation thereof, for the following uses and purposes among others:

(a) For assisting public charitable or educational institutions, whether supported wholly or in part by private endowment or donations or by public taxation;

(b) For promoting scientific research for the advancement of human knowledge and the alleviation of human suffering;

(c) For providing scholarships or otherwise assisting worthy young men or women who would otherwise be unable to do so in obtaining an education;

(d) For the care of the sick, aged and helpless;

(e) For the care of needy men, women and children;

(f) For the improvement of living and working conditions;

(g) For providing facilities for public recreation;

(h) For the promotion of sanitation and measure for the prevention of disease;

(i) For research into the causes of ignorance, poverty, crime and vice, preventing the operation of such causes, and remedying or ameliorating the conditions resulting therefrom.

Provided, that trusts for charitable purposes and uses outside the geographical limits of Stark County may also be administered in accordance with the terms and conditions of this Resolution and Declaration if the provisions of the instrument creating the trust expressly so state.

#### Section B. Use of Principal.

With the approval of the Trustee institution acting as Trustee for a specific trust fund had upon a two-thirds (2/3rds) vote of the directors present at a duly held meeting of the Board of Directors of such institutions, all of any part of the principal of that fund may be used for any purpose within the scope of the Foundation which may have the approval of a majority of the members of said Distribution Committee, providing that not to exceed twenty per cent (20%) of the entire amount held as principal in all trusts then existing hereunder shall be disbursed during any one period of five (5) consecutive years.

#### Section C. Certification of Income.

Each of the Trustees shall, within forty-five (45) days after the expiration of each quarter of every calendar year, by certificate in writing signed by its President, Vice President or other duly authorized officer and delivered to President of the Foundation, certify the amount of income received by such Trustee during the preceding quarter and the amount available for distribution as herein provided.

Section D. Trustees' Disbursement of Income.

Each of the Trustees shall pay and disburse such portions of net income or of the principal of the property held by them respectively, provided such distribution of principal shall have been approved as provided in Section B hereof, at such times and in such amounts as shall from time to time be ordered or directed by the Distribution Committee, and in the distribution and application of funds available for distribution hereunder, payments may be made (a) directly for any such public charitable or educational purposes; (b) to corporations or associations maintaining institutions for any one or more of the public charitable or educational purposes aforesaid, to corporations or associations already formed to distribute and apply such funds to any one or more of such purposes, or to corporations or associations formed by the Committee for any one or more of such purposes; or (c) to the Committee for its own reasonable expenses and reasonable compensation to its agents, employees and attorneys, including in such expense such reasonable amount as the Committee may deem necessary or advisable for investigating the conduct, scope and operation of any of the charitable institutions, organizations, or endeavors of the character set forth in Section A of this Article; provided, however, that no funds shall be appropriated by the Distribution Committee or paid by any Trustee to any corporation or association if any officer, private stockholder, individual, member or employee thereof shall be

received or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes, or if the organization thereof for any such purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employees, or if it be not in good faith organized or conducted exclusively for one or more of such purposes, or if the distribution of funds to such corporation or association would cause this Foundation or the trust from which the funds are distributed to lose its classification as an organization exempt from taxation as a charitable or educational organization under the United States Internal Revenue Code or similar tax law or the tax laws of the State of Ohio then in effect.

The Trustees and the directors and officers thereof, however, shall be fully protected in acting upon any such order or direction of the Distribution Committee and shall not be responsible for any act or omission of the said Committee; and any distribution made by any Trustee upon the order of such Committee shall be conclusively deemed to be in compliance with the provisions hereof.

Section E. Failure of Appropriate Income.

If the Distribution Committee shall fail, within a reasonable time after receipt of the certificate from a Trustee provided for in Section C of this Article VI, to appropriate, or to order or direct such Trustee to pay and disburse the net income of said fund so certified to said Committee as in said Section D of this Article VI provided, then and in that event, and income, such Trustee shall be the power and duty of disposition of the portion of the net income of the fund received by it, including power to select and appoint the beneficiaries subject to the limitations

herein imposed and prescribed and allot the amount payable to each, to the end that there shall be no failure to carry out the charitable uses and purposes hereof. Every distribution made by any Trustee in good faith, by reason of the failure of the members of the Distribution Committee to direct distribution as hereinabove provided, shall fully protect such Trustee.

