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Choosing or Changing Trust Situs – Everything You  
Need to Know, and Perhaps Worry About

Session I – Income Tax Consequences of Situs Selection

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## INCOME TAX CONSEQUENCES OF SITUS SELECTION\*

### I. “DING” TRUSTS

#### A. Introduction

Several private letter rulings confirm that it is possible, under the laws of any state that permits the creation of so-called “asset protection trusts,” to create a trust that is a non-grantor trust for purposes of Subpart E of Subchapter J of the Internal Revenue Code (the “Code”) and that may be funded with contributions that are not taxable gifts for federal gift tax purposes. See PLR 200612002; PLR 200502014; PLR 200247013; and PLR 200148028 (cited not as precedent but as illustrations of how the Internal Revenue Service might analyze the issues addressed in the rulings). In Delaware, which is one of the states in which such a trust may be created, such trusts commonly are known as “DING” Trusts. The acronym stands for “Delaware Incomplete Gift Non-Grantor Trust.” If the state in which such a trust is created also is a state that does not tax income and capital gains accumulated in the trust, the trust can be a powerful state income tax planning vehicle for settlors living in states that would not tax the trust’s accumulated income and capital gains merely because the settlor resides in that state at the time the trust is created or because of some other connection between the trust and the settlor’s home state. A form of DING trust agreement patterned closely upon the actual trust agreement that was the subject of PLR 200148028 is appended to this outline as Exhibit A. See also Pulsifer

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\* IRS Regulations provide that taxpayers may not rely upon written advice to promote third-party transactions or avoid federal tax penalties unless the advice is provided in the form of a “covered opinion” (essentially a formal tax opinion letter which satisfies numerous regulatory requirements and is based upon an independent fact inquiry). This outline is not a covered opinion within the meaning of the regulations.

and Flubacher, Eliminate A Trust's State Income Tax, Trusts & Estates Magazine, May 2006, at p. 30; Steiner, The Accidentally Perfect Non-Grantor Trust, Trusts & Estates Magazine, September 2005, at p. 28.

B. Basic Design

Crafting a DING trust agreement is a bit like punching a pillow. Every effort to design the agreement so as to avoid grantor trust status seems to push the agreement closer to the point at which the grantor will not have retained a sufficient interest in the trust to avoid making a completed gift upon funding the trust. All four private letter rulings cited above use essentially the same solution to achieve these almost, but not quite, mutually exclusive results. In order to avoid a completed gift, the settlor retains a limited power of appointment over all of the trust property remaining at the settlor's death. In order to avoid grantor trust status, the trust agreement creates a Distribution Committee (called a "Power of Appointment Committee" in PLR 200612002), comprised of "adverse parties" within the meaning of Code § 672(a), whose consent is required in order for (i) the grantor or the grantor's spouse to receive discretionary distributions from the trust; or (ii) the trustee to accumulate income in the trust potentially subject to the grantor's testamentary limited power of appointment.

C. Gift Tax Analysis

In a properly designed DING trust, the grantor is entitled to receive discretionary distributions from the trust upon the direction of any one member of the Distribution Committee provided that the grantor consents to the distribution. Delaware law expressly permits the grantor to retain certain rights in a Delaware asset protection trust including the right to block distributions from the trust. 12 Del. C. § 3570(10)(b)(1). This retained right to receive distributions upon the joint action of the grantor and any member of the Distribution Committee

constitutes a retained lifetime general power of appointment. I.R.C. § 2514(c)(3)(B); Rev. Rul. 79-63, 1979-1 C.B. 302. Furthermore, the grantor of a DING trust should retain a testamentary limited power of appointment. Section 3570(10)(b)(2) of Title 12 of the Delaware Code permits the retention of such a power. The retained limited power of appointment should cause the gift to be incomplete pursuant to the principles of Treasury Regulation § 25.2511-2(b) which includes an example in which the donor transfers property in trust to pay the income to the donor, or accumulate the income, and the donor retains a testamentary power to appoint the trust remainder among the donor's descendants. The Regulation concludes that the funding of the trust is an income gift. Similarly, Treasury Regulation 25.2511-2(c) states that a gift is incomplete if the donor reserves the power to name new beneficiaries or change the interests of the beneficiaries unless the power is a fiduciary power limited by a fixed or ascertainable standard. A testamentary limited power of appointment is in substance a power to both change beneficiaries and vary their interests. Accordingly, the grantor's retention of these two rights ought to assure that contributions to the trust are not taxable gifts.

#### D. Grantor Trust Analysis

(1) Reversionary Interest Under Code § 673. A threshold question that must be answered in order to determine whether it is possible to create a non-grantor asset protection trust is whether the grantor will be deemed to hold a reversionary interest in the trust for purposes of Code § 673 by reason of the grantor's eligibility to receive discretionary distributions from the trust. Code § 673 provides, in general, that a trust is a grantor trust if the grantor retains a reversionary interest having a value that exceeds five percent of the value of the trust. Query: How did the trust in PLR 200612002 avoid grantor trust status under Code § 673 despite the grantor's spouse's right to receive an outright distribution from the trust upon the

grantor's death which seemingly should have been attributed to the grantor under Code § 672(e)? Code § 673(c) provides that, for purposes of determining the value of the grantor's reversionary interest, it shall be assumed that any discretion exercisable in favor of the grantor will be exercised in favor of the grantor to the maximum extent possible.

In a properly drafted asset protection trust, the grantor retains no reversionary interest. The trustee's discretionary power to make distributions to the grantor should not be categorized as a "reversionary interest" within the meaning of Code § 673.

Code § 672, which provides definitions for the grantor trust provisions under subpart E, does not define "reversion" for the purposes of Code § 673. Although Code § 672 does not provide a definition of a reversion for purposes of subpart E, it seems clear that a reversion under Code § 673 can not arise in situations other than those involving a traditional reversion. Under the traditional definition of a reversion, a reversion exists when a person having a vested estate transfers a lesser vested estate to another. See LEWIS M. SIMES AND ALLAN F. SMITH, THE LAW OF FUTURE INTERESTS, § 82 (2d ed. 1956) (hereinafter "SIMES"); see also WILLIAM SHWARTZ, FUTURE INTERESTS AND ESTATE PLANNING, § 2.24 (1965) (hereinafter "SHWARTZ"). The interest left with the transferor, by virtue of transferring a lesser estate, is called a reversion. Thus, the grantor of a trust retains a reversionary interest if a portion of the transferred assets will return to the grantor upon the death of a person (life estate), after a number of years (term of years), or upon the grantor's demand (tenancy at will). Under this traditional concept, if a transferor conveys all of his or her interest in property to a trust, then he or she has not retained a reversion even if he or she holds a beneficial interest (such as a right to receive distributions in the trustee's discretion). See SHWARTZ, § 2.27; see also PLR 9016079

(January 25, 1990) (trust held not to be a grantor trust under Code § 673 even though trustee had power to make discretionary distributions to the grantor).

(a) Internal Revenue Service Memoranda. In Technical Advice Memorandum (“TAM”) 8127004, the Internal Revenue Service stated that “a reversionary interest is the interest a transferor has when less than his entire interest and property is transferred to a trust and which will become possessory at some future date.” Tech. Adv. Mem. 81-27-004 (February 25, 1981) (emphasis added).

In a General Counsel Memorandum, comparing a possibility of reverter under Code § 676(a) with a reversion, the Service defined a reversion as “the residue left in the grantor on determination of a particular estate” and stated that “the reversionary interest arises only when the transferor transfers an estate of lesser quantum than he owns”. Gen. Couns. Mem. 36,410 at 5-6 (September 11, 1975) (emphasis added).

(b) Case Law. In Crane v. Commissioner, 368 F.2d 800 (1st Cir. 1966), the Court held that a grantor had a reversionary interest where he transferred stock to a trust and upon termination of the trust was entitled to either the proceeds from the sale of the stock to the beneficiaries or a return of the stock. Id. at 801. The Court held that “when we look at the obvious purpose of Code § 673(a), it must be to prevent a grantor from making a temporary transfer of assets in order to diminish, for a limited period, the receipt of taxable income therefrom.” Id. (emphasis added). By indicating that a reversion is a “temporary transfer,” the Court interpreted a Code § 673 reversionary interest under the traditional definition of a reversion.

The hierarchy of vested interests in property helps explain how the First Circuit’s holding relates to the traditional definition of a reversion. The hierarchy that gives rise to a

reversion, such as fee simple, fee tail, life estate, term of years, and tenancy at will, are specifically defined by their “duration.” See SIMES, § 82; see also SHWARTZ, § 2.24. Thus, when a grantor transfers a lesser vested estate, he or she is making a “temporary transfer,” with a reversion of the remaining interest.

(c) Legislative History. Prior to 1954, the Internal Revenue Code contained only provisions for grantor trusts in which the transferor retained a power of revocation or when trust income was accumulated for, or distributed to, the transferor. H.R. REP. NO. 83-1337 (1954) reprinted in 1954 U.S.C.C.A.N. 4025, 4089; S. REP. NO. 83-1337 (1954) reprinted in 1954 U.S.C.C.A.N. 4621, 4719. There were also Treasury Regulations providing for a grantor trust when the grantor had a reversionary interest that would revert within a specified period of time. The regulations were known as “Clifford” regulations because they adopted the approach taken in Helvering v. Clifford, 309 U.S. 331 (1940).

In 1954, Congress adopted Code § 673. Congress’ intent was to codify the approach in section 39.22(a)-21(c) of Regulations 118. H.R. REP. NO. 83-1337 (1954) reprinted in 1954 U.S.C.C.A.N. 4025, 4353. There were only two minor changes to the approach in the regulation. These changes were unrelated to circumstances that give rise to a reversion. Id. at 4089 (shortening the time in which a reversionary interest would effect taxation to the grantor and amending the provisions pertaining to related or subordinate trustees); S. REP. NO. 83-1337 (1954) reprinted in 1954 U.S.C.C.A.N. 4621, 4719.

The approach from section 39.22(a)-21(c) of Regulations 118 that Congress codified provided that “[i]ncome of a trust is taxable to the grantor where the grantor has a reversionary interest in the corpus or income.” Treas. Reg. § 39.22(a)-21(c) (1953). Section 39.22(a)-21(c) then described some specific situations in which a reversionary interest may arise.

Each of the examples provided in the regulation illustrate the “traditional” concept of a reversion.

The first example in Treasury Regulation § 39.22(a)-21(c)(2) provided an example of a reversionary interest: “[w]here the grantor’s reversionary interest is to take effect in possession or enjoyment by reason of some event other than the expiration of a specific term of years, the trust income is nevertheless attributable to him if such event is the practical equivalent of the expiration of a period less than 10 or 15 years.” Treas. Reg. § 39.22(a)-21(c)(2) (1953); See also Treas. Reg. § 1.673(a)-1(a)(2)(c). Treasury Regulation § 39.22(a)-21(c)(3) also stated: “a reversionary interest may reasonably be expected to take effect in possession or enjoyment within 10 or 15 years, as the case may be, where the corpus or the income therefrom is to be reacquired if the grantor survives any stated contingency which is of an insubstantial character.” Treas. Reg. § 39.22(a)-21(c)(3) (1953); See also Treas. Reg. § 1.673(a)-1(a)(2)(d). Although the regulation does not purport to provide a complete list of situations in which a reversionary interest may arise, the examples suggest that the regulation, and the later-adopted statute which codified the regulation, did not contemplate reversionary interests beyond the traditional definition.

(d) Interpretation of Code § 673(c). Although Internal Revenue Code § 673 was originally adopted in 1954, the current Code § 673(c) (which provides that in valuing a reversion, the maximum exercise of discretion in favor of the grantor is assumed) was not adopted until 1988. See S. REP. NO. 100-445 at 362 (1988) reprinted in 1988 U.S.C.C.A.N. 4515, 4872. There is no case law or interpretive material providing guidance on what is meant by “assuming the maximum exercise of discretion in favor of the grantor” when valuing the grantor’s reversionary interest.

The legislative history of Code § 673(c) simply provides that “in determining whether a reversionary interest has a value in excess of five percent of the trust, it will be assumed that any discretionary powers are exercised in such a way as to maximize the value of the reversionary interest.” S. REP. NO. 100-445 at 362 (1988) reprinted in 1988 U.S.C.C.A.N. 4515, 4872. There is no other express explanation of how this provision affects the reversionary interest rule. A careful reading of the legislative history, however, demonstrates that Congress only intended Code § 673(c) to provide an assumption that discretionary powers are exercised in favor of the grantor for purposes of calculating the proportion of the value of an exiting reversion to the value of the rest of the trust, and not in determining whether the discretionary powers themselves create a reversion.

The Senate Report states that discretionary powers should be assumed to be exercised to maximize the value in favor of the grantor “in determining whether a reversionary interest has a value in excess of five percent.” Id. This explanation does not suggest that a discretionary exercise in favor of the grantor can be assumed in order to determine whether there is a reversion in the first place. Rather, the assumption is only made in calculating the value of a traditional reversion, relative to the size of the trust, in applying the five percent exception. Thus, Code § 673(c) does not operate to create a reversion where none exists under the traditional definition contemplated by Congress.

An example of the proper application of Code § 673(c) as Congress intended it is as follows: If the grantor retains a reversionary interest in the income or principal of a trust, and the trustee has the discretion to distribute principal or income to another beneficiary for a term of years, the value of the grantor’s reversionary interest is determined by assuming that no amount of principal or income will be distributed to the other beneficiary. Pursuant to Code § 673(c), the

trustee's discretion to distribute principal or income to the other beneficiary is assumed to be exercised in favor of the grantor (meaning it is assumed no discretionary distributions will be made to the other beneficiary) in calculating whether the value of the reversion exceeds five percent of the value of the trust.

(2) Power To Control Beneficial Enjoyment Under Code § 674.

Code § 674(a) provides, in general, that a trust is a grantor trust if the beneficial enjoyment of the trust property is subject to a power of disposition exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party. An asset protection trust (which by its fundamental character always permits discretionary distributions to the grantor) may avoid grantor trust status under Code § 674(a) with respect to the trustee's power to sprinkle income and principal among the grantor, the grantor's spouse and other beneficiaries by providing in the trust agreement that no such distributions may be made except with the consent of one or more members of a Distribution (or Power of Appointment) Committee comprised exclusively of persons who are themselves currently eligible to receive discretionary distributions from the trust. Each such Committee member should be deemed to be an "adverse party" within the meaning of Code § 672(a) provided that his or her interest is "substantial." An "adverse party" is defined in Code § 672(a) as any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or non-exercise of the power. Plainly, any distribution from the trust to the grantor or any other beneficiary would adversely affect the interests of the Distribution Committee members not receiving the distribution. The determination of whether a party has a "substantial" adverse interest is a factual question depending on the merits of each case. Paxton v. Commissioner, 520 F.2d, 923, 925 (9<sup>th</sup> Cir. 1975). A party with a beneficial interest, or some future interest in the trust property, is not

always an adverse party. If the trust agreement for a DING trust provides that all adult competent beneficiaries who are eligible to receive distributions from the trust must consent in order for the trustee to make a distribution to the grantor or the grantor's spouse, the beneficiaries collectively should be viewed as having a "substantial beneficial interest" in the trust adverse to the exercise of the trustee's discretion in favor of the grantor because each such distribution actually made to the grantor would reduce the amount that otherwise would be available for distribution to or among them. Similarly, in PLR 9016079 (January 25, 1990) and each of the four rulings pertaining to DING trusts, the Service held that each person eligible to receive discretionary distributions from the trust had a substantial interest that was adverse, within the meaning of Code § 672, to the exercise of the trustee's discretion in favor of the grantor. See also Grantor Trusts: Sections 671-679, Tax Mgmt. (BNA) No. 858 at A-15.

