**THE (INSERT NAME) ALASKA ASSET PRESERVATION TRUSTSM**

**ALASKA IRREVOCABLE TRUST FOR POTENTIAL BENEFIT OF GRANTOR, GRANTOR’S SPOUSE AND GRANTOR’S DESCENDANTS. GRANTOR CAN VETO DISTRIBUTIONS TO OTHERS AND HAS BROAD TESTAMENTARY SPECIAL POWER OF APPOINTMENT. GIFT TO TRUST IS INCOMPLETE FOR GIFT TAX PURPOSES. TRUST WILL BE INCLUDIBLE IN THE GRANTOR’S ESTATE. THERE IS A “FALL-BACK” QTIP TRUST IF SPOUSE SURVIVES. GRANTOR CAN RELEASE VETO POWER AND POWER OF APPOINTMENT WHICH SHOULD MAKE THE GIFT COMPLETE AND SHOULD AVOID INCLUSION IN THE GRANTOR’S ESTATE. UPON THE DEATH OF THE GRANTOR AND THE GRANTOR’S SPOUSE, PROPERTY IS DIVIDED INTO PER STIRPITAL SHARES FOR THE GRANTOR’S DESCENDANTS TO BE HELD IN PERPETUAL TRUSTS UNDER ALASKA LAW FOR THEM AND THEIR FAMILIES.**

*Alaska Advantage: Under Alaska law, the Grantor’s interest in the trust should not be subject to attachment by the grantor’s creditors if the transfer to the trust is not a fraudulent conveyance and certain other conditions are met. The trusts for successor beneficiaries may last perpetually under Alaska law.*

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**[INSERT NAME] ALASKA ASSET PRESERVATION TRUSTsm[[1]](#footnote-1)**

**THIS AGREEMENT OF TRUST** made the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_ 200\_, between \_\_\_\_\_\_\_\_\_\_\_\_\_, of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Grantor (the “Grantor”), and Alaska Trust Company, of Anchorage, Alaska, as Investment Trustee (the “Investment Trustee”) and Alaska Trust Company, of Anchorage, Alaska, as Benefits Trustee (the “Benefits Trustee”) and Alaska Trust Company, of Anchorage, Alaska, as the Administrative Trustee (the “Administrative Trustee”) (herein collectively the “Trustees”).[[2]](#footnote-2)

**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 which may be referred to as **[INSERT** **NAME]** Alaska Asset Preservation Trustsm, and the Trustee has consented to accept and perform said trust in accordance with such terms, and

**WHEREAS**, the Grantor desires to give the Trustee broad discretion with respect to the management, distributions and investments 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 the extent to which the trust estate is subject to the claims of creditors and to minimize the income and wealth transfer taxes which any beneficiary hereunder or his or her estate may pay on any trust created herein,

**WHEREAS**, in order to maximize the protection of the trust estate or estates from creditors’ claims of the Grantor or any beneficiary and to minimize all wealth transfer taxes, the Grantor has provided that the various trust or trusts created hereunder may be held in trust in perpetuity as permitted under Alaska law,

**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 the property set forth in the Schedule hereto annexed,

**TO HAVE AND TO HOLD** the same and any other property which 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 ESTATE**

The Trustee shall hold the trust estate in accordance with the terms and conditions set forth in Article SECOND hereof.

**ARTICLE SECOND**

**TRUST DURING LIVES OF GRANTOR AND THE SPOUSE**

**2.1 Dispositive Provisions During Life of Grantor.** During the lifetime of the Grantor, any property which is directed to be held in accordance with the terms and conditions set forth in this Article shall be held by the Trustees, IN TRUST, NEVERTHELESS, in a separate trust 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 Benefits Trustee, in the exercise of sole and absolute discretion, shall determine, to or for the benefit of such one or more members of the class consisting of the Grantor,[[3]](#footnote-3) the Grantor’s spouse (the “Spouse”) and the Grantor’s descendants, until the death of the