#### **ARTICLE VII. TITLE, POWERS AND IMMUNITIES OF TRUSTEES**

The Trustee of each trust made as provided in Article II shall be vested under the terms of this declaration as Trustee of an express trust, with the legal title to the property given, granted, devised or bequeathed to it for the uses and purposes and upon the conditions herein expressed, and shall be entitled to exercise in respect of the property so held by it all rights of absolute ownership, provided, however, that all securities and property at any time held by the Trustee shall be devoted exclusively to the public charitable and educational purposes herein mentioned.

Without in any way limiting or restricting the generality of the foregoing, but rather in enlargement and extension thereof, and except as otherwise expressly restricted or enlarged by such specific provisions, if any, with respect thereto as may be contained in the particular will or trust instrument creating the trust, the Trustee shall have the following powers with respect to the management, investment and control of the trust estate:

(a) In investing, reinvesting, purchasing, acquiring, exchanging, selling and managing the trust estate, the Trustee shall not be limited to investment which would be permitted by a trustee under the laws of the State of Ohio, but shall exercise the judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent investment of their funds, considering the probable income, as well as the probable safety of their capital and the possibility of capital growth. Within the limitations of the foregoing standard, the

Trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred to commit, which men of prudence, discretion and intelligence acquire for their own account. The Trustee may also hold in the trust its own stock or other securities, if such should be transferred or bequeathed to the trust, and may deposit any cash funds held by it for the trust in a savings account or interest-bearing deposit in its own commercial banking department;

(b) To retain any and all property, real or personal, which may come into its hands in the form and condition in which it may be, notwithstanding the same be not a lawful investment for trust funds under the laws of the State of Ohio; or, if it shall deem it advisable, from time to time sell or exchange any or all such property;

(c) To sell, lease (for such periods, irrespective of the time for distribution of principal, as it shall deem for the best interests of said fund), convey, transfer, exchange, deliver and dispose of all or any part of the property or securities from time to time constituting the trust estate, at such prices and upon such terms and conditions as to it shall seem expedient and proper, no purchaser of any securities or property sold by the Trustee shall be bound to ascertain or inquire into the necessity or propriety of any such sale, or shall be bound to see to the application of the purchase moneys paid thereon, and the receipts or receipt in writing of the Trustee for the purchase money of any property sold, or for any money, stocks, funds, shares or securities, which may be paid or transferred to them, shall effectually discharge the purchaser or purchasers or other person or persons paying or transferring the same therefrom or for being answerable for the application or misapplication thereof;

(d) To consent to the extension, refunding or renewal of any such securities, and to the extension or renewal of any mortgage or lien securing the same;

(e) To make, execute and deliver all proper receipts, bills of sale, conveyances, assignments, transfers, proxies, powers of attorney and agreements as it shall deem best in the management and control of the securities and property constituting the trust estate;

(f) To exercise all voting rights and privileges pertaining to stocks held by it; to make or join in any plan or plans of reorganization or of readjustment in respect of any corporation of which any of the shares of stock, bonds or other securities or obligations are at any time held by it, and to exchange, accept and hold any property or new securities in exchange for or in place of any securities surrendered in accordance with any such plan; to assent to the liquidation, consolidation or merger of any corporation whose securities are held by it with any other corporation or to the lease by such corporation of its property, or any portion thereof, to any other corporation, or to the sale or lease by any other corporation of its property to such corporation, and upon any such consolidation, merger, lease or similar arrangement, to exchange the securities held by the Trustee for other securities issued in substitution therefor; to pay all such assessments, expenses and sums of money as it may deem expedient for the protection of the interest of the fund as holder of the stocks, bonds, or other securities or any corporation. The term corporation as used in this paragraph shall be deemed to include any company, association, trust or other entity or organization whose shares, certificates of ownership, bonds, obligations or securities of any character are held by the Trustee;

(g) The Trustee shall have the right and power, in its uncontrolled discretion, to determine, in all trusts subject hereto, what shall be treated as income and what shall be treated as principal as to each respective transaction therein and to charge or apportion any losses or expenses

to principal or income as it shall deem best, including the right to set aside, or in its discretion, refrain from setting aside any part of the income received by it from securities taken or purchased as part of the trust estate at a premium, as a sinking fund to retire or amortize such premium;