Query: Is there a point at which the aggressive drafter may cross the substantiality line? Suppose the DING trust agreement provides that everyone in the world is eligible to receive distributions from the trust upon the unanimous consent of the Distribution Committee members and that the Committee is comprised of everyone in the world? If the grantor could receive a distribution upon the direction of any one member of the Committee, could the chosen Committee member fairly be said to have a "substantial" adverse interest? Obviously the answer must be no.

(3) Testamentary Power of Appointment Under Code § 674(b)(3). The grantor's testamentary limited power of appointment (a requirement to avoid adverse gift tax treatment) should not cause a DING trust to be taxable as a grantor trust. Code § 674(a) does not apply to a power of appointment exercisable only by will other than a power held by the grantor to appoint income accumulated by the grantor or income that may be accumulated in the

discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party. No income can be accumulated in a DING trust without the consent of the Distribution Committee because the Committee members (who would be adverse parties for the reasons explained in I.D.(2) above) may, by unanimous action, appoint current and accumulated income among the trust beneficiaries (including the Committee members themselves) eligible to receive current trust distributions thereby preventing the accumulation of income subject to the grantor's testamentary limited power of appointment.

(4) Power To Revest Property Under Code § 676. Code § 676(a) provides that the grantor shall be treated as the owner of any portion of a trust if the grantor or a nonadverse party has the power to revest title to the trust property in the grantor. Again, the existence of a Distribution Committee comprised of adverse parties will prevent the application of Code § 676.

(5) Code § 677 Distribution Power. Code § 677 provides, in general, that the grantor shall be treated as the owner of any portion of a trust the income from which may, without the approval of any adverse party, be distributed to the grantor or the grantor's spouse; or accumulated for future distribution to the grantor or the grantor's spouse; or applied to the payment of premiums on insurance on the life of the grantor or the grantor's spouse. As none of these actions can occur with respect to the income of a DING trust except as a result of actions taken by Distribution Committee members, Code § 677 would not cause a carefully designed DING trust to be taxed as a grantor trust.

(6) The Importance of Avoiding Credit Rights. A trust is a grantor trust if, under applicable state law, the grantor's creditors may recover from the trust amounts owed to them by the grantor. Treasury Reg. § 1.677(a)-1(d). Under the laws of most states other than

those states which have adopted asset protection trust legislation, if the grantor is eligible to receive discretionary distribution from the trust, the grantor's creditors may look to the trust to satisfy obligations owed to them by the grantor. Accordingly, a self-settled incomplete gift non-grantor trust can only be created under the laws of a state with asset protection trust legislation in place.

E. Example. A simple example illustrates the utility of a DING trust: A couple residing in New York City has a sizeable portfolio of marketable securities and other intangible assets. They are concerned about liability to potential future creditors. They are in the highest federal income tax bracket and pay combined state and city income tax at an 11 percent rate. They do not wish to make a completed gift because they do not wish to pay gift tax or use any of their gift tax exclusion amount. Within their portfolio of securities, they have \$2 million of assets that they essentially hold for the benefit of their children because they do not foresee any circumstance (other than a catastrophic lawsuit or similar financial setback) in which they would expend that money during their lifetimes given the magnitude of their other assets.

A DING trust could be powerful planning tool for this couple. As settlors of such a trust, they could retain the right to receive discretionary distributions of income and principal from the trust (subject to the consent or direction of a distribution committee comprised of their children who are also potential discretionary beneficiaries). This would provide the couple with a safety net against the possibility of a major financial setback. The trust also will provide creditor protection for the trust assets. At the same time, the trust's income will not be subject to New York state or city income taxation assuming the trust avoids New York source income and other contacts with New York that would subject the trust to New York income tax. The federal

income tax imposed on the trust's assets would be about the same in the trust as it would be if the couple owned the assets outright.

Had the couple retained this \$2 million in their own names and achieved an enviable 10 percent annual rate of return before taxes, the \$2 million would grow to about \$8.6 million in 20 years, assuming the earnings are comprised entirely of qualified dividends and realized capital gains. The effective rate of tax on these investment assets would be 24.35 percent (15 percent federal rate on capital gains and dividends; 11 percent New York state and city tax on all income; New York taxes deducted in computing federal taxes). By contrast, contributing the \$2 million to a DING trust means the effective rate of tax is reduced to 15 percent, and the trust grows to about \$10.225 million in the same time with the same rate of return. Thus, merely by creating the trust, the couple would obtain asset protection for the trust property during the entire 20-year trust period and, at the end, the value of the property would be \$1.6 million greater.

F. Cautionary Note. It is possible that state taxing authorities in various states will attack obviously abusive transactions using DING trusts that are designed primarily to avoid the imposition of state income tax on a particular transaction, such as the disposition of a block of highly appreciated stock. Consequently, advisors should counsel their clients to avoid funding such trusts with assets likely to be sold shortly after the creation of the trust. Such a trust could be even more vulnerable to attack if the sale were followed by the distribution of all, or a large portion, of the trust assets back to the settlor. The settlor's home-state taxing authority could view such a transaction as a "sham" and might attack it on the basis of substance over form, assignment of income, or some similar theory.

In addition to risks under state tax laws, such a transaction could jeopardize the trust's creditor protection if there is evidence that the settlor had a prearranged agreement with the distribution committee to distribute assets back to the settlor at a particular time.

Ideally, such trust should be created only with the intent to continue the trust at least for the lifetime of the settlor. Settlers should avoid transferring a proportion of their assets to such a trust that is so large that the settlor will need routine distributions from the trust to pay for living expenses. Optimally, for creditor protection reasons as well as sound tax planning, advisors should generally recommend that their clients fund such trusts only with those assets that the client likely will never need to expend, absent extraordinary events.

## **II. DELAWARE INCOME TAXATION OF TRUSTS**

### **A. Introduction**

In general, Delaware does not impose any taxes upon trusts except in cases where one or more trust beneficiaries live in Delaware and then only upon the portion of the trust income attributable to the Delaware resident beneficiaries.

### **B. Resident Trust Definition**

A trust that is treated as a trust for federal income tax purposes, and is not a trust of which the grantor or another person is treated as the owner of the entire trust under Sections 671 through 679 of the Code, is treated a "resident trust" for Delaware income tax purposes if:

- (1) The trust is created by the will of a decedent who at death was domiciled in Delaware; or
- (2) The trust is created by, or consists of property of, a person domiciled in Delaware; or
- (3) During more than half of any taxable year, the trust has only one trustee who is either a Delaware resident individual, or a corporation, partnership

or other organization having an office for the conduct of trust business in Delaware; or

- (4) During more than half of any taxable year, the trust has more than one trustee and one of the trustees is a corporation, partnership or other organization having an office for the conduct of trust business in Delaware; or
- (5) During more than half of any taxable year, the trust has more than one trustee all of whom are individuals and one-half or more of whom are Delaware residents. 30 Del. C. § 1601(f)-(g).

A Delaware nonresident trust is any trust that is not a resident trust. 30 Del. C. § 1601(h).

### C. Taxation of Nonresident Trusts

Delaware nonresident trusts are only subject to Delaware state income tax to the extent that they have items of income, gain, loss and deduction derived from, or connected with, sources located within the State of Delaware. 30 Del. C. § 1639. Income of a trust is deemed to be derived from a Delaware source only if the income is attributable to:

- (1) The ownership of real or tangible personal property located in Delaware; or
- (2) A business, trade or commerce carried on in Delaware. 30 Del. C. §§ 1124 and 1639.

Intangible assets held for investment are not considered to be property employed in a business, trade or commerce. 30 Del. C. § 1124(c). Therefore, a nonresident trust conducting traditional investment activities is not subject to Delaware income taxation unless the trust owns real or tangible property located in Delaware or conducts a business or trade in Delaware. A nonresident trust that does not have Delaware source income is not required to file a Delaware income tax return.

D. Taxation of Resident Trusts

Delaware resident trusts are potentially subject to the Delaware income tax imposed upon individuals. However, resident trusts are allowed both an income tax deduction for the amount of their federal distributable net income that is actually distributed, 30 Del. C. § 1635, and an income tax deduction for the amount of their federal taxable income (including capital gains), as modified for Delaware purposes, that is set aside for future distribution to nonresident beneficiaries. 30 Del. C. § 1636. The practical effect of these two deductions is that a Delaware resident trust never pays any Delaware income tax (and is not required to file Delaware income tax returns) if (1) the trust has no living beneficiaries who are residents of Delaware; and (2) the trust does not identify its beneficiaries by their relationship to a Delaware resident. In cases where one or more beneficiaries reside in Delaware, the portion of the trust's accumulated income and accumulated capital gains allocable to the Delaware resident beneficiaries is subject to Delaware income taxation.

**III. POSSIBLE STRATEGIES FOR AVOIDING OR REDUCING STATE INCOME TAXATION ON THE INCOME OF TRUSTS HAVING A SITUS IN A LOW OR NO TAX JURISDICTION**

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A. Introduction

Moving a trust to a no or low tax jurisdiction or settling the trust in such a jurisdiction will avoid taxation in those high tax jurisdictions that base their income tax regime entirely upon the location of the trustee. However, a trust located in a low tax jurisdiction may still be subject to state income taxation in a high tax state based upon other contacts with the high tax state. For example, nearly half the states tax a trust's accumulated income and capital gains merely because the settlor resided in the state at some critical moment such as upon funding of the trust, when it became irrevocable or during the current tax year. Similarly, most of the same

states and a few others tax trusts created or funded under the will of a resident decedent. Still other states such as New York, Massachusetts, Missouri and Ohio tax trusts created by residents if certain other contacts with the state are present, such as a resident trustee or beneficiary or if some trust administration occurs in that state. Other states, such as Delaware, tax trusts created or funded by residents only to the extent that income and capital gains accumulated in the trust are deemed to be held for resident beneficiaries. A small number of states tax trusts if a trustee is located in the state and a similar number tax trusts if the administration of the trust occurs in the state. Finally, a few states tax trusts based solely upon the residency of the beneficiaries. It should be possible in many cases for a trust located in a low or no tax jurisdiction to avoid income taxation by high tax states through careful planning. The tax planning strategies discussed in this outline are presented solely as a possible starting point for further analysis in light of the laws of whatever high tax state may have contacts with a particular trust. Some of the strategies may work to permit trusts to avoid or reduce taxes in some states (or at least to allow the trustee to take a reasonable reporting position that no tax is due to a particular state) but not work under the laws of other states even in cases where both states taxed trusts on the basis of similar factors. Other strategies mentioned here might not work under any state's laws or might be viewed as too aggressive by cautious advisers and trustees. The strategies discussed here are presented as general observations and not with the laws of any particular state in mind except to the extent that certain states are mentioned by name.

B. States Basing Taxation Upon Residence Of Settlor.

As was mentioned above, many states (about half) base the taxation of trusts in whole or in part upon the residence of the settlor. This raises the obvious but sometimes difficult question of who is treated as the settlor of a particular trust. For example, suppose a New York

resident creates a trust and by the terms of the trust agreement grants a person who does not reside in New York a power to appoint the trust property upon further trusts. If the power is exercised, is the new trust created by the non-New York resident deemed to be created by the New York settlor of the first trust? The New York Department of Taxation has taken the position that the answer turns upon whether the power of appointment is a limited or general power. If the power is general, the powerholder is treated as the creator of the appointive trust. If the power is limited, the settlor of the first trust is treated as the creator of the new trust. N.Y. STATE DEPARTMENT OF TAXATION ADVISORY OPINION (TSB-A-03(6)I). Is the rule the same in those other states that tax trusts based upon the residency of the settlor? Is the New York Department of Taxation's position correct under New York law? What if the power of appointment, although limited, was not in the initial trust agreement but was added by court ordered reformation at a later date? What if, as is sometimes the case under Delaware law, the reformation can be accomplished without the settlor's consent? What if the new trust is not created by the exercise of a power granted in the trust agreement, but by the action of the trustee acting under a "decanting" statute such as 12 Del. Code § 3528 (or the similar New York statute) which permits trustees having the power to make outright distributions to trust beneficiaries to instead distribute to new trusts created by the trustee for the benefit of these directionary distributee beneficiaries? Would the answer vary if the trustee were an institutional fiduciary or some other independent trustee as opposed to the settlor personally or someone deemed susceptible to the settlor's influence? What if the trust were merged into a substantially similar trust created by someone other than the settlor pursuant to a state statute or court order permitting the merger? Would the answer vary if the merger could only be accomplished with the settlor's consent? Suppose the trust is created or declared by a non-resident but a resident contributes

assets to the trust? Would it matter whether the trust were nominally or substantially funded by the initial non-resident settlor? What if the trust is created by joint declaration? What if the trust is created by an entity in which the resident holds an interest? Suppose the entity is a single member limited liability company created by the resident? What if the entity is a statutory trust, corporation, or partnership? What if the entity has multiple owners?

C. Court Ordered Change of Situs

Some states that generally tax trusts on the basis of the residence of the settlor nevertheless do not tax trusts settled by residents following the entry of a state court order directing a change of situs from the state of the settlor's residence to another jurisdiction. Pennsylvania and Virginia appear to fall into this category. Pennsylvania Department of Revenue PIT-01-040 (July 27, 2001); Virginia Admn-Rul, VA-Trxrptr § 202-326 (August 26, 1993). Does this rule apply only in cases where a court order is required to move the trust? What if the trust agreement provides a means for moving the trust out of the state but the trustee nevertheless seeks such an order approving the move? Would the state court enter an order in such a case? Would it matter if the trustee had a non-tax reason for obtaining the order, for example, to protect itself against a possible beneficiary challenge to the move? What if the court order comes from a state other than the settlor's state of residence? Suppose the settlor creates a trust in Delaware (or a Pennsylvania or Virginia trust is moved to Delaware pursuant to a power to do so in the trust agreement) and the Delaware Chancery Court enters an order transferring the trust situs to Alaska? Why is a court order necessary to avoid tax? Why should it matter how the situs is changed?

D. Location of Trust Beneficiaries

The obvious question (and perhaps planning opportunity) arising in those states that tax trusts in whole or in part on the basis of the place of residence of the trust beneficiaries is how does one identify the beneficiaries and which beneficiaries are taken into account under the relevant tax statutes. For example, are discretionary distributees considered beneficiaries? If so, how would the trust be taxed if the agreement permits the trustee to make discretionary distributions to anyone in the world but only with the consent of someone who has a substantial adverse interest? Are contingent beneficiaries taken into account? California, for example, does not take into account contingent beneficiaries. Does it matter whether the contingency is likely to occur? What if some or all of the beneficiaries eligible to receive distributions from the trust are other trusts or entities in which residents hold beneficial or equity interests? Are persons in whose favor a power may be exercised considered beneficiaries? What if the power is a broad limited power exercisable in favor of any one other than the holder and the holder's estate and creditors? What if the settlor holds such a power of appointment (properly designed to avoid grantor trust status)? Would it matter whether the most likely (or ultimate actual) persons in whose favor the power would be exercised were residents of the potential taxing state? What if no person is eligible to receive distributions in the current tax year?

E. Location of Trustee and Place of Administration.

States that generally tax trusts based upon the location of the trustee or place of trust administration or that tax trusts on the basis of either of these factors in combination with other factors probably present the greatest planning opportunities. These states may also present some insidious traps for the unwary. However, even in these states, questions sometimes arise concerning who is a trustee or what contacts with a state suffice to cause the trust administration

to occur in the state. Can persons who are not formally designated as trustees nevertheless be treated as trustees? Will the performance of any traditional trustee function suffice to cause the person performing the function to be treated as a trustee? What if the function is performed in a non-fiduciary capacity under applicable law? What if such a function is performed by a committee and one or more members of the committee reside in the relevant state? What if third party advisers or agents reside in the relevant state? Does it matter whether they are selected by the trustee or named in the trust agreement? What if these advisers or agents hold discretionary powers (such as discretionary investment authority) over some or all of the trust assets? What happens if the trustee is a corporation with trust offices in several states including the potential taxing state? What happens if there are multiple trustees less than all of who reside in the relevant state?