(h) To borrow money for the purpose of procuring funds deemed by the Trustee in its discretion to be necessary for the improvement, protection or preservation of the trust estate or any of the assets comprised therein. To realize such funds the Trustee may advance its own funds, having a lien for the payment thereof, with interest, upon the trust estate, or may borrow from others upon such terms and conditions as it deems proper, including the right to secure any such loan by the mortgage or pledge of all or any part of the property or securities of the trust estate, but the Trustee may not otherwise mortgage, pledge or otherwise encumber the assets of the trust;

(i) To compromise, compound and adjust claims in favor of or against the property held or intended to be held by it, upon such terms and conditions as to it may seem just, expedient and proper;

(j) Although the Trustee in making investments or re-investments of said funds, shall in no case be permitted to purchase from itself, or to sell to itself, securities or property, or retain to itself any commission from the purchase or sale of any such security or property, it is understood and agreed that the acquisition of real estate mortgage loans theretofore made by the Trustee as its own loans, in the ordinary course of its business, or the acquisition of participating interests in such loans, shall not be deemed a purchase prohibited by the provisions hereof or by any principle of equity, if such real estate mortgage loans, or participating shares therein, at the time of their acquisition, are within the standards prescribed by law for the investments of savings banks and trust companies and are so acquired free from any or other charge;

(k) The Trustee of each trust may select and employ in and about the execution thereof, attorneys, agents or servants, and may pay reasonable and proper compensation for the services and expenses of such attorneys, agents or servants. The Trustee may also retain, as compensation for its services as Trustee, the compensation for which it may have contracted, or which is stipulated in the instrument of gift, grant, devise or bequest, or, in the absence of such contract or stipulation, then such compensation as may be reasonable, and in addition thereto, its reasonable expenses;

(l) No Trustee shall be answerable for the acts, receipts, neglects or defaults of any of the other Trustees, and no Trustee shall be liable for any error of judgment or for any act done or step taken or omitted under the advice of counsel, nor for anything which it may do or refrain from doing in good faith, each Trustee being liable only for its own bad faith or willful default or neglect;

(m) Any moneys received by any Trustee, under the provisions of any gift, grant, devise or bequest may be treated by it, until invested or reinvested, or paid out conformably herewith, as a general deposit, without any liability for interest save such as, during that time, it allows to its depositors on similar deposits;

(n) No Trustee shall be responsible for the validity of any gift, grant, devise or bequest at any time made to any of them for the uses and purposes and upon the conditions expressed in this declaration.

## **ARTICLE VII-A. ADDITIONAL PROVISIONS WITH RESPECT**

### **TO REDEVELOPMENT ACTIVITIES.**

#### **Section A. General.**

Consistent with the Foundation's purposes, it may from time to time engage in

activities in connection with the redevelopment of downtown Canton and other areas within Stark County which would be benefited by such redevelopment. The powers and authority granted by this Article with respect to such activities are in addition to those given by law or under other provisions of this trust.

Section B. Special Powers of Organization, Management and Investment.

In connection with any such redevelopment activities, the Trustee of each trust made as provided in Article II shall have the following powers, to be exercised to the extent and in such manner as the Distribution Committee determines to be necessary or desirable for such redevelopment purposes:

- (1) To purchase, receive and hold real estate or any interest therein; to repair buildings or structures, to settle boundary lines; to grant easements and other rights; to partition and to join with co-owners and others in dealing with such real estate interests;
- (2) To acquire and exercise options to purchase real estate; to lease, convey, sell, transfer or exchange upon such terms and conditions as the Trustee, with the approval of the Distribution Committee, may deem advisable, any real estate interest held by a Trustee (including options to purchase real estate) to any individual or to any corporation, partnership, trust, real estate investment trust, joint venture or syndicate, formed or to be formed, or to any political subdivision or other governmental entity; and to receive in payment or exchange therefor cash or another real property interest, or stocks, bonds, notes or other securities of such individual or entity, or any interest in such

partnership or real estate investment trust, or options with respect thereto, whether or not the same are among the classes of investments which a trustee is authorized by law or any rule of court to make;

- (3) To enter into any agreement relating to the development, construction upon, financing, management, operation, conservation, sale, lease, or transfer of any real estate interest; or otherwise to join with any individual, corporation, general or limited partnership, trust, real estate investment trust, political subdivision or other governmental entity, and in joint ventures, syndicates, co-owners' groups and partnerships;
- (4) To lease or manage any real estate interest so as to permit the realization of principal appreciation and income without regard to the amount or stability of income; to vacate and abandon any real estate interest; to dedicate property for public use and to convey with or without consideration to any governmental authority such sums of money, parcels of real property or personal property held shall be deemed necessary or advisable; to grant easements; to adjust boundaries, to partition and to pay any sums of money necessary for equality of partition; to perfect the title thereof; from time to time to expend either from principal or income or from both such amounts for the foregoing or for the maintenance or repair of any real property interest or any buildings or improvements thereon as shall be deemed advisable; and to determine whether or not to establish any reserves for depreciation of any buildings or improvements thereon;
- (5) To renew, extend, modify, subordinate or replace or to participate in the renewal, extension, modification, subordination or replacement of any option, mortgage,

note, bond or lease upon such terms as the Trustee, with the approval of the Distribution Committee, may deem advisable; to release from the lien of a mortgage a portion of the property subject thereto; to release a portion of any mortgage lien; to accept surrender, cancellation or assignment of any lease and to pay such considerations the Trustee, with the approval of the Distribution Committee, may deem advisable; to agree to a reduction in the rate of interest on or to the prepayment of any mortgage, note or bond or rental payments due under any lease or to any other modification or change in the terms of any mortgage, note, bond or lease or of any guarantee securing any mortgage, note, bond or lease, in any manner and to any extent as may be deemed advisable; to waive or to forbear from suing on any default in the performance of any covenant or condition of or payment due under any mortgage, note, bond or lease or in the performance of any guarantee, or to enforce against any such default in such manner and to such extent as it may deem advisable; to collect, to exercise and to enforce and to forbear from collecting, exercising or enforcing in any action, suit or proceeding at law or in equity any sums, rights or remedies in respect of any mortgage, note, bond or lease or of any guarantee; to exercise and to enforce any and all rights of foreclosure of any mortgage, or under any security agreement, and at any foreclosure to purchase the real or personal property securing any mortgage or security agreement; to take a deed in lieu of foreclosure and to pay a consideration therefor; and to retain any such real or personal property received on any foreclosure whether or not the same is among the classes of investments a trustee is authorized by law or any rule of court to make.

Each such Trustee (or the Distribution Committee by joint action) shall also have the power to form and own part or all of the stock or other incidents of legal or equitable ownership of a corporation, trust, partnership or other legal entity having any or all of the foregoing powers in order to further redevelopment activities which are consistent with the Foundation's purposes and to distribute funds or property to such entities for their purposes; provided that no Trustee shall become a general partner in any partnership for such purposes.

The Trustee of each trust may hold real estate interest or interests in corporation, trusts, partnerships or other legal entities engaged in such redevelopment activities notwithstanding the fact that such assets may not be productive of income and regardless of the proportion which any such asset or class or type of asset of similar character may bear to the size of the trust.

Any such property may be registered or held in the name of the Trustee's nominee, provided that the Trustee shall be responsible for the acts of any such nominee.

#### Section C. Distributions

In connection with the redevelopment activities dealt with in this Article VII-A (including, without limitation, the preparation and implementation of a plan or plans for such redevelopment), a Trustee or any legal entity owned or controlled by The Stark Community Foundation may, with the approval of the Distribution Committee, contribute or sell assets to political subdivisions or other government entities for less than adequate consideration and pay any reasonable expenses incurred in connection with such activities by a Trustee, the Distribution Committee, or any legal entities which the Foundation may own. Such contributions, sales or payments shall not be considered disbursements of principal for purposes of the percentage limitations found in Section B, Article VI, nor shall any other transfer, sale, contribution or exchange of assets held

by the Foundation be so considered so long as (i) such assets comprise only interests in real estate held in connection with the redevelopment activities herein referred to and (ii) such real estate interests (or cash or other property providing the consideration for purchase of the real estate interest) were not initially contributed to the Foundation for other designated purposes.

The preceding sentence shall not apply to assets held on or before March 31, 1979.

No Trustee shall be liable for any actions taken with respect to redevelopment activities pursuant to the direction or approval of the Distribution Committee, including, without limitation, distributions of principal, purchases of assets, sales of assets for less than adequate consideration, and the exercise of certain other powers by or with the approval of the Distribution Committee pursuant to this Article.