F. Conclusion.

The hodgepodge of state taxing regimes combined with the relatively high income tax rates imposed by some states, suggest that whenever one is considering the creation of a trust that will be subject to income taxation in a high tax state and whenever one encounters a trust already located in such a state, it is a worthwhile exercise to consider whether there may be an opportunity through careful and sometimes creative planning to avoid or reduce the trust's state income tax burden.

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## EXHIBIT A

### [FORM: Asset Protection Trust/ Non-Grantor Trust/Incomplete Gift]

#### THE 2006 \_\_\_\_\_ FAMILY DELAWARE TRUST\*

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\* This is a form of trust agreement that may be of assistance in drafting a trust agreement for the purpose of creating a trust that (i) may be funded with one or more contributions that may constitute “qualified dispositions” within the meaning of Section 3570(6) of Title 12 of the Delaware Code; (ii) may qualify as a trust which is not a so-called “grantor trust” described in Subpart E of Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code (the “Code”); and (iii) may be funded with contributions that do not constitute completed gifts for purposes of Chapter 12 of Subtitle B of the Code. The trust should not be treated as a grantor trust under Code Section 671 because the grantor has not retained any power or interest that would cause the grantor to be treated as the owner of any portion of the trust under Code Sections 672 through 679 (note that distributions may only be made to the grantor upon the direction of a Distribution Committee comprised of persons with a substantially adverse interest). Transfers to the trust should not constitute completed gifts because the grantor has retained a limited power of appointment. See Sanford Est. v. Commissioner, 308 U.S. 39 (1939). While not binding on the Internal Revenue Service as precedence, Private Letter Rulings 200148028, 200247013, 200502014 and 200612002 support this income and gift tax conclusion. Under applicable tax law, if a particular client is interested in making the assets of such a trust available for his or her surviving spouse, the client should exercise his or her limited power of appointment in favor of a further trust which benefits the surviving spouse.

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**THE 2006 \_\_\_\_\_ FAMILY**

**DELAWARE TRUST**

THIS AGREEMENT is made between \_\_\_\_\_ (the "Grantor") and \_\_\_\_\_ Trust Company, a Delaware trust company, as trustee (the "Trustee"), and shall be effective upon the date of execution by the Trustee.

W I T N E S S E T H:

WHEREAS, the Grantor desires to create a trust of the property hereinafter specified for the purposes hereinafter set forth, and the Trustee has consented to accept and perform said trust in accordance with such terms,

WHEREAS, the Grantor intends for each transfer made by the Grantor to the Trustee to constitute a "qualified disposition" within the meaning of Section 3570(6) of Title 12 of the Delaware Code, or any successor provision, and

WHEREAS, the Grantor desires to give the Trustee broad discretion with respect to the management, distribution and investment of the various trusts created herein with the intention of generally obtaining the objectives of benefiting the beneficiaries of the trusts while attempting to minimize wealth transfer taxes on the trusts and income and wealth transfer taxes on the beneficiaries,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the Grantor does hereby assign, convey, transfer and deliver to the Trustee ten dollars (\$10.00) and such other property acceptable to the Trustee as the Grantor elects, TO HAVE AND TO HOLD the same and any other property as the Trustee may hereafter at any time hold or acquire hereunder (the "trust estate") IN TRUST, NEVERTHELESS, for the following uses and purposes and subject to the terms and conditions hereinafter set forth:

## **ARTICLE FIRST- TRUST DURING LIFETIME OF GRANTOR**

1.1 Trust During Grantor's Lifetime. During the lifetime of the Grantor (the "Initial Term"), the trust estate shall be held by the Trustee, IN TRUST NEVERTHELESS, for the following uses and purposes: to manage, invest and reinvest the same, to collect the income thereof, and to pay over or apply the net income and principal thereof as provided in this Article. During the Initial Term, the Trustee shall have no power or authority to make any distribution of net income or principal of the trust estate to, or for the benefit of, any trust beneficiary at any time when any person is serving as a member of the Distribution Committee (described in Section 3.5) unless the distribution is made at the direction of the Distribution Committee. During the Initial Term, when (i) no member of the Distribution Committee is serving or (ii) the Trustee is acting at the direction of the Distribution Committee, the Trustee may distribute so much, if any, of the net income and principal of the trust estate to, or for the benefit of, the Grantor, the Grantor's Spouse or any of the descendants of the Grantor's parents, as the Distribution Committee or the Trustee (as the case may be) determines in its sole discretion. Any net income not so paid over or applied shall be accumulated and added to the principal of the trust estate at least annually and shall thereafter be held, administered and disposed of as a part thereof.

1.2 Upon Death of the Grantor. Upon the death of the Grantor, the income and principal of the trust estate, as it is then constituted, shall be transferred, conveyed and paid over to such person or persons then eligible to receive distributions out of the trust estate (other than the Grantor, the Grantor's estate, the Grantor's creditors or the creditors of the Grantor's estate), to such extent, in such amounts or proportions, and in such lawful interests or estates, whether outright or in trust, as the Grantor appoints by the Grantor's Last Will and Testament by specific reference to this power. To the extent all, or any portion, of the income and principal of the trust estate is not so effectively appointed, such income and principal shall be divided into a sufficient number of equal shares so that there shall be set aside one (1) such share for each child of the Grantor who is then living and one (1) such share for the collective descendants who are then living of any child of the Grantor who is not then living. From each such share so set aside for the collective descendants who are then living of any child of the Grantor who is not then living there shall be set aside per stirpital parts for such descendants. Each child of the Grantor who is then living for whom a share

is set aside and each descendant who is then living of a child of the Grantor who is not then living for whom a per stirpital part is set aside is herein referred to as a “primary beneficiary.” The share or part of a share so set aside for a primary beneficiary shall be held in a separate trust in accordance with the terms and conditions set forth in Article SECOND hereof. If no descendant of the Grantor is living at the death of the Grantor, the income and principal of the trust, to the extent not effectively appointed, shall be distributed, free from trust, to the then living descendents, per stirpes, of the Grantor's parents. If the Grantor's parents have no then living descendent, the income and principal of the trust, to the extent not effectively appointed, shall be distributed, free from trust, to such living person or persons as shall be determined to be the distributees of the Grantor by the application of the intestacy laws of the State of Delaware governing the distribution of intestate personal property in effect at the time of distribution, as though the Grantor’s Spouse had predeceased the Grantor, and the Grantor had died at that particular time, intestate, a resident of the State of Delaware and owning the property so distributable.

**(Alternative to contingent remainder under Delaware intestacy laws: Charitable organizations as named in trust instrument or as selected by Trustee or Trust Protector).**

1.3 Release of Grantor’s Rights and Powers. The Grantor may, at any time and from time to time during the Grantor’s life, by a written, acknowledged instrument delivered to the Trustee, release the Grantor’s right to receive discretionary distributions of income and principal from the trust estate, the right to consent to distributions from the trust estate described in Section 3.5, and/or the power of appointment described in Section 1.2 with respect to any or all of the property held as part of the trust estate and may limit the persons or entities in whose favor the power of appointment described in Section 1.2 may be exercised; notwithstanding the foregoing or any other provision of this Agreement, the Grantor shall have no power or authority to change the class of persons eligible to receive distributions during the Initial Term (except to cause the Grantor personally to be excluded from the class by releasing the Grantor’s own right to be eligible to receive such distributions).

## **ARTICLE SECOND - TRUST FOR A PRIMARY BENEFICIARY**

2.1 During Primary Beneficiary’s Lifetime. Any share or part of a share which is directed to be held in accordance with the terms and conditions set forth in this Article or this Section shall be held by the Trustee, IN TRUST, NEVERTHELESS, in a separate trust

for the benefit of the primary beneficiary for whom the share or part of a share was set aside and the descendants of the primary beneficiary living from time to time during the trust term (hereinafter collectively referred to as the “beneficiaries”) for the following uses and purposes: to manage, invest and reinvest the same, to collect the income thereof, and to pay over or apply the net income and principal thereof to such extent, including the whole thereof, and in such amounts and proportions, including all to one to the exclusion of the others, and at such time or times as the Trustee, in the exercise of sole and absolute discretion, shall determine, to or for the benefit of such one or more of the beneficiaries as the Trustee, in the exercise of sole and absolute discretion, shall select. Any net income not so paid over or applied shall be accumulated and added to the principal of the trust at least annually and shall thereafter be held, administered and disposed of as a part thereof.

2.2 Power of Appointment Upon Death Of Primary Beneficiary. Upon the death of the primary beneficiary, the Trustee shall transfer, convey and pay over the principal and income of the trust, as it is then constituted, to or for the benefit of such one or more of the descendants of the Grantor (other than the primary beneficiary, his or her estate or creditors or the creditors of his or her estate) to such extent, in such amount or proportions, and in such lawful interests or estates, whether outright or in trust, as the primary beneficiary may by his or her Last Will and Testament appoint by specific reference to this power; provided, however, that the primary beneficiary is cautioned against exercising such power of appointment over any trust created hereunder that has an inclusion ratio of less than one (1) for generation-skipping transfer tax purposes in a manner that would cause section 2041(a)(3) or section 2514(d) of the Internal Revenue Code of 1986 (the "Code") to apply by reason of such exercise.

The primary beneficiary may, at any time and from time to time during his or her life, by a written, acknowledged instrument delivered to the Trustee, release such power of appointment with respect to any or all of the property subject to such power or may further limit the persons or entities in whose favor this power may be exercised.

If the power of appointment is for any reason not effectively exercised in whole or in part by the primary beneficiary, the principal and income of the trust, as it is then constituted, to the extent not effectively appointed by him or her, shall, upon his or her death, be disposed of in accordance with the terms and conditions set forth in Section 2.3 of this Article.

2.3 Disposition Of Unappointed Property For Descendants. Upon the death of the primary beneficiary (referred to in this Section as the "deceased primary beneficiary"), if any descendant of the deceased primary beneficiary is then living, the principal and income, if any, of the trust directed to be disposed of in accordance with the terms and conditions set forth in this Section shall be divided into a sufficient number of equal shares so that there shall be set aside one (1) such share for each child of the deceased primary beneficiary who is then living and one (1) such share for the collective descendants who are then living of any child of the deceased primary beneficiary who is not then living. From each such share so set aside for the collective descendants who are then living of any child of the deceased primary beneficiary who is not then living there shall be set aside per stirpital parts for such descendants. Each then living child of the deceased primary beneficiary for whom a share is set aside and each then living descendant of a then deceased child of the deceased primary beneficiary for whom a per stirpital part is set aside is herein referred to as a "primary beneficiary". The share or part of a share so set aside for a primary beneficiary shall be held in a separate trust in accordance with the terms and conditions set forth in Section 2.1 and the other provisions of this Article. If no descendant of the deceased primary beneficiary is then living, the principal and income, if any, of the trust directed to be disposed of in accordance with the terms and conditions set forth in this Section shall be divided into per stirpital shares for the descendants who are then living of the lineal ancestor of the deceased primary beneficiary of the closest degree of consanguinity to the deceased primary beneficiary which ancestor has descendants who are then living and which ancestor is (or was) also a descendant of the Grantor or which ancestor was the Grantor. Each descendant for whom a per stirpital share is set aside is herein referred to as a "primary beneficiary". The share so set aside for a primary beneficiary shall be held in a separate trust in accordance with the terms and conditions set forth in Section 2.1 and the other provisions of this Article; provided, however, that if a trust already exists under Section 2.1 of this Article of which that primary beneficiary is also the primary beneficiary, the Trustee, in the exercise of sole and absolute discretion, may instead add the share to that existing trust, thereafter to be held, administered and disposed of as a part thereof.

If no descendant of the Grantor is then living, the principal and income, if any, of the trust directed to be disposed of in accordance with the terms and conditions set forth in this Section shall be distributed, free from trust, to the then living descendants, per stirpes of the Grantor's

parents. If the Grantor's parents have no then living issue, the income and principal of the trust, as it is then constituted, shall be distributed, free from trust, to such living person or persons as shall be determined to be the distributees of the Grantor by the application of the intestacy laws of the State of Delaware governing the distribution of intestate personal property in effect at the time of distribution, as though the Grantor's Spouse had predeceased the Grantor, and the Grantor had died at that particular time, intestate, a resident of the State of Delaware and owning the property so distributable.

**(Alternative to contingent remainder under Delaware intestacy laws: Charitable organizations as named in trust instrument or as selected by Trustee or Trust Protector).**

2.4 Intention As To Disposition Under Article SECOND. It is the Grantor's general intention that, upon the death of any primary beneficiary (regardless of his or her generation from the Grantor) of any trust under this Article, except to the extent that the primary beneficiary effectively exercises his or her power of appointment, the property in that trust (i) be divided, as set forth above, on a per stirpital basis into trusts for the primary beneficiary's surviving descendants with each of those descendants becoming a primary beneficiary of his or her own trust and (ii) be similarly disposed of through all succeeding generations in perpetuity to the maximum extent permitted under Delaware law.

### **ARTICLE THIRD - TRUSTEE'S POWERS**

3.1 Powers Of Trustee. In the administration of any property, real or personal, forming a part of the trust estate or of any trust established hereunder, including any accumulated income thereof, the Trustee, in addition to and not by way of limitation of the powers provided by law (except that the Trustee shall not have any of the specific powers described in Section 3405 of Title 12 of the Delaware Code unless, and only to the extent that, such specific power is expressly described in this Article or otherwise expressly granted by the Trustee by this Agreement), shall, except as otherwise provided in this Agreement, have the following powers:

(1) To retain such property for any period, whether or not the same be speculative or be of the character permissible for investments by fiduciaries under any applicable law, and without regard to any effect the retention may have upon the diversification of the investments. The Trustee shall be under no duty to sell or otherwise dispose of any particular investment or type of investment (whether originally a part of the trust estate or any trust or

subsequently acquired by the Trustee) merely because of the amount or value of such investment or type of investment in relation to the total amount or value of the trust estate in which such investment or type of investment is held.

(2) To sell, transfer, exchange, convert or otherwise dispose of, or grant options with respect to, such property, at public or private sale, with or without security, in such manner, at such time or times, for such purposes, for such prices and upon such terms, credits and conditions as the Trustee may deem advisable.

(3) To invest and reinvest in common stocks, preferred stocks, bonds, and other securities, commodities, collectibles, art, and any variety of real or personal property, foreign or domestic, whether or not productive of income or consisting of wasting assets, including but not limited to notes and debentures (including convertible stocks and securities); certificates of indebtedness; commercial paper; acceptances; variable amount notes; investment trust certificates; equipment trust certificates; bills of exchange; Treasury bills; certificates of deposit; repurchase agreements; demand or time deposits; gold, silver, and other minerals; real estate investment trusts, real estate mortgage investment conduits, land trusts or other title-holding trusts; equity interests or equity participation in improved or unimproved real property, either in the form of direct ownership (with or without leaseback provisions) of such real property, or in the form of stock (closely held or publicly traded), stock purchase warrants, or other forms of interest in the entity owning or developing such real property; loans or debt obligations whether or not secured by mortgages on, or other interests in, real property; mortgages on the fee, leasehold or other interests in real property, installment sales contracts, sale and leasebacks; leases or rental agreements providing income or profits from real property; royalties, overriding or limited royalties, production payments, net profit interests or other interests in minerals, oil, gas, timber or other natural resources in or on land; interests in general and limited partnerships, limited liability companies, limited liability partnerships, syndicates or other organizations which conduct any type of business or own or invest in any interests in or relating to any property real, personal or mixed; contracts for the immediate or future delivery of financial instruments or other property of any issuer; option contracts of any type (including, without limitation, put and call options), whether or not traded on any exchange; interests in trusts; interests in shares of mutual funds or other investment companies (including any investment company for which the Trustee or any affiliate thereof serves as an investment advisor); insurance policies and contracts; annuity contracts; evidences of indebtedness of corporations or other enterprises; foreign securities; foreign securities in the form of American depositary receipts, European depositary receipts, global depositary receipts, international depositary receipts, and other similar securities represented by an interest in securities of foreign issuers; options; futures; forward foreign currency exchange contracts; short sale contracts; reverse repurchase agreements; United States dollar denominated and non-United States dollar-denominated corporate and government debt securities of foreign issuers, including debt securities rated below investment grade and comparable unrated securities; indexed securities; restricted securities; put and call options on foreign currency; and interests in business trusts (whether or not maintained by the Trustee or any related party); without being limited to the classes of property in which trustees are authorized to invest trust funds by any law of any state, and despite any rule or other provision of applicable law generally limiting a trustee's power or

authority to delegate investment discretion and despite any resulting risk or lack of diversification or marketability as the Trustee may deem advisable, including interests formed principally for the commingling of assets for investment, such as common trust funds, investment companies, investment trusts and partnerships (participating therein as a general or limited partner) whether or not such investments may be speculative or be of the character permissible for investments by fiduciaries under any applicable law, and without regard to the effect any such investment or reinvestment may have upon the diversification of investments and without any duty or obligation to comply with the provisions of section 3302(e), section 3307, or section 3312 of Title 12 of the Delaware Code or other provisions of law that otherwise might restrict, limit or impose conditions upon the Trustee's power or authority to invest in common or collective trust funds or other entities formed principally for the commingling of assets for investment but only to the extent that such provisions of law may be waived or overridden by the express terms of this Agreement.

(4) To engage in short sales of securities; to acquire puts and calls; to enter into any options and futures contracts offered by any exchange trading in options and futures or otherwise; to use hedging transactions utilizing spreads and straddles; to acquire financial instruments commonly known as "derivatives"; to engage in all manner of other investment strategies as now exist or may in the future exist.

(5) To render liquid any trust in whole or in part at any time or from time to time and to hold cash or readily marketable securities of little or no yield for such period as the Trustee may deem advisable.

(6) To lease any such property beyond the period fixed by statute for leases made by fiduciaries and beyond the duration of any trust created hereunder.

(7) To join or become a party to, or to oppose, any reorganization, readjustment, recapitalization, foreclosure, merger, voting trust, dissolution, consolidation or exchange, and to deposit any securities with any committee, depository or trustee, and to pay any and all fees, expenses and assessments incurred in connection therewith; to exercise conversion, subscription or other rights, and to make any necessary payments in connection therewith, or to sell any such privileges.

(8) To vote in person at meetings of stock or security holders or any adjournments of such meetings or to vote by general or limited proxy with respect to any such shares of stock or other securities held by the Trustee.

(9) To hold securities in the name of a nominee without indicating the trust character of such holding, or unregistered or in such form as will pass by delivery; or to use a central depository, such as The Depository Trust Company and any Federal Reserve Bank, and permit the registration of registered securities in the name of its nominee.

(10) To pay, compromise, compound, adjust, submit to arbitration, sell or release any claims or demands of the trust estate or any trust against others or of others against the same as the Trustee may deem advisable, including the acceptance of deeds of real property

in satisfaction of bonds and mortgages, and to make any payments in connection therewith which the Trustee may deem advisable.

(11) To make loans, secured or unsecured, subordinate or otherwise, to any person, including but not limited to any one or more beneficiaries (other than the Grantor or the Grantor's Spouse) or contingent beneficiaries of the trust estate or any trust, and to guarantee the loans of others to any such person.

(12) To borrow money for any purpose from any source, including the Trustee, or any of its affiliates or any other fiduciary at any time acting hereunder, and to secure the repayment of any and all amounts so borrowed by mortgage or pledge of any property.

(13) To possess, manage, insure against loss by fire or other casualties, develop, subdivide, control, partition, mortgage, lease or otherwise deal with any and all real property; to satisfy and discharge or extend the term of any mortgage thereon; to execute the necessary instruments and covenants to effectuate the foregoing powers, including the giving or granting of options in connection therewith; to make repairs, replacements and improvements, structural or otherwise, or abandon the same if deemed to be worthless or not of sufficient value to warrant keeping or protecting, to abstain from the payment of taxes, water rents, assessments, repairs, maintenance and upkeep of the same; to permit to be lost by tax sale or other proceeding or to convey the same for a nominal consideration or without consideration, to set up appropriate reserves out of income for repairs, modernization and upkeep of buildings, including reserves for depreciation and obsolescence, and to add such reserves to principal, and, if the income from the property itself should not suffice for such purposes, to advance out of other income any sum needed therefor, and to advance any income of the trust for the amortization of any mortgage on property held in the trust.

(14) To invest in any money market deposit or similar account or securities of the Trustee or any affiliate thereof, or in one or more limited partnerships, joint ventures, investment trusts, mutual funds or similar investment funds (each such enumerated investment is hereinafter referred to in this subparagraph (14) as an "investment fund"), whether or not the Trustee, or any affiliate thereof, renders services to such investment fund and receives compensation therefrom. The Trustee shall be entitled to receive such compensation as is provided in this Agreement for serving as Trustee as to amounts invested in any such investment fund, even though the Trustee, or any affiliate thereof, may receive additional fees from such investment fund and the Trustee shall have no duty or obligation to make the disclosure described in section 3312 of Title 12 of the Delaware Code or any similar provision of law that generally would be applicable to the Trustee but that may be waived by the express terms of this Agreement.

(15) To appoint, employ and remove, at any time and from time to time, agents, including but not limited to, accountants, attorneys, employees, investment counselors, and other expert advisers; to delegate to such agents any of the discretionary and nondiscretionary powers granted to the Trustee; and to pay the fees of such agents from the income or the principal, or partially from the income and partially from the principal, of the trust estate or of any trust.

(16) To enter into transactions with, and to retain the services of, any entity affiliated with the Trustee, upon such terms and conditions as the Trustee deems advisable, including but not limited to transactions or services in which the Trustee or its affiliated entity (i) is a broker or dealer retained to execute security transactions on behalf of the trust estate or any trust; (ii) purchases assets from or sells assets to the trust estate or any trust; (iii) lends money to the trust estate or any trust; (iv) engages in any other transactions (whether as an agent, as a principal, as a counterparty or in any other capacity) with, or renders any other services to, the trust estate or any trust. In such instances, the affiliated entity shall be entitled to receive fees or other compensation from the trust estate or any trust without any reduction of the fees which the Trustee shall be otherwise entitled to receive from the trust estate or any trust.

(17) To make distribution of the trust estate or of the principal of any trust created hereunder in kind and to cause any distribution to be composed of cash, property or undivided shares in property different in kind from any other distribution without regard to the income tax basis of the property distributed to any beneficiary of any trust.

(18) To take part in the management of any business in which investment is retained or made hereunder and to delegate duties with respect to such management, with the requisite powers, to any employee, manager, partner or associate of such business, without liability for such delegation; to reduce, expand, limit or otherwise fix and change the operation or policy of any such business and to act with respect to any other matter in connection with any such business; to subject to the risks of any such business, any part or all of any trust estate, for such term or period as the Trustee may determine; to advance money or other property to any such business; to make loans, subordinated or otherwise, of cash or securities to any such business and to guarantee the loans of others made to any such business; to borrow money for any such business, either alone or with other persons interested therein, and to secure such loan or loans by a pledge or mortgage of any part of any trust estate; to select and vote for directors, partners, associates and officers of any such business; to act as directors, general or limited partners, associates and officers of any such business either individually or through an officer or officers if the Trustee be a corporation, and to receive compensation from such business for so acting; to enter into stockholders' agreements with corporations in which the trust estate or any trust has an interest and with the stockholders of such corporations; to liquidate, either alone or jointly with others, any such business or any interest in any such business; and generally to exercise any and all powers as the Trustee may deem necessary with respect to the continuance, management, sale or liquidation of any such business.

(19) To purchase life insurance on the life of any individual (other than the Grantor or the Grantor's Spouse) in which any beneficiary hereunder may have an insurable interest; to enter into any form of split-dollar arrangement with respect to such insurance, including a split-dollar arrangement with another trust of which any Trustee hereunder is acting as a trustee notwithstanding that such arrangement may constitute an act of self-dealing; to pay any premiums on any such life insurance policy held hereunder; to exercise with respect to said insurance policies held hereunder from time to time all options, rights, elections and privileges exercisable with respect to said policies, including, but not limited to, the right to demand and collect from the company or companies issuing said policies all such proceeds as shall be payable to the Trustee; to designate and change the beneficiaries thereunder; to modify,

exchange, surrender or cancel any such policies of insurance; to borrow upon and pledge any such policy in connection with a loan; to assign and distribute any and all of the rights thereunder to or for the benefit of any beneficiary of the trust; to direct the disposition of dividends or surplus; to convert said policies into different forms of insurance; and to elect methods of settlement with respect thereto; provided, however, that the Trustee shall have no power to use any income of the trust within the meaning of section 677 of the Code including capital gains directly or indirectly to pay premiums on policies of insurance on the life of either the Grantor or the Grantor's Spouse or both of them (including, without limitation, any form of split-dollar arrangement with respect to such insurance).

(20) To drill, test, explore, maintain, develop and otherwise exploit, either alone or jointly with others, any and all property in which any trust created hereunder may have any rights or interests of whatsoever kind or nature with respect to oil, gas, minerals, timber or other natural resources, whether originally a part of the trust or subsequently acquired, and to pay the costs and expense thereof, together with all delay rentals, bonuses, royalties, overriding royalties, drilling and operating expenses, taxes, assessments and other charges and burdens in connection therewith; to enter into operation, farmout, pooling or utilization agreements in connection with any or all of such rights or interests; and to extract, remove, process, convert, retain, store, sell or exchange such rights and interests and the production therefrom, in such manner, to such extent, on such terms and for such consideration as the Trustee may deem advisable.

(21) To manage any trust in a consolidated manner with any other trust created under Article FIRST or Article SECOND hereof or with any other trust created by the Grantor or any other person which has similar terms, conditions and beneficiaries.

(22) To make a joint purchase with or to make a sale at less than fair market value to any beneficiary (other than the Grantor or the Grantor's Spouse) of a trust created hereunder; to make loans without interest or at less than market rate interest to any beneficiary (other than the Grantor or the Grantor's Spouse); and to enter into any other transaction or agreement, including guaranteeing loans made to beneficiaries by third parties and pledging trust assets as security for such loans, whether or not such transaction or agreement is of a commercial nature with any beneficiary (other than the Grantor or the Grantor's Spouse) which the Trustee, in the exercise of sole and absolute discretion, may determine to reflect what would be the wishes of the Grantor.

(23) To grant a term of years interest or a life estate with respect to any asset to any one or more of the beneficiaries (other than the Grantor or the Grantor's Spouse) of a trust created hereunder, as the Trustee, in the exercise of sole and absolute discretion, may determine, and to retain the power to terminate the same, retaining the reversionary interest in the trust or for the benefit of any other beneficiary of the trust.

(24) To make any property of any trust created hereunder available for the use and benefit of any beneficiary (other than the Grantor or the Grantor's Spouse) of the trust on such terms as the Trustee, in the exercise of sole and absolute discretion, may determine.

(25) To employ domestic servants and pay any other expenses incident to the maintenance of a household for the benefit of any one or more of the beneficiaries (other than the Grantor or the Grantor's Spouse) of a trust created hereunder, as the Trustee, in the exercise of sole and absolute discretion, may determine, and to provide for the personal care and comfort of any one or more of the beneficiaries (other than the Grantor or the Grantor's Spouse) in any manner whatsoever.

(26) To permit any one or more of the beneficiaries (other than the Grantor or the Grantor's Spouse) of any trust created hereunder, as the Trustee, in the exercise of sole and absolute discretion, may determine, to occupy any real property and to use any tangible personal property forming part of the trust on such terms as the Trustee, in the exercise of sole and absolute discretion, may determine, whether for rent, rent-free, in consideration of payment of taxes, insurance, maintenance or ordinary repairs, or otherwise.

(27) To divide any trust created hereunder or any property used to fund or augment any trust created hereunder into two or more fractional shares to be held as separate trusts hereunder, or to divide any trust created hereunder into one or more separate trusts for the benefit of one or more of the beneficiaries (to the exclusion of the other beneficiaries) of the trust so divided, as the Trustee, in the exercise of sole and absolute discretion, may determine and to allocate to such divided trust some or all of the assets of the trust estate for any reason including, but not limited to, enabling any such trust or trusts to qualify as an eligible shareholder of an S corporation as described in sections 1361(c)(2)(A)(i), 1361(d), or 1361(e) of the Code, as the case may be, or any other provision of the law hereafter enacted for the purpose of permitting trusts to qualify as eligible shareholders of an S corporation, to provide an inclusion ratio (within the meaning of section 2642(a) of the Code) of zero for a trust to which an allocation of generation-skipping transfer tax exemption may be made, or for any other purpose.

(28) If two trusts created hereunder are directed to be combined into a single trust (for example, because property of one trust is to be added to the other), whether or not the trusts have different inclusion ratios with respect to any common transferor or have different transferors in whole or in part for generation-skipping transfer tax purposes, in the exercise of sole and absolute discretion, instead of combining the trusts, to hold and administer them as separate trusts with identical terms in accordance with the provisions that would have governed the combined trusts.

(29) If anyone adds or is deemed to add by gift or bequest property to a trust created hereunder, to hold the added property as a separate trust with terms identical to the trust to which it would have been added.

(30) To merge all or any part of the assets of any trust created hereunder with the assets of any other trust created by the Grantor or any other person (whether during life or by Will) and held by the same Trustee for the benefit of the same beneficiaries and upon substantially the same terms and conditions as those set forth herein, and at the Trustee's discretion, either (i) administer the merged assets as a single trust hereunder, or (ii) transfer the trust assets to that other trust, to be administered under the instrument governing that other trust, and thereafter terminate the trust hereunder as a separate entity; if the Trustee elects to

administer the merged assets as a single trust under this Agreement, then the Trustee, in the exercise of sole and absolute discretion, may later divide that trust as provided above in this Article; without in any way limiting the discretion of the Trustee granted by this subparagraph, it is envisioned that the Trustee will not elect to combine two or more trusts with different inclusion ratios for generation-skipping transfer tax purposes.

(31) Whenever two (2) or more co-Trustees are acting as Trustees for any trust hereunder, to agree among themselves in writing that one or more of them, but less than all of them, shall assume sole responsibility for performing such duties and exercising such powers of the Trustee as shall be expressly delegated to such one or more of them and, following any such delegation of duties and powers, the co-Trustee or co-Trustees to whom such duties and powers have been delegated shall bear sole fiduciary responsibility and liability with respect to such duties and powers and the other co-Trustee or co-Trustees shall bear no responsibility or liability with respect to such duties and powers and shall have no obligation to monitor or review the conduct of the co-Trustee or co-Trustees to whom such delegation has been made. Any such delegation may be made on a continuing basis, or for a term, and may be made upon a revocable or irrevocable basis as the co-Trustees then serving shall determine.

(32) To allocate receipts and expenses between income and principal as the Trustee, in the Trustee's sole discretion, may determine.

(33) If property, whether income or principal, vests in a minor, the Trustee is authorized (but not required) to hold and manage the property as donee of a power during minority until the minor attains majority (as determined under the law of the minor's domicile), and to exercise in respect of the property and the income all powers conferred by law on the donees of a power during minority, and shall receive the compensation the Trustee would receive if holding the property as Trustee of a separate trust hereunder and shall not be required to render periodic accounts to any court.

(34) To make such elections under the tax laws as the Trustee may determine to be appropriate, regardless of the effect thereof on any interests in any trust created under this Agreement, and to determine whether or not any adjustment of such interests shall be made by reason of any such election.