#### Section D. Prohibitions.

No sale, exchange, lease or loan transaction between the Foundation or any corporation wholly owned by it and (i) any Trustee of the Foundation, (ii) any then current or former member of the Distribution Committee, (iii) any then current or former member of 'The Newmarket Committee', (iv) any trustee or director of such corporation, or (v) any person who, if Section 4946 of the Internal Revenue Code were applicable, would be a 'disqualified person' with respect to the Foundation, shall be entered into unless approved by the Distribution Committee (with any member of the Distribution Committee related to such person not voting) and shall be at fair market or fair rental value as evidenced by appraisal or other documentation.

Nothing in this Article VII-A shall be construed to derogate from the general prohibition in Article VI against actions which would cause this Foundation or the trust from which the funds are distributed to lose its classification as an organization exempt from taxation as a charitable or educational organization under the United States Internal Revenue Code or similar tax law or the

tax laws of the State of Ohio then in effect, and all of the provisions hereof shall be construed so as to permit such continued exemption.

Nothing in this Article VII-A shall be construed to authorize the Foundation or any Trustee to become a general partner in any partnership which may be established in connection with the activities described herein.

The income produced by funds held on or before March 31, 1979, shall not be utilized to purchase interests in real estate in connection with the redevelopment activities dealt with in this Article VII-A. With respect to any fund held on or before that date as to which the donor expressed a desire that such property be applied for specific purposes other than urban redevelopment, (1) the principal of such fund shall not be utilized to purchase real estate for redevelopment, regardless of any other provisions governing the disposition of principal held hereunder; (ii) the income of such fund shall not be utilized to pay expenses incurred in redevelopment activities; and (iii) the Distribution Committee shall not direct the application of either the income or principal of such fund to any aspect of the redevelopment activities described in this Article VII-A, notwithstanding the generality of its powers under Article II hereof.

## **ARTICLE VIII. AUDIT AND SUPERVISION.**

### **Section A. Annual Audit and Report.**

The accounts of the several Trustees insofar as the same relate to trusts held hereunder, and the expenses of the Distribution Committee, shall be audited annually by a firm of certified public accountants, to be appointed by the Distribution Committee, and paid out of the income of the fund as a part of the expenses of the said Committee. They shall annually be published in such

form and in such newspaper or newspapers, published and of general circulation in Stark County, as said Distribution Committee may direct, a report of its proceedings during the preceding year, which shall state the aggregate of the funds, the disbursements made pursuant to the direction of said Committee, and the purposes for which the same were made. The cost of the publication of such report shall be regarded as part of the expenses of said Committee.

Section B. Public Supervision.

Either the Attorney General of the State of Ohio or the Prosecuting Attorney of Stark County, or such other officer having similar jurisdiction as may hereafter be appointed with other titles, and any representative of the Distribution Committee, shall have, at all reasonable times during business hours, the right to inspect the books, vouchers, and records of the several Trustees and of the Distribution Committee in any wise appertaining to said funds or the management thereof or the distribution and application of the income, rents or profits thereof, and shall have the right to institute proper proceedings in any court of competent jurisdiction to restrain, correct or recover for any maladministration of the trust estate by any Trustee or by the Distribution Committee.

**ARTICLE IX. SUCCESSOR TRUSTEES.**

Section A. Successor Corporations.

Any corporation which shall be the successor to or shall acquire property and assets of any of the Trustees, whether by merger, consolidation, acquisition of assets, or otherwise, and which shall have adopted or adopt this resolution, shall forthwith be and become one of the Trustees hereunder, with all the rights, titles, interest, powers and duties vested in the predecessor

Trustee by the terms hereof and by the terms of the gift, grant, devise or bequest under which the predecessor Trustee claimed.

Section B. Resignation and Appointment of Successor Trustees.