(35) To make any application of principal or income for the benefit of any beneficiary by payment to such person or persons (including, but without limitation, other trusts, estates, individuals and institutions) as the Trustee, in the exercise of sole and absolute discretion, determines (including, but without limitation, a trust of which any Trustee hereunder is also acting as trustee or a trust in which one or more of the beneficiaries of this trust are beneficiaries, provided that no such application may be made to a trust in which a person who is not a beneficiary of this trust has any beneficial interest, and whether such trust was created pursuant to authority granted to the Trustee hereunder or otherwise); the written receipt of the person or persons so paid shall be a full discharge to the Trustee from all liability with respect thereto, and any such payment or application may be made without bond, without intervention of any guardian, conservator or committee, and without the order of any court.

(36) To make or terminate elections with respect to S corporation stock, and to make such adjustments between income and principal to compensate for the consequences of the trust's ownership of S corporation stock as the Trustee may deem just and equitable; provided, however, that if the trust holds S corporation stock, the Trustee shall not make adjustments that would have the effect of denying to the income beneficiary the income of the trust to which the beneficiary must be entitled in order for the trust to qualify as an eligible S corporation shareholder under the Code; and provided further, that if a trust holds S corporation stock no Trustee shall exercise any power conferred under this Agreement that would have the effect of denying to the income beneficiary the income of the trust to which the beneficiary must be entitled in order for the trust to qualify as an eligible S corporation shareholder under the Code; and provided further, during the term of any trust created hereunder, (i) if the Trustee sells any interest in a corporation or if the assets of any entity constituting a corporation in which the trust has an ownership interest are sold, and (ii) if that corporation has made an election to be taxed under Subchapter S of the Code, then in the Trustee's sole and absolute discretion, the Trustee may distribute to the income beneficiary such amounts of principal as shall be necessary to pay any income tax caused by that sale, if the income or gain attributable to that sale is taxed directly to the income beneficiary under applicable Federal tax law.

(37) To execute and deliver any and all instruments in writing which the Trustee may deem advisable to carry out any of the foregoing powers. No party to any such instrument in writing signed by the Trustee shall be obliged to inquire into its validity.

(38) In exercising the powers granted to the Trustee by this Article, the Trustee shall be under no duty to obtain information from the beneficiaries of the Grantor's estate or any trust. Specifically, the Trustee shall have no duty to inquire as to any beneficiary's assets and sources of income other than any interests such beneficiary may have in any trust created hereunder.

(39) To perform all other acts in the Trustee's judgment appropriate for the proper management and investment of trust property in like manner and with the same full power, authority, and discretion, alone or with others, as an individual owner would possess with respect to such property.

3.2 Powers of Trustee Exercised Without Court Authorization. The powers granted to the Trustee under this Agreement may be exercised in whole or in part and from time to time, and without court authorization, and shall be deemed to be supplemental and not exclusive, it being the Grantor's intention that the Trustee hereunder shall have all the general powers of fiduciaries as well as all of the special powers herein expressly granted, and all powers incidental to, reasonably to be implied from, or necessary to the proper exercise of, the powers herein granted.

3.3 "Prudent Person" Rule Waived; Rule Against Self-Dealing Waived; Duty of Loyalty Waived. In addition to the investment powers conferred above, the Trustee is

authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would be forbidden or would be regarded as imprudent, improper or unlawful by the “prudent person” rule, “prudent investor” rule, Section 3302 of Title 12 of the Delaware Code, any rule or law concerning the duty of loyalty, any rule or law limiting, proscribing, or voiding or making voidable any interested party or self-dealing transaction, or any other rule or law which restricts a fiduciary’s capacity to invest. The Trustee is authorized (but not directed) to acquire property from, transfer property to, obtain services from, provide services to, and otherwise enter into contracts, understandings, arrangements, and other dealings, of any kind or nature, with any person or entity (each such person or entity hereinafter referred to as a “Third Party”), whether or not the Third Party is in any manner related to, or affiliated with, the Trustee or any other person or entity related to, or affiliated with, the Trustee and without regard to whether the Trustee, acting in its corporate or personal capacity or in any other capacity, or any person related to, or affiliated with, the Trustee has other contracts, understandings, arrangements or dealings, whether or not for remuneration, with the Third Party. In making investments, the Trustee may disregard any or all of the following factors: (1) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (2) whether the acquisition or retention of a particular investment, or the trust investments collectively, are consistent with any duty of impartiality as to the different beneficiaries; (3) whether the acquisition or retention of a particular investment or any aspect of the administration of the investment violates any duty of loyalty or rule against self-dealing; (4) whether the trust is diversified; and (5) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the entire trust may be so invested).

The Grantor’s purpose in granting the foregoing authority is to modify the “prudent person” rule, “prudent investor” rule, the application of Section 3302 of Title 12 of the Delaware Code, the duty of loyalty, the rule against self-dealing, or any other rule or law which restricts a fiduciary’s ability to invest insofar as any such rule or law would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. The Grantor does this because the Grantor believes it is in the best interests of the beneficiaries of the trusts created hereunder to give the Trustee

broad discretion in managing the assets of the trusts created hereunder. Notwithstanding the foregoing, the Trustee shall exercise all of the Trustee's powers and authority under this Agreement solely in a fiduciary capacity and shall only be liable for any loss incurred by any trust hereunder caused by the Trustee's own willful misconduct proved by clear and convincing evidence in the court then having primary jurisdiction over the trust.

3.4 Trustee Acts In Fiduciary Capacity. Every act done, power exercised or obligation assumed by the Trustee pursuant to the provisions of this Agreement shall be held to be done, exercised or assumed, as the case may be, by the Trustee acting in a fiduciary capacity and not otherwise, and every person, firm, corporation or other entity contracting or otherwise dealing with the Trustee shall look only to the funds and property of the trust estate for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Agreement, in whole or in part, and the Trustee shall not be individually liable therefor even though the Trustee did not exempt himself, herself or itself from individual liability when entering into any contract, obligation or transaction in connection with or growing out of the trust estate.

3.5 Distribution Committee. The initial members of the Distribution Committee shall be the two eldest adult and competent persons (other than the Grantor or the Grantor's Spouse) initially eligible to receive distributions out of the trust estate. At all times during the Initial Term, (i) the Distribution Committee shall be comprised of two persons; and (ii) each member of the Distribution Committee shall be a person then eligible to receive distributions out of the trust estate. Notwithstanding the foregoing sentence, if, at any time during the Initial Term, there are less than two persons eligible and willing to serve on the Distribution Committee pursuant to the foregoing provisions of this Section 3.5, then (i) the adult and competent parents (other than the Grantor or the Grantor's Spouse), guardians, conservators and other representatives of the minor or incompetent persons then eligible to receive distributions out of the trust estate shall be eligible to serve as members of the Distribution Committee and (ii) the Distribution Committee may have a single member. Each member of the Distribution Committee serving from time to time shall appoint his or her successor by a duly acknowledged written instrument executed during his or her lifetime or by his or her Last Will and Testament and in default of such appointment, successor members shall be appointed by a

duly acknowledged written instrument executed by the Trust Protector. The Trust Protector may remove any member of the Distribution Committee from office at any time, with or without cause, provided that the Trust Protector appoints a successor member to serve in the removed member's stead. Following the Initial Term and at any time when there is no person serving as a member of the Distribution Committee, the Trustee shall exercise all rights and powers of the Distribution Committee and shall be entitled to additional compensation for such services in accordance with its regularly published schedule of compensation (as in effect at the time such compensation is paid) for serving as a fiduciary with full responsibility for making discretionary distributions, notwithstanding any contrary provision in the Trustee's instrument of appointment.

During the Initial Term, the Distribution Committee shall direct the Trustee with regard to (i) all discretionary distributions from the trust estate to beneficiaries made pursuant to Section 1.1 and (ii) the exercise of the Trustee's powers granted and described in subsections (11), (17) and (22) – (26) of Section 3.1 of Article THIRD or any other powers relating to the use or enjoyment, with or without consideration, of any part of the trust estate. The Trustee is authorized and directed to follow each such direction of the Distribution Committee (provided, however, that the Distribution Committee shall not be authorized to direct the Trustee to make any distributions that would violate the provisions of this Agreement). In exercising its discretion pursuant to this Section 3.5, the Distribution Committee, or the Trustee if at any time there is no Distribution Committee acting hereunder, may, but need not, consider the wishes of the Grantor, as expressed, from time to time, by the Grantor in one or more letters delivered by the Grantor to the Trustee. The Trustee shall not be accountable and shall have no liability hereunder for (i) any action taken pursuant to direction of the Distribution Committee or (ii) inaction of the Distribution Committee. All rights and powers conferred on the Distribution Committee shall be exercisable only by unanimous action of all members of the Distribution Committee except that any member of the Distribution Committee acting alone may direct the Trustee to make one or more distributions pursuant to Section 1.1 upon (i) obtaining the Grantor's prior written consent to each such distribution and (ii) filing each such consent with the Trustee. The exercise of such powers shall be reflected by a writing signed by the requisite number of Distribution Committee members and delivered to the Trustee or by a facsimile transmission of the same or by such other means as shall hereafter be agreed upon in a writing

signed by the Trustee and all of the members of the Distribution Committee such as, but not limited to, a writing signed by the Trustee and all of the members of the Distribution Committee agreeing that the Trustee shall act upon the verbal instructions of any member of the Distribution Committee provided that the Distribution Committee member issuing the verbal instructions indicates that the instructions were authorized by the unanimous action of all of the members of the Distribution Committee or that the Grantor has consented (either verbally or in writing) to the verbal instructions. Each verbal instruction of the Distribution Committee and each verbal consent of the Grantor shall be confirmed in a writing signed by the person or persons issuing the verbal instruction or verbal consent but the Trustee shall have no liability hereunder for the Trustee's good faith reliance upon any such verbal instructions or verbal consents even if the Trustee fails to obtain such written confirmation. By accepting an appointment to serve or act hereunder, the Distribution Committee members shall be deemed to have consented to submit to the jurisdiction of each court in which jurisdiction and venue are proper to review the administration of the trust and to be made parties to any proceedings in each such court that place in issue the decisions or actions of such Distribution Committee. No member of the Distribution Committee shall be liable hereunder for any action taken or omitted absent proof by clear and convincing evidence in the court then having primary jurisdiction over the trust that the member personally engaged in willful misconduct. Each member may resign at any time by an instrument in writing delivered to the other members of the Distribution Committee and the Trustee. No member of the Distribution Committee shall be entitled to compensation for serving as such, but each member shall be reimbursed from the trust estate for reasonable expenses incurred in the performance of such member's duties hereunder. Each member of the Distribution Committee shall have the right and power, acting in a non-fiduciary capacity, to participate in deliberations concerning, and to vote in favor of, distributions to, or for the benefit of, such Distribution Committee member personally, notwithstanding any common law or statutory provision, such as the rule proscribing self-dealing, that might otherwise limit or proscribe such Distribution Committee member's right or ability to participate in such deliberations or vote in favor of such distributions.

Whenever, pursuant to the terms of this Agreement, the Trustee acts at the direction of the Distribution Committee or any other person authorized by the terms of this

Agreement to direct the Trustee in the exercise of the Trustee's powers as to any particular matter, (i) as provided in Section 3313(b) of Title 12 of the Delaware Code, the Trustee shall not be liable for any loss resulting from such acts except in cases of willful misconduct proven by clear and convincing evidence in the court then having primary jurisdiction over the trust and (ii) to the extent any such action concerns a matter outside the scope of Section 3313(b) of Title 12 of the Delaware Code, in accordance with Section 3302(d) of Title 12 of the Delaware Code, the Trustee shall have no liability under this Agreement to the Grantor, any beneficiary or any other person whose interest arises under this Agreement for the Trustee's good faith reliance on the provisions of this Agreement requiring the Trustee to act at the direction of another.

#### **ARTICLE FOURTH - TRUSTEE PROVISIONS**

4.1 Appointment of Successor Trustee. If there is no Trustee acting as to a trust hereunder, the successor Trustee shall be such individual or individuals and/or such bank or trust company as shall be appointed in the same manner and subject to the same limitations and restrictions as provided in Section 4.2 of this Article for the removal and replacement of a Trustee.

4.2 Removal and Replacement of Trustee. Any Trustee acting hereunder may be removed at any time, with or without cause, by a unanimous vote of the then adult and competent beneficiaries of the trust and an individual or individuals and/or bank or trust company may be appointed as successor Trustee, in such removed Trustee's place, by a plurality vote of the then adult and competent beneficiaries of the trust (other than the Grantor). If any Trustee resigns or is removed or otherwise ceases to serve as Trustee hereunder and the then adult and competent beneficiaries of the trust fail to select a successor Trustee by plurality vote within fifteen (15) days thereafter, the Trust Protector shall appoint a successor trustee (other than the Trust Protector or any person related or subordinate to the Trust Protector within the meaning of Code Section 672(c)) within fifteen (15) days following the end of the initial fifteen (15) day period. If no Trust Protector is then serving or the Trust Protector fails to appoint a successor Trustee within that fifteen (15) day period, any interested party (including the predecessor Trustee) may petition a court of competent jurisdiction for the appointment of a successor Trustee. Notwithstanding any other provision of this Agreement, neither the Grantor nor any beneficiary of any trust hereunder, nor any person or entity that is related or subordinate

to either the Grantor or any such beneficiary within the meaning of Code Section 672(c) shall ever be eligible to serve as a Trustee. Furthermore, during the Grantor's lifetime, unless the Trust Protector has determined to change the situs of the Trust from Delaware in accordance with Section 5.2, at all times, at least one Trustee then serving must be a "qualified trustee" within the meaning of Section 3570(9) of Title 12 of the Delaware Code or any successor provision thereto.

4.3 Resignation of Trustee. Any Trustee may resign from office without leave of court at any time and for any reason by a duly acknowledged writing, delivered in person or by registered mail to the remaining Trustee or Trustees, or, if there is no other Trustee then in office, in the manner provided in Section 4.4 of this Article.

4.4 Manner of Notice. Any notice directed to be given in the manner provided in this Section shall be by a duly acknowledged writing delivered to the Trust Protector or, in the event no Trust Protector is then in office, to the person then authorized to appoint a Trust Protector for such trust.

4.5 Term of Trustee's Duties. The title, powers, duties, immunities and discretions herein conferred upon the Trustee shall continue after the termination of each trust hereby created until final distribution of the particular trust estate.

4.6 No Periodic Accounts or Bond. No Trustee shall be required to file or render periodic accounts in or to any court other than for good cause shown. No Trustee shall be required to give any bond.

Within 90 days following the close of each calendar year and within 90 days after the removal or resignation of the Trustee, the Trustee may deliver an accounting to the Grantor, and, following the Grantor's death, to such person or persons as the Trust Protector shall designate in writing. In the event the Trust Protector fails to provide the Trustee with the aforementioned writing, the Trustee shall deliver such accounting to the Trust Protector. In the event no Trust Protector is then in office, the Trustee shall deliver such accounting to the person then authorized to appoint a Trust Protector for such trust. Any such accounting shall be a written accounting of the trusts hereunder during such year or during the period from the close of the last preceding year to the date of such removal or resignation and shall set forth all investments, receipts, distributions, expenses and other transactions of each such trust and show

all cash, securities, and other property held as a part of each such trust at the end of such year or as of the date of such removal or resignation, as the case may be. The accountings referred to in this Section 4.6 shall be deemed to be an account stated, accepted and approved by all of the beneficiaries of each trust for which an accounting is rendered, and the Trustee shall be relieved and discharged, as if such accounting had been settled and allowed by a final judgment or decree of a court of competent jurisdiction, unless protested by written notice to the Trustee within 60 days of receipt thereof by the person designated to receive such accounting. The Trustee shall have the right, at the expense of the trust, to apply at any time to a court of competent jurisdiction for judicial settlement of any account of the Trustee whether or not previously settled as herein provided or for the determination of any question of construction or for instructions. In any such action or proceeding it shall be necessary to join as parties solely the Trustee and the Grantor (or the Trust Protector following the Grantor's death) (although the Trustee may also join such other parties as it may deem appropriate), and any judgment or decree entered therein shall be conclusive and binding on all persons at any time interested in the trust.