Any of the Trustees may at any time resign as to one or more or all of the trusts held by it hereunder, and surrender the property held by it in such trust or trusts, to such one or more of the other Trustees as the resigning Trustee, with the consent of the Trustee or Trustees thus designated, may designate, and the Trustees Committee approve; or may so resign without designating a successor, in which event the Trustees Committee may designate a successor or successors. In the event of any such resignation and the designation of a successor, as herein provided or otherwise, the resigning Trustee shall thereupon be discharged and released from its obligation under any gift, grant, devise or bequest of such property. Any Trustee which shall become insolvent or bankrupt or of which control shall have been assumed by the State Bank Commissioner or other analogous officer or authority, shall be deemed to have been removed, and the Trustees Committee shall, unless otherwise provided by the terms of the gift, grant, devise or bequest of the donor, have the right to designate, with the consent of the Trustee thus designated, one or more of the other Trustees to demand and receive the property held by such Trustee, and become the successor to such Trustee. All successors in trust receiving property hereunder shall thereupon succeed to all the rights, titles, interest, powers, discretion and duties vested in the predecessor Trustee by the terms hereof, and by the terms of the gift, grant, devise or bequest under which the predecessor Trustee claimed.

**ARTICLE X. CONSTRUCTION.**

It is intended that Stark Community Foundation and all trusts and funds created or held hereunder shall be classified and maintained as an organization exempt from Federal income tax

under the provisions of Section 501(c)(3) of the internal Revenue Code of 1986 and as an organization contributions to which may be deducted under Section 170(c) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Laws) and the provisions of this Resolution and Declaration of Trust are to be regarded and construed to give effect to this intention.

To further assure the carrying out of the provisions hereof, each and every of the provisions of this Resolution and Declaration are to be regarded and construed as independent of every other provision. In the event that the final determination of a court of competent jurisdiction shall adjudge that any of the terms, conditions or provisions of the Resolution and Declaration are invalid, such adjudication shall in no wise affect the validity of the remaining provisions.

In the event that such determination shall adjudge that the powers hereby in Article VI conferred upon the Distribution Committee are invalid, or in the event that, under the provisions of Article XI Stark Community Foundation and the powers and duties of the Distribution Committee shall be terminated, then and in either such event each of the Trustees respectively shall have and may exercise the powers so conferred upon the Distribution Committee in respect of any property given, granted, devised or bequeathed to such Trustee for the uses and purposes herein set forth, as well as to direct that the administration of the trust be proceeded with in such manner as will most nearly conform, in its judgment, to the charitable intentions and purposes of each donor.

#### **ARTICLE XI. AMENDMENT AND TERMINATION.**

The maker of any gift, grant, devise or bequest for the uses and purposes herein expressed, and upon and subject to the provisions hereof, and all persons claiming by, through or under him

and each Trustee by the acceptance thereof shall be conclusively deemed to have agreed that the Distribution Committee, by resolution adopted by the affirmative vote of four-fifths (4/5) of its members, when approved by resolution adopted by the affirmative vote of two-thirds (2/3) of all the members of the Trustees Committee, may, from time to time or at any time (1) modify or supplement the administrative provisions hereof other than those set forth in Article VII, including any change deemed advisable in the number, method of appointment or qualification of the members of the Distribution Committee, provided that any such modification, supplement or change shall be consistent with the general plan and purpose of Stark Community Foundation as expressed herein and with the application of the entire net income and/or principal of any gift, grant, devise or bequest for the charitable purposes of the Foundation as defined in Articles II and VI hereof, but subject at all times to the provisions of Article II as respects changing the purposes or directions specifically expressed in any particular trust; (2) terminate Stark Community Foundation and all the powers and duties of the Distribution Committee with the effect provided in Article X. Notwithstanding the generality of the preceding sentence, the administrative provisions set forth in Article VII hereof may also be amended in the manner specified if such amendments are approved by the Attorney General of the State of Ohio and if they are made solely for the purpose of either (a) enabling Stark Community Foundation to continue to qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, or any similar provision of subsequent federal or state law, or (b) enabling Stark Community Foundation to comply with any statutes or regulations generally applicable to the administration and regulation of charitable trusts under the laws of the State of Ohio. A copy of any resolution so adopted and approved, certified by the President of Stark Community Foundation shall be delivered to the President for the time being, of each of the Trustees.

In the event of a termination of the Foundation by any other means than that provided in Article X or in the event of termination of any trust, or any fund, held by a Trustee (other than upon complete distribution of a trust or fund for charitable purposes in accordance with its provisions), the property then held shall (after payment of, or provision for, all liabilities) be disposed of exclusively for charitable purposes in such manner, or to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the United States Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law), as the Distribution Committee (or the Trustee, if the Distribution Committee has been terminated) shall determine. Any property not so disposed of shall be disposed of by the court, which has general jurisdiction for the county in which the principal office of the Foundation (or Trustee, as the case may be) shall then be located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

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