4.7 Trustee's Compensation. Except as otherwise provided in its instrument of appointment, each corporate Trustee shall be entitled to compensation for its services in any fiduciary capacity hereunder, including with respect to any fund held for the benefit of a minor, as provided in its regularly published schedule of compensation in effect at the time such compensation is paid, including minimum fees and additional compensation for special investments and services, notwithstanding that such stipulated compensation shall be greater than that now in effect or than that provided from time to time under applicable law, and such compensation may be paid at any time without court approval; provided, however, that in the event that the Trustee and the Grantor shall, prior to the date hereof, have entered into a written agreement regarding the compensation to be paid to the Trustee for its services as Trustee hereunder, the Trustee shall instead be entitled to compensation for such services as set forth in such written agreement, and such compensation may be changed at any time by mutual agreement in writing between the Trustee and the Trust Protector. Any other Trustee serving as a Trustee hereunder shall be compensated as agreed upon by the person or persons appointing the Trustee and the Trustee so appointed in his, her, or its instrument of appointment. If such Trustee's instrument of appointment does not provide for compensation, the Trustee shall not be

entitled to any compensation for services hereunder but shall be reimbursed from the trust estate for reasonable expenses.

4.8 Merger of Corporate Trustee. Any corporation resulting from any merger, conversion, reorganization or consolidation to which any corporation acting as Trustee hereunder shall be a party, or any corporation to which shall be transferred all or substantially all of any such corporation's trust business, shall be the successor of such corporation as Trustee hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this Agreement; provided, however, that in the case of any corporation that is acting as a Trustee hereunder, the provisions of this Section shall apply only if the resulting or transferee corporation or another co-Trustee then serving is eligible to serve as a "qualified trustee" within the meaning of Section 3570(9) of Title 12 of the Delaware Code or any successor provision thereto.

4.9 Majority Vote. If more than two (2) co-Trustees are acting as to any trust hereunder they shall act by majority vote of the disinterested Trustees.

4.10 No Duty of Inquiry. Upon the delivery of the trust property to a successor Trustee, the predecessor Trustee shall have no further liability or responsibility with respect thereto. A successor Trustee shall have no duty to examine, or inquire into, the acts or omissions of its immediate predecessor Trustee or immediate and more remote predecessor Trustees, and any successor Trustee shall have responsibility only with respect to the property actually delivered to it by its predecessor Trustee.

4.11 Duties of Trustee. In addition to the Trustee's other duties hereunder, the Trustee shall, with respect to each trust created hereunder, have the following exclusive duties, each of which shall be performed in Delaware or such other jurisdiction as the Trust Protector may select as the situs of the trust pursuant to Section 5.2: (i) to maintain or arrange for custody, in the jurisdiction serving as situs of the trust, of some or all of the trust property; (ii) to maintain records for the trust on an exclusive or nonexclusive basis; and (iii) to prepare or arrange for the preparation of fiduciary income tax returns for the trust.

4.12 Discretionary Distributions. For purposes of this Agreement, whenever the Trustee is authorized or directed to make distributions to or among beneficiaries in the

Trustee's sole discretion, or in the Trustee's sole and absolute discretion, the Trustee (or the Distribution Committee when it is authorized to direct the Trustee) may, but need not, consider the property available to a beneficiary from other sources before making any such distribution to the beneficiary.

4.13 Standard of Care; Indemnification. The Trustee shall be liable hereunder only for the Trustee's willful misconduct proved by clear and convincing evidence in the court then having primary jurisdiction over the trust. The Trustee shall not be personally liable for making any delegation that is authorized under this Agreement, nor for any action taken without the Trustee's express agreement, nor for any failure to act absent willful misconduct. The Trustee shall not be liable for relying absolutely on (i) any apparently valid documents and certifications including, but not limited to, tax reports and other tax information provided to the Trustee by any entity in which the trust estate holds an ownership interest; and (ii) the opinions of counsel or any accountant to any trust. Prior to the death of the Grantor, the Trustee shall be under no duty to inform any person having a beneficial interest in any trust created hereunder of the existence of any such trust or the nature and extent of that person's beneficial interest in, or rights with respect to, any such trust. Following the death of the Grantor, the Trustee shall be under no duty to inform any person, other than the primary beneficiary of each trust hereunder, having a beneficial interest in any trust created hereunder of the existence of such trust or the nature and extent of that person's beneficial interest in, or rights with respect to, any such trust. While not required, the same procedure referred to in Section 4.6 hereof to settle the Trustee's accounts may also be employed to obtain the conclusive consent by the beneficiaries to the Trustee's specific conduct of any other particular matter. The Trustee and each former Trustee shall be indemnified and held harmless by each trust created hereunder against any threatened, pending or completed action, claim, demand, suit or proceeding, whether civil, criminal, administrative or investigative, falling within the exculpatory provisions of this Section 4.13 or to which the Trustee is made a party, or threatened to be made a party, by reason of serving as Trustee if the Trustee acted in good faith. Such indemnification shall include expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually incurred by the Trustee in connection with such action, claim, demand, suit or proceeding and may be advanced prior to the conclusion of such matter. The cost of indemnification shall be

apportioned against the various trusts created hereunder as the Trustee reasonably considers appropriate, taking into account the nature of the claims involved.

4.14 Additional Powers. The Trustee shall have all additional powers and authority necessary or desirable, in the sole judgment of the Trust Protector, for prompt and effective administration of the trusts created hereunder, unless the particular power or authority is specifically denied by this Agreement. The Trust Protector may amend any portion of this Agreement in writing from time to time to state expressly any such additional powers and authority or otherwise to change the provisions of this Agreement in any manner that the Trust Protector deems necessary or advisable. Nevertheless, no power granted to the Trust Protector in this Section 4.14 grants any implied power to change beneficial interests under any trust or to amend this Agreement in any manner that would cause any trust hereunder to be or become a “grantor trust” as defined in Article SIXTH. In exercising these powers and in amending the provisions of this Agreement, the Trust Protector shall observe the general fiduciary duties of loyalty, good faith, fairness and due care and shall act in a manner consistent with the Grantor’s intent as expressed in this Agreement.

4.15 Trust Protector. The initial Trust Protector shall be \_\_\_\_\_. Each Trust Protector may resign at any time and may appoint its successor. In the event no Trust Protector is acting hereunder at any time, the Trust Protector shall, until the death of the Grantor, be an individual appointed by the Grantor's Spouse if the Grantor's Spouse is then living, or by the eldest then living and competent trust beneficiary (other than the Grantor) if the Grantor's Spouse is not then living, or by the Trustee if there is no then living and competent trust beneficiary other than the Grantor. Following the death of the Grantor, if no Trust Protector is acting hereunder at any time, the Trust Protector shall be appointed by the Grantor's Spouse if the Grantor's Spouse is then living, or if the Grantor's Spouse is not then living, the Trust Protector shall be appointed by the primary beneficiary of the trust if he or she is then adult and competent, or, if the primary beneficiary is not then adult and competent, by the parents or guardian of the person of the primary beneficiary provided that no such parent or guardian of the primary beneficiary shall serve as Trust Protector. No Trust Protector shall receive compensation for his or her services hereunder, however, the Trust Protector shall be entitled to reimbursement for reasonable costs and expenses incidental to serving as Trust Protector. The

Trust Protector shall have no duty to monitor the conduct of the Trustee and shall have no liability hereunder except for the Trust Protector's willful misconduct proved by clear and convincing evidence in the court then having primary jurisdiction over the trust. Notwithstanding any other provision of this Agreement, no person shall be eligible to serve as Trust Protector if such person is a beneficiary of any trust held under this Agreement or if such person is a related or subordinate party within the meaning of Section 672(c) of the Code with respect to any beneficiary of any trust held under this Agreement.

#### **ARTICLE FIFTH - GOVERNING LAW AND TRUST SITUS**

5.1 Governing Law. The validity, construction and effect of the provisions of this Agreement in all respects shall be governed and regulated according to and by the laws of the State of Delaware. Except as otherwise provided in Section 5.2, each trust created hereunder shall be administered in accordance with the laws of Delaware, and the Trustee shall not be required to account in any court other than one of the courts of Delaware and shall have no duty to account in the courts of Delaware except to the extent provided in Section 4.6 hereof.

5.2 Situs. The original situs of the trusts created hereunder shall be Delaware. The situs of any trust created hereunder may be maintained in any jurisdiction (including outside the United States), as the Trust Protector, in the exercise of sole and absolute discretion, may determine, and may thereafter be changed at any time or times to any jurisdiction selected by the Trust Protector in accordance with the provisions of this Section 5.2. Notwithstanding the foregoing, the Trust Protector may only change the situs of any trust created hereunder with the consent of the Trustee, which consent may be granted or withheld in the Trustee's sole and absolute discretion. Upon any such change of situs, the trust estate may thereafter, at the election of the Trust Protector, with the consent of the Trustee of said trust, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. Accordingly, if the Trust Protector of any trust created hereunder elects to change the situs of any such trust, the Trustee of said trust is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

5.3 Back-Up Perpetuities Provision. The trusts created hereunder shall be perpetual to the fullest extent permitted by Delaware law. If any trust created hereunder is

deemed to be subject to the law of a jurisdiction (including, but only to the extent applicable to real property, Delaware law) that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then such trust (other than a trust created by the exercise of a power of appointment conferred hereunder which exercise commences a new rule against perpetuities period under the law of such jurisdiction) shall terminate in all events upon the expiration of the longest period that property may be held in trust under this Agreement under the law of such jurisdiction (including any applicable period in gross, such as 21 years, 90 years or 110 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this Section shall apply only to such property. If under the law of such jurisdiction the longest period that property may be held in trust may be determined (or alternatively determined) with reference to the death of the last survivor of a group of individuals in being upon the date of this Agreement, those individuals shall consist of all of the descendants of the Grantor's parents and the Grantor's Spouse's parents who were in being on the date of this Agreement. Upon termination of a trust or the distribution of property from a trust pursuant to the provisions of this Section, the trust property shall be transferred, conveyed and paid over to the primary beneficiary.

#### **ARTICLE SIXTH - GRANTOR'S INCOME TAX**

Notwithstanding any other provision of this Agreement, the Trustee shall not make any distribution from the trust estate to, or for the benefit of, the Grantor or the Grantor's Spouse except as provided in Section 1.1 of Article FIRST and the Trustee shall not permit the Grantor or the Grantor's Spouse, directly or indirectly, to use, borrow, acquire, or otherwise deal with, any property held as part of the trust estate whether or not for adequate consideration. It is the intent of the Grantor that no part of the income, deductions, or credits of any trust created hereunder shall be attributed to the Grantor under the so-called "grantor trust" rules of subpart E of subchapter J of subtitle A of the Code and, accordingly, the Grantor directs that this Agreement shall be construed and the trusts hereunder administered in accordance with and to carry out that intent. Furthermore, none of the powers granted the Trustee shall enable any person to buy, exchange, or otherwise deal with trust principal or income for less than adequate and full consideration in money or money's worth (other than by (i) a distribution to, (ii) a

distribution for the benefit of, or (iii) an expressly permitted use by, a beneficiary named or identified in this Agreement pursuant to the authorities granted the Trustee hereunder). None of the powers granted the Trustee shall enable the Grantor, the Grantor's Spouse, the Trustee, or any entity in which the Grantor or the Grantor's Spouse, or any trust hereunder, has a substantial interest, to borrow the principal of the trust, directly or indirectly. Except to the extent provided in Section 3.5, none of the powers granted the Trustee shall enable anyone other than the Trustee to vote or direct the voting of any corporate shares or other securities held as part of the trust estate, or control the trust investments or reinvestments by direction or veto. None of the powers granted to the Trustee shall enable anyone to require the Trustee to exchange trust property by substituting other property of equal value. The Trustee shall not pay to the Grantor or the Grantor's executor any income or principal of any trust estate hereunder on account of or in discharge of the Grantor's income tax liability (whether Federal, state or otherwise), if any, in respect of property held in any trust hereunder and taxable to the Grantor including, but without limitation, tax on realized capital gains.

#### **ARTICLE SEVENTH - SPENDTHRIFT TRUST PROVISIONS**

No beneficial interest (including any beneficial interest held by the Grantor) in any trust created hereunder, whether in income or in principal, shall be subject to anticipation, assignment, pledge, mortgage, sale or transfer in any manner whether voluntary or involuntary, and no beneficiary of any such trust or other person interested therein shall have the power to anticipate, encumber or charge his or her interest therein, and no trust estate created hereunder shall be liable for or subject to the debts, contracts, obligations, liabilities or torts of any beneficiary of any such trust or other person interested therein; provided, however, that nothing contained herein shall be construed as preventing any beneficiary from making a qualified disclaimer within the meaning of Section 2518 of the Code with respect to interests herein. This Section constitutes a restriction on the transfer of the Grantor's beneficial interest in the trust estate that is enforceable under applicable non-bankruptcy laws within the meaning of Section 541(c)(2) of the Bankruptcy Code or any similar or successor statute.

## **ARTICLE EIGHTH - IRREVOCABILITY OF TRUST**

This Agreement and the trusts created hereby are irrevocable. This Agreement is not subject to amendment by the Grantor or any other person except as otherwise provided in this Article and in Section 4.14 of Article FOURTH. The Trustee is authorized to modify or amend the provisions of this Agreement, upon the direction of the Trust Protector, to ensure that any property contributed to any trust created under this Agreement shall be the subject of a qualified disposition within the meaning of Section 3570(6) of Title 12 of the Delaware Code.

## **ARTICLE NINTH - DEFINITIONS**

9.1 Child And Descendant. For purposes of beneficial interests in the income and principal of any trust created hereunder, the words “child”, “children”, “descendant”, “descendants”, and “issue” as used herein shall include only descendants by and through birth in lawful wedlock or by and through adoption while such adopted person is under the age of twenty-one (21) years.

9.2 Competence. For all purposes of this Agreement, a person shall be conclusively presumed to be competent unless (i) the Trustee is unable, in the exercise of ordinary due diligence, to locate the person; or (ii) the Trustee has actual knowledge that the person has been adjudged incompetent or a guardian or conservator, or someone holding a similar office has been appointed by a court to care for the person or manage the person’s property; or (iii) a physician notifies the Trustee in a signed writing that the person, by reason of physical or mental incapacity, is not able properly to manage and care for his or her property. The Trustee may rely without further inquiry upon any court proceeding or writing of a physician described in this Section and shall have no liability hereunder in doing so.

9.3 Grantor’s Spouse. For purposes of this Agreement, the term “Grantor’s Spouse” shall mean any person to whom the Grantor is legally married at any time, and from time to time, and shall include any person to whom the Grantor was married at the time of the Grantor’s death, but shall not refer to any person to whom the Grantor ceases to be married on account of divorce.

9.4 Per Stirpes. A disposition in this Agreement to the descendants of a person in “per stirpital” parts, or to the descendants of a person “per stirpes”, shall be deemed to require a division into a sufficient number of equal shares to make one such share for each child

of such person living at the time such disposition becomes effective and one share for each then deceased child of such person having one or more descendants then living, regardless of whether any child of such person is then living, with the same principle to be applied in any required further division of a share at a more remote generation.

#### **ARTICLE TENTH - MISCELLANEOUS PROVISIONS**

10.1 Additional Contributions Provision. Any individual may at any time and from time to time transfer and deliver, or may bequeath or devise by Last Will and Testament, to the Trustee cash or other property acceptable to the Trustee which shall thereupon become a part of the trust or trusts to which such property is contributed and shall be held, administered and disposed of by the Trustee in all respects subject to the provisions of this Agreement applicable to such trust or trusts.

10.2 Disclaimer. Any beneficiary of any trust created hereunder including the Grantor, in addition to any rights conferred on him or her by law, is authorized, at any time and with respect to any or all interests hereunder, to make a disclaimer or release, in whole or in part or with reference to specific amounts, parts, fractional shares or assets, of any interest, right, privilege, or power granted to that person by this Agreement, by a duly acknowledged writing executed by that person or by his or her guardian, conservator, committee, executor or administrator, delivered to the Trustee.

10.3 Receipt. The Trustee acknowledges the receipt from the Grantor of the property contributed to the trust estate on the date hereof and accepts the trusts hereby created upon the terms set forth herein.

10.4 Application to Successors. This Agreement shall extend to and be binding upon the executors, administrators and assigns of the Grantor and upon the successors to the Trustee.

10.5 Headings. The headings used in this Agreement are for convenience only and shall not be relied upon in order to construe this Agreement.

10.6 Counterparts. This Agreement may be executed in counterparts and such counterparts taken together shall constitute a single instrument which shall be binding upon the executors, administrators and assigns of the Grantor and upon the successors to the Trustee..

10.7 Minority or Other Incapacity. If any property is otherwise required to be distributed to a beneficiary who has not attained age twenty-one (21) or, in the Trustee's opinion, is not competent or is otherwise unable to manage funds due to illness or infirmity, the Trustee may (i) distribute such property to such beneficiary himself or herself; (ii) apply such property for the benefit of such beneficiary; or (iii) hold the property not so distributed or applied in a separate trust hereunder for the benefit of such beneficiary, and distribute or apply the net income and principal thereof as provided in clauses (i) and (ii) above.

The Trustee shall distribute the property in any such trust to the beneficiary upon his or her attaining age twenty-one (21), or upon the termination of his or her incapacity (as the case may be). If the beneficiary dies prior to such distribution, the Trustee shall distribute the property to the beneficiary's estate.

10.8 Alternative Methods of Distribution. The Trustee may take any reasonable steps to disburse funds to or for a beneficiary, including: (i) distribution, either by hand or mail, to the beneficiary or the guardian of the person or property (whether the guardian is formally appointed or a natural guardian), (ii) distribution to a custodian for the beneficiary under the Uniform Transfers to Minors Act (or similar statute) of any state, (iii) deposit to the account of the beneficiary in any federally insured depository, or (iv) direct application for the benefit of the beneficiary.

10.9 Payment of Death Taxes and Costs of Administration. On the death of any beneficiary of any trust created hereunder (other than the Grantor or the Grantor's Spouse), if the principal of such trust is included in the estate of the beneficiary for transfer tax purposes, the Trustee shall, unless otherwise directed by the beneficiary's Will, distribute from such trust to the personal representative of the beneficiary's estate an amount equal to the sum of all transfer taxes and costs of administration payable by such personal representative as a result of the inclusion of the trust in the beneficiary's estate. Certification of such personal representative as to the amount of such taxes and costs will be determinative for all purposes.

The Trustee shall make such distributions directly to the appropriate payee, if so directed by such personal representative.

In addition, the Trustee shall pay any tax imposed under Chapter 13 of the Code as a result of a "taxable termination" or "taxable distribution" attributable to any trust created

hereunder from the principal of such trust, charging such payments ratably against the property in respect of which such termination occurred.

IN WITNESS WHEREOF, the undersigned Grantor and Trustee have executed this Agreement as of the date of execution by the Trustee which shall be the effective date of this Agreement.

GRANTOR:

\_\_\_\_\_ (SEAL)  
\_\_\_\_\_

TRUSTEE:

\_\_\_\_\_ TRUST COMPANY

By: \_\_\_\_\_  
Vice President

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me personally came \_\_\_\_\_, to me known and known to me to be the individual described in and who executed the foregoing Agreement.

\_\_\_\_\_  
Notary Public

STATE OF DELAWARE )  
 ) ss.  
COUNTY OF NEW CASTLE )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me personally came \_\_\_\_\_, to me known and known to me to be an authorized officer of \_\_\_\_\_ TRUST COMPANY, the trust company described in and which executed the foregoing Agreement.

\_\_\_\_\_  
Notary Public

2007 Delaware Trust Conference

November 29, 2007

Mechanics of Changing Trust Situs:  
How to Move a Trust to Delaware

Thomas R. Pulsifer  
Morris Nichols Arsht & Tunnell LLP  
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**Exhibit A**  
**[SAMPLE LANGUAGE]**  
**ARTICLE \_\_\_\_\_**  
**Administrative Trustee**

As the Grantor intends that each trust created under this Agreement shall be a Delaware trust with its situs and place of administration in Delaware, \_\_\_\_\_, a \_\_\_\_\_ with trust administration offices located in Delaware, is hereby appointed as administrative trustee (the "Administrative Trustee") for all trusts created hereunder. The Administrative Trustee shall act in a fiduciary capacity but shall not be a Trustee or co-Trustee except to the extent and for the limited purposes described in this Article. Accordingly, no reference in this Agreement to the "Trustee" or "co-Trustee" shall include, or be deemed to refer to, the Administrative Trustee. Notwithstanding the foregoing, the same individual or bank or trust company may serve simultaneously as both a Trustee or co-Trustee and as Administrative Trustee for any trust created hereunder. The initial Administrative Trustee and each successor may resign at any time and may be removed or replaced at any time by the Trustee. The Administrative Trustee shall be entitled to such compensation for its services hereunder as shall be agreed upon from time to time between the Administrative Trustee and the Trustee.

The Administrative Trustee shall have the following exclusive duties, which shall all be carried out in the State of Delaware or such other jurisdiction as the Trustee shall, from time to time, select as the situs of the trust:

- (1) To maintain bank accounts, brokerage accounts and other custody accounts which receive trust income and contributions and from which trust expenditures and distributions are disbursed.
- (2) To maintain storage of tangible personalty and evidence of intangible trust property.
- (3) To maintain trust records.
- (4) To maintain an office for Trustee meetings and other trust business.
- (5) To originate, facilitate and review trust accountings, reports and other communications with the Grantor, any co-Trustees, beneficiaries and unrelated third parties.
- (6) To respond to inquiries concerning the trust from the Grantor, any co-Trustees, beneficiaries and unrelated third parties.
- (7) To execute documents with respect to trust account transactions.
- (8) To retain accountants, attorneys, investment counsel, agents and other advisers in connection with the performance of its duties under this Article.

The Administrative Trustee shall have no other duties, obligations, or authority and the Trustee and any co-Trustees serving, from time to time, need not obtain the consent of, consult with, or otherwise advise, the Administrative Trustee prior to exercising their powers or performing their duties under this Agreement.

Any appointment pursuant to this Article shall be made by an acknowledged instrument in writing and shall be effective upon acceptance thereof by the Administrative Trustee so appointed.

The Administrative Trustee shall have no liability hereunder except on account of the Administrative Trustee's own willful misconduct proved by clear and convincing evidence in the court then having primary jurisdiction over the trust.

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## **Exhibit B**

### **ARTICLE FIRST GOVERNING LAW AND TRUST SITUS**

4.1 Governing Law. The validity, construction and effect of the provisions of this Agreement in all respects shall be governed and regulated according to and by the laws of the State of \_\_\_\_\_. Except as otherwise provided in Section 7.2, each trust created hereunder shall be administered in accordance with the laws of \_\_\_\_\_, and the Trustee shall not be required to account in any court other than one of the courts of \_\_\_\_\_ and shall have no duty to account in the courts of \_\_\_\_\_ except to the extent provided in Section 6.6 hereof.

4.2 Situs. The original situs of the trusts created hereunder shall be \_\_\_\_\_. The situs of any trust created hereunder may be maintained in any jurisdiction (including outside the United States), as the Trust Protector, in the exercise of sole and absolute discretion, may determine, and may thereafter be transferred at any time or times to any jurisdiction selected by the Trust Protector in accordance with the provisions of this Section 7.2. Notwithstanding the foregoing, the Trust Protector may only change the situs of any trust created hereunder with the consent of the Trustee, which consent may be granted or withheld in the Trustee's sole and absolute discretion. Upon any such change of situs, the trust estate may thereafter, at the election of the Trustee of said trust, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. Accordingly, if the Trust Protector of any trust created hereunder elects to change the situs of any such trust, the Trustee of said trust is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

**Exhibit C**

Surrogate's Court  
of the County of New York

LETTERS OF TRUSTEESHIP  
The People of the State of New York

INDEX#

To \_\_\_\_\_ [Delaware trustee], to act in place and stead of \_\_\_\_\_  
[New York trustee], in conjunction with \_\_\_\_\_ [co-trustee, if any], to whom  
letters have heretofore issued \_\_\_\_\_ send greetings:

WHEREAS you have duly qualified according to law to act as SUCCESSOR TRUSTEE under  
the last will and testament of \_\_\_\_\_ deceased, which was duly admitted to probate  
by decree of the Surrogate's Court of New York County on \_\_\_\_\_, 19\_\_.

NOW, THEREFORE, KNOW YE that you are hereby authorized to administer the trusts created  
under said will subject to the jurisdiction and supervision of this court, pursuant to an order  
entered herein on \_\_\_\_\_, 2007.

WITNESS, \_\_\_\_\_, a Surrogate of the County of New York this \_\_\_\_\_, 2007.

\_\_\_\_\_  
\_\_\_\_\_  
Clerk of the Surrogate's Court

NOTICE

Attention is called to the provision of Sec. 11-1.6 of Estates, Powers and Trusts Law and  
Sec. 719 of Surrogate's Court Procedure Act, which make it a misdemeanor and a cause for  
removal for an executor, administrator trustee or guardian to deposit or invest estate funds in his  
individual account or name. All estate funds must be deposited in the name of the executor,  
administrator, trustee or guardian in his or her representative capacity and to the credit of the  
estate. Sec. 708 and Sec. 711 of the Surrogate's Court Procedure Act provide that if a fiduciary  
shall change his address he shall promptly notify the court of his new address and that failure to  
do so within thirty (30) days after such change may result in the suspension or revocation of  
letters.



At the Surrogate's Court of the County of New York at the Courthouse, 31 Chambers St., New York, New York on the \_\_\_\_ day of \_\_\_\_\_, 2007

PRESENT: Hon. \_\_\_\_\_  
Surrogate

.....  
*In the Matter of the Application of* \_\_\_\_\_ [New York trustee] as Co-Trustee of the Trust under the Will of \_\_\_\_\_ **ORDER APPROVING RESIGNATION OF TRUSTEE AND APPOINTMENT OF SUCCESSOR CO-TRUSTEE**

\_\_\_\_\_  
\_\_\_\_\_  
Deceased

File No. \_\_\_\_\_

For Permission to Resign and for the Appointment of \_\_\_\_\_ [Delaware trustee] as Successor Co-Trustee

.....  
Upon reading and filing (i) the verified petition of \_\_\_\_\_ and \_\_\_\_\_, Trustees, praying that letters of trusteeship previously issued to \_\_\_\_\_ [New York trustee], as Co-Trustee under the Last Will and Testament of \_\_\_\_\_, deceased, dated \_\_\_\_\_, 19\_\_ (the "Will"), be revoked and that letters of trusteeship issue to \_\_\_\_\_ [Delaware trustee] as Co-Trustee to serve in the place and stead of \_\_\_\_\_, and to serve in conjunction with \_\_\_\_\_, to whom letters have been previously issued; (ii) the Affidavit of Reciprocity of \_\_\_\_\_ [Delaware trustee], to which a verified copy of the Articles of Association of \_\_\_\_\_ is attached; (iii) the Consent and Designation of \_\_\_\_\_; (iv) the Waivers and Consents of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ [the beneficiaries] all consenting to the relief requested in the Petition, and good cause appearing therefore, it is hereby:

ORDERED, that \_\_\_\_\_ [New York trustee] is granted leave of Court to resign as Co-Trustee of Trust under Article Fifth (c) of the Last Will and Testament of \_\_\_\_\_, deceased, dated \_\_\_\_\_, 19\_\_; and it is further

ORDERED, that letters of trusteeship previously issued to \_\_\_\_\_, Trustee of Trust under Article Fifth (c) of said Will be revoked; and it is further

ORDERED, that \_\_\_\_\_ [Delaware trustee] be and hereby is appointed Successor Co-Trustee of Trust under Article Fifth (c) of said Will, to act in place and stead of \_\_\_\_\_ [New York trustee], and in conjunction with \_\_\_\_\_ [co-trustee, if any]; and it is further

ORDERED, that Letters of Trusteeship be and hereby issue to \_\_\_\_\_ [Delaware trustee], to serve without bond, as Successor Co-Trustee of Trust under Article Fifth (c) of said Will, in conjunction with \_\_\_\_\_ [co-trustee, if any], upon Successor Co-Trustee duly qualifying according to law; and it is further

ORDERED, that \_\_\_\_\_ [New York trustee] shall account for its proceedings as Co-Trustee of Trust under Article Fifth (c) of said Will, within a reasonable time.

---

Surrogate

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Proceeding for the Resignation of  
\_\_\_\_\_ [New York trustee] and the  
appointment of \_\_\_\_\_ [Delaware  
trustee] as Co-Trustee of the Trust under the  
Article FIFTH (c) of the Last Will and  
Testament of

\_\_\_\_\_  
Deceased.

**AFFIDAVIT OF RECIPROCITY**

File No. \_\_\_\_\_

STATE OF DELAWARE            )  
  : ss.:  
COUNTY OF NEW CASTLE    )

I, Thomas Pulsifer, being duly sworn, depose and say:

1. I am an attorney admitted to practice before the courts of the State of Delaware. I maintain an office at 1201 North Market Street, Wilmington, Delaware, I am a citizen of the United States, and am over the age of eighteen (18) years. I submit this Affidavit of Reciprocity in connection with the Petition of \_\_\_\_\_ [co-trustee, if any] and \_\_\_\_\_ [New York trustee] ("NY Trustee") to request permission for NY Trustee to resign as trustee and to appoint \_\_\_\_\_ [Delaware trustee] as successor trustee in the above-captioned proceeding.

2. I am informed and believe that (i) \_\_\_\_\_ [Delaware trustee] is a trust company incorporated under the laws of the State of Delaware.

3. Pursuant to Section 380 of Title 8 of the Delaware Code, a corporation organized and doing business under the laws of the State of New York, duly authorized by its

certificate of incorporation or bylaws so to act, may be appointed by any last will and testament or other testamentary writing, probated within the State of Delaware, or by a deed of trust, mortgage or other agreement, as executor, guardian, trustee or other fiduciary, and may act as such within the State of Delaware when and to the extent that the laws of the State of New York confer like powers upon corporations organized and doing business under the laws of the State of Delaware.

4. Attached to this Affidavit as Exhibit A is a copy of the Articles of Association of \_\_\_\_\_ [Delaware trustee] which Articles have been certified by the Secretary of \_\_\_\_\_ [Delaware trustee] under corporate seal, which authorizes \_\_\_\_\_ [Delaware trustee] to act as a trustee in the State of Delaware.

\_\_\_\_\_  
THOMAS R. PULSIFER

STATE OF DELAWARE            )  
  : ss.:  
COUNTY OF NEW CASTLE    )

On \_\_\_\_\_, 2007, before me, the undersigned, personally appeared THOMAS R. PULSIFER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in

\_\_\_\_\_  
Wilmington, New Castle County, Delaware  
[CITY, COUNTY, STATE WHERE ACKNOWLEDGEMENT TAKEN].

\_\_\_\_\_  
Notary Public

This \_\_\_\_\_ day of \_\_\_\_\_, 2007 I hereby certify that the foregoing instrument is a correct copy of the Articles of Association of \_\_\_\_\_ [Delaware trustee] and that such Articles of Association remain in effect as of the date hereof.

By: \_\_\_\_\_  
Corporate Secretary

**Exhibit D**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

IN THE MATTER OF the Irrevocable Trust )  
Created Under the Agreement of \_\_\_\_\_ ) C.M. No.  
)

**ORDER**

This \_\_\_\_\_ day of \_\_\_\_\_, 2007, the Petition for Reformation, Appointment of Administrative Trustee and Instructions (the "Petition") of \_\_\_\_\_ and \_\_\_\_\_ ("Petitioners"), having been considered by the Court, and it appearing that:

\_\_\_\_\_ (THE "GRANTOR") CREATED A TRUST (THE "TRUST") UNDER AN AGREEMENT (THE "IRREVOCABLE TRUST AGREEMENT") DATED \_\_\_\_\_ BETWEEN THE GRANTOR, AS GRANTOR, AND \_\_\_\_\_, AS TRUSTEE. A COPY OF THE IRREVOCABLE TRUST AGREEMENT IS ANNEXED TO THE PETITION AS **EXHIBIT A.**

ARTICLE VII OF THE IRREVOCABLE TRUST AGREEMENT STATES THAT IT IS IRREVOCABLE.

PETITIONERS DESIRE TO REFORM THE TRUST TO PROVIDE (I) THAT THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN ALL MATTERS PERTAINING TO THE ADMINISTRATION OF THE TRUST, AND IN PARTICULAR, SECTION 3312 OF TITLE 12 OF THE DELAWARE CODE SHALL BE APPLICABLE BUT SHALL APPLY ONLY TO A CORPORATE FIDUCIARY THAT IS SERVING AS AN

ADMINISTRATIVE TRUSTEE OF THE TRUST; AND (II) THAT THE LAWS OF THE STATE OF COLORADO SHALL GOVERN ALL OTHER ASPECTS OF THE TRUST.

PETITIONERS ALSO WISH TO REFORM THE TRUST TO PROVIDE FOR THE APPOINTMENT OF AN ADMINISTRATIVE TRUSTEE FOR THE TRUST.

PETITIONERS WISH TO APPOINT AS THE INITIAL ADMINISTRATIVE TRUSTEE OF THE TRUST, \_\_\_\_\_ TRUST COMPANY (THE “TRUST COMPANY”).

THE TRUST COMPANY IS A DELAWARE TRUST COMPANY, HAVING ITS SOLE OFFICE WITHIN THE STATE OF DELAWARE.

PETITIONERS WISH TO REFORM THE TRUST TO PROVIDE THAT THE SITUS OF THE TRUST MAY BE MAINTAINED IN ANY JURISDICTION, AS THE TRUSTEES OF THE TRUST MAY DETERMINE, AND THAT UPON ANY SUCH TRANSFER OF SITUS, THE TRUST ESTATE MAY, AT THE ELECTION OF THE TRUSTEES, THEREAFTER BE ADMINISTERED EXCLUSIVELY UNDER THE LAWS OF THE JURISDICTION TO WHICH THE TRUST ESTATE HAS BEEN TRANSFERRED.

PETITIONERS WISH TO DESIGNATE THE STATE OF DELAWARE AS THE SITUS OF THE TRUST.

PETITIONERS SEEK INSTRUCTIONS FROM THE COURT ACCEPTING JURISDICTION OVER THE TRUST, DECLARING THAT THE TRUST IS A “RESIDENT TRUST” WITHIN THE MEANING OF SECTION 1601(G)(3)(B) OF TITLE 30 OF THE DELAWARE CODE, AND ACKNOWLEDGING THAT THE SITUS AND PLACE OF ADMINISTRATION OF THE TRUST IS THE STATE OF DELAWARE, EFFECTIVE AS OF THE EXECUTION OF A WRITTEN INSTRUMENT BY AN AUTHORIZED OFFICER OF

THE TRUST COMPANY ACKNOWLEDGING ACCEPTANCE OF ITS APPOINTMENT AS ADMINISTRATIVE TRUSTEE OF THE TRUST.

PETITIONERS ALSO WISH TO REFORM THE TRUST TO PROVIDE ANY ADMINISTRATIVE TRUSTEE OF THE TRUSTS, ACTING SOLELY AT THE DIRECTION OF THE GENERAL TRUSTEES OF THE TRUSTS, WITH THE POWER TO ENTER TRANSACTIONS WITH, OR OTHERWISE DEAL WITH, ANY CORPORATE ENTITY HAVING EITHER DIRECTLY, OR THROUGH ONE OR MORE AFFILIATED ENTITIES, AT LEAST ONE BILLION DOLLARS (\$1,000,000,000) IN FIDUCIARY ASSETS UNDER MANAGEMENT EVEN IF SUCH CORPORATE ENTITY IS IN ANY MANNER RELATED TO, OR AFFILIATED WITH, THE ADMINISTRATIVE TRUSTEE OF THE TRUST.

SO FAR AS CAN BE ASCERTAINED WITH DUE DILIGENCE, THE NAME, POST OFFICE ADDRESS, RELATIONSHIP TO THE GRANTOR AND THE NATURE OF INTEREST OF ALL BENEFICIARIES OF THE TRUST ARE AS FOLLOWS:

<u>Name and Address</u>	<u>Relationship to Grantor</u>	<u>Nature of Interest</u>
_____	_____	_____
_____	_____	_____

ALL OF THE TRUST BENEFICIARIES AND TRUST FIDUCIARIES HAVE CONSENTED, EITHER DIRECTLY OR BY APPLICATION OF 12 DEL. C. § 3547, TO THE RELIEF SOUGHT HEREIN AS EVIDENCED BY THEIR CONSENTS ANNEXED TO THE PETITION AS **EXHIBIT B.**

ACCORDING TO COLORADO COUNSEL FOR PETITIONERS, ALL OTHER PERSONS WHO WOULD BE REQUIRED TO BE NOTIFIED OF A PROCEEDING SEEKING THE RELIEF REQUESTED IN THE PETITION UNDER COLORADO LAW

INCLUDE \_\_\_\_\_ . ALL SUCH PERSONS HAVE WAIVED ALL NOTICES OF THE FILING OF THE PETITION AND OF ANY HEARING TO BE HELD BY THE COURT THEREON, AS EVIDENCED BY THE WAIVERS OF NOTICE ANNEXED TO THE PETITION AS **EXHIBIT C**.

THERE IS NO OTHER PROCEEDING NOW PENDING BEFORE THIS OR ANY OTHER COURT SEEKING THE RELIEF REQUESTED IN THE PETITION.

NOW, THEREFORE, IT IS HEREBY ORDERED, that, effective upon the execution of a written instrument by an authorized officer of the Trust Company acknowledging its appointment as administrative trustee of the Trust (whether such written instrument is executed before or after the date of this Order):

**THE TRUST IS REFORMED AS FOLLOWS:**

i. the following Paragraph A of Article VI of the Irrevocable Trust Agreement is removed to the extent such paragraph applies to the Trust:

Except as otherwise provided in this Agreement, each trust shall be governed, construed, and administered under, and the rights, powers, duties, and liabilities of Trustee shall be as provided under, the statutory and other applicable laws of the State of Colorado in effect at any applicable time. No bond or other security shall ever be required of Trustee.

ii. the removed Paragraph A of Article VI of the Irrevocable Trust Agreement is, with respect to the Trust, replaced with the following new Paragraph A:

All matters pertaining to the administration of the trust hereunder held for the primary benefit of \_\_\_\_\_ (the “\_\_\_\_\_ Irrevocable Trust”) and any trust created in succession to such trust, shall be governed by the laws of the State of Delaware, and in particular, Section 3312 of Title 12 of the Delaware Code shall be applicable but shall apply only to a corporate fiduciary that is serving as an Administrative Trustee (as defined in Article XI below) of any such trust. All matters pertaining to the validity of such trusts and the construction of this Agreement as it applies to such trusts shall be governed by the laws of the State of Colorado.

Trustee may change the laws governing administration of such trusts pursuant to Article XII. No bond or other security shall ever be required of Trustee or the Administrative Trustee.

iii. the following first sentence of Paragraph B of Article VI of the Irrevocable Trust Agreement is removed to the extent that such paragraph applies to the Trust:

Trustee shall manage the trust properties and may invest and reinvest in property of any character, upon such terms and conditions and for such lengths of time as Trustee shall deem proper in its judgment and discretion, without any limitation upon its power to do so and without being limited to investments authorized by law or custom for the investment of trust properties.

**IV. THE REMOVED FIRST SENTENCE OF PARAGRAPH B OF ARTICLE VI OF THE IRREVOCABLE TRUST AGREEMENT IS, WITH RESPECT TO THE TRUST, REPLACED WITH THE FOLLOWING NEW FIRST SENTENCE:**

Trustee of the \_\_\_\_\_ Irrevocable Trust or any trust created in succession to such trust shall manage the trust properties and may invest and reinvest in property of any character, upon such terms and conditions and for such lengths of time as Trustee shall deem proper in its judgment and discretion, without any limitation upon its power to do so and without being limited to investments authorized by law or custom for the investment of trust properties; provided, however, that Trustee shall not invest trust assets in any non-publicly traded entity in which any individual, bank or trust company serving as such Trustee holds an ownership interest in his, her or its individual capacity.

v. the following new Article XI is, with respect to the Trust, added to the Irrevocable Trust Agreement:

Appointment of Administrative Trustee

Trustee, at any time and from time to time, in the exercise of sole and absolute discretion, may appoint an administrative trustee (the “Administrative Trustee”) for the \_\_\_\_\_ Irrevocable Trust and/or for any trust created in succession to such trust (any reference in this Article to a “trust” shall refer only to such trusts).

The Administrative Trustee shall act in a fiduciary capacity but shall not be a Trustee or co-trustee except to the extent and for the limited purposes described in this Article. Accordingly, no reference in this Agreement to the "Trustee" or "co-trustee" shall include, or be deemed to refer to, the Administrative Trustee. Notwithstanding the foregoing, the same individual or bank or trust company may serve simultaneously as both a Trustee or co-trustee and as the Administrative Trustee for the trust. The initial Administrative Trustee and each successor may resign at any time and may be removed or replaced at any time by Trustee. The Administrative Trustee shall have the following exclusive duties, which shall all be carried out in the State of Delaware or such other jurisdiction as Trustee may, from time to time, select as the situs of the trust pursuant to Article XII; provided, however, that the Administrative Trustee's duties described in clauses (7), (9), (10) and (12) below shall be performed solely at the direction of Trustee and the Administrative Trustee shall have no liability hereunder in acting pursuant to any such direction except in cases of wilful misconduct on the part of the Administrative Trustee so directed as provided in Section 3313(b) of Title 12 of the Delaware Code, which is expressly made applicable to such trust:

(1) To maintain bank accounts, brokerage accounts and other custody accounts (each such account is sometimes hereinafter referred to as an "Administrative Trustee Account") which receive trust income and contributions and from which trust expenditures and distributions are disbursed; provided, however, that Trustee may, in Trustee's sole discretion, arrange with one or more third party brokers or custodians for the creation and maintenance of one or more separate brokerage or custody accounts to hold such trust assets as Trustee, in Trustee's sole discretion, shall determine (each such account is hereinafter referred to as a "Third Party Account").

(2) To maintain storage of tangible personal property and evidence of intangible trust property.

(3) To maintain trust records.

(4) To maintain an office for Trustee meetings and other trust business.

(5) To originate, facilitate and review trust accountings, reports and other communications with any co-trustees, beneficiaries and unrelated third parties.

(6) To respond to inquiries concerning the trust from any co-trustees, beneficiaries and unrelated third parties.

(7) To execute documents with respect to trust account transactions.

(8) To retain accountants, attorneys, investment advisors, agents and other advisers in connection with the performance of the Administrative Trustee's duties.

(9) To prepare and file on behalf of the trust those federal income tax returns and reports as may be required by applicable law, and to make provision for the timely payment on behalf of the trust of any federal income taxes as may become due.

(10) To prepare and file on behalf of the trust those state and local tax returns and reports as may be required by applicable law, and to make provision for the timely payment on behalf of the trust of any state or local taxes as may become due.

(11) To prepare and file those miscellaneous reports and statements as may be required under applicable state law.

(12) To respond to and initiate those communications as may be necessary with any federal, state or local tax authorities on behalf of the trust.

(13) To receive and provide for the payment of bills received from the trust's service providers (such as attorneys, accountants, etc.).

(14) To conduct audits of and prepare statements regarding trust finances and property on a frequency that is appropriate under the trust's circumstances.

Notwithstanding any other provision of this Agreement, the Administrative Trustee shall have no authority to open or deal with, or have legal title to, any Third Party Account, and shall have no duties, responsibilities, or liability hereunder, (and shall be entitled to indemnification from the trust for any liability incurred) with respect to any trust assets held in a Third Party Account, except that the Administrative Trustee shall perform all of the duties enumerated in clauses (3) through (14) of this Article XI with respect to Third Party Accounts based solely upon such records and reports of Third Party Accounts as Trustee provides to the Administrative Trustee and the Administrative Trustee may rely conclusively upon all such records and reports without further inquiry. Notwithstanding any other provision of this Agreement, the Administrative Trustee shall have no liability hereunder (and shall be entitled to indemnification from the trust for any liability incurred) with respect to its duties enumerated in clauses (3) through (14) of this Article XI to the extent

that the Administrative Trustee fails to receive sufficient tax, accounting or other information to enable it to fully perform such duties.

The Administrative Trustee shall have no other duties, obligations, or authority, except such duties, obligations and authority as Trustee shall delegate to the Administrative Trustee and as shall be acceptable to the Administrative Trustee, and Trustee and any co-trustee serving, from time to time, need not obtain the consent of, consult with, or otherwise advise, the Administrative Trustee prior to exercising their powers or performing their duties under this Agreement.

Any appointment pursuant to this Article shall be made by an acknowledged instrument in writing and shall be effective upon acceptance thereof by the Administrative Trustee so appointed.

The Administrative Trustee shall be entitled to receive fair and reasonable compensation, which in the case of a bank or trust company shall not be in excess of its regular schedule of fees existing when those services are performed.

vi. the following new Article XII is, with respect to the Trust, added to the Irrevocable Trust Agreement:

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The situs of the \_\_\_\_\_ Irrevocable Trust, or any trust created in succession of such trust (any reference in this Article to a "trust" shall refer only to such trusts) may be maintained in any jurisdiction (including outside the United States), as Trustee, in the exercise of sole and absolute discretion, may determine, and thereafter transferred at any time or times to any jurisdiction selected by Trustee. Upon any such transfer of situs, the trust estate may thereafter, at the election of Trustee of said trust, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. Accordingly, if Trustee elects to change the situs of any such trust, Trustee is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

vii. the following new Paragraph P is, with respect to the Trust, added to Article VI of the Irrevocable Trust Agreement:

The Administrative Trustee (as defined in Article XI below) (acting solely at the direction of Trustee) of the \_\_\_\_\_ Irrevocable Trust, or any trust created in succession of such trust (any reference in this Paragraph P to a “trust” shall refer only to such trusts), is authorized to acquire property from, transfer property to, obtain services from, provide services to, and otherwise enter into contracts, understandings, arrangements, and other dealings, of any kind or nature, with any corporate entity having either directly, or through one or more affiliated entities, at least One Billion Dollars (\$1,000,000,000) in fiduciary assets under management (each such person or entity hereinafter referred to as a “Corporate Third Party”), even if the Corporate Third Party is in any manner related to, or affiliated with, any Administrative Trustee of such trust or any other person or entity related to, or affiliated with any Administrative Trustee of such trust and without regard to whether any Administrative Trustee of such trust, acting in its corporate or personal capacity or in any other capacity, or any person related to, or affiliated with, any Administrative Trustee of such trust has other contracts, understandings, arrangements or dealings, whether or not for remuneration, with the Corporate Third Party.

**THE TRUST COMPANY IS APPOINTED AS THE INITIAL ADMINISTRATIVE TRUSTEE OF THE TRUST;**

**THIS COURT ACCEPTS JURISDICTION OVER THE TRUST AND DECLARES THAT THE TRUST IS A “RESIDENT TRUST” WITHIN THE MEANING OF SECTION 1601(G)(3)(B) OF TITLE 30 OF THE DELAWARE CODE; AND**

**THE SITUS AND PLACE OF ADMINISTRATION OF THE TRUST IS THE STATE OF DELAWARE.**

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