Grantor; provided, however, that during the life of the Grantor, at least thirty (30) days prior to making any payment or application of income or principal to any beneficiary other than the Grantor, the Benefits Trustee shall advise the Grantor in writing of the Benefits Trustee’s intention to pay over or apply income or principal to a beneficiary other than the Grantor and the Grantor may veto any such intended payment or application by directing the Benefits Trustee in writing not to make the payment or application, and, if such veto is exercised by the Grantor, the Benefits Trustee shall not make the intended payment or application to a beneficiary other than the Grantor. Any net income (which may be the whole of such income) not so paid over or applied shall be accumulated and added to the principal of the trust at least annually and thereafter shall be held, administered and disposed of as a part thereof.[[4]](#footnote-4) Without in any way limiting the sole and absolute nature of the discretion of the Benefits Trustee hereunder and without imposing any fiduciary duty to do so, it would be in keeping with the Grantor’s current intention, but it is not the Grantor’s direction, if the Benefits Trustee would make distributions to or for the benefit of the Grantor during the Grantor’s lifetime only to allow the Grantor to maintain the Grantor’s lifestyle as it existed at the time of the creation of this trust taking into account resources and income available for or by the Grantor.[[5]](#footnote-5) The Grantor retains the right to renounce the power to veto retained in this Paragraph 2.1 by delivery of an acknowledged written instrument to the Benefits Trustee renouncing such veto power.

**2.2 Upon the Death of the Grantor.** Upon the death of the Grantor, the income and principal of the trust under Paragraph 2.1 of this Artic le, as it is then constituted, shall be transferred, conveyed and paid over to such person or persons (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 amount or proportions, and in such lawful interests or estates, whether absolute or in trust, as the Grantor appoints by Last Will and Testament by specific reference to this power[[6]](#footnote-6) and, to the extent not so effectually appointed,[[7]](#footnote-7) (a) if the Spouse survives the Grantor, the principal of the trust shall be disposed of in accordance with the terms and conditions of Paragraph 2.3 of this Article, or (b) if the Spouse does not survive the Grantor, the principal of the trust 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 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 THIRD hereof. If neither the

Spouse nor any descendant of the Grantor is then living the income and principal of the trust, as it is then constituted, to the extent the Grantor does not so effectually appoint shall be disposed of in accordance with the terms and conditions set forth in Article FOURTH hereof. The Grantor may, at any time and from time to time during his life, release the testamentary power of appointment under this Paragraph 2.2. with respect to any or all of the property subject to the power and may further limit the persons or organizations in whose favor such power may be exercised.

**2.3 Dispositive Provisions During Lifetime of the Spouse after the Death of the Grantor.** Any property which is directed to be held in accordance with the terms and conditions set forth in this Paragraph 2.3 shall be disposed of in accordance withthe following Subparagraphs A and B.

A. Except to the extent the Grantor exercises the testamentary power of appointment under Paragraph 2.2 of this Article SECOND,[[8]](#footnote-8) and except to the extent that the provisions of Subparagraph B of this Paragraph 2.3 are effective as of the Grantor’s death, any property which is directed to be held in accordance with the terms and conditions set forth in this paragraph 2.3 shall be held, during the lifetime of the Spouse after death of the Grantor, by the Trustees, IN TRUST, NEVERTHELESS, in a separate trust 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 Benefits Trustee, in the exercise of sole and absolute discretion, shall determine, to or for the benefit of such one or more members of the class consisting of the Grantor’s spouse and the Grantor’s descendants, until the death of the Spouse.[[9]](#footnote-9) Any net income (which may be the whole of such income) not so paid over or applied shall be accumulated and added to the principal of the trust at least annually and thereafter shall be held, administered and disposed of as a part thereof. Without in any way limiting the sole and absolute nature of the discretion conferred upon the Benefits Trustee and without imposing any fiduciary duty to do so, it would be in keeping with the Grantor’s current intention, but it is not the Grantor’s direction, if the Benefits Trustee would consider the interests of the Spouse as paramount to the interests of the other beneficiaries.

Upon the death of the Spouse, the remaining principal of the trust, as it is then constituted, shall be transferred, conveyed and paid over to or for the benefit of such one or more of the Grantor’s descendants and such organizations described in and meeting the requirements of sections 170(c) and 2055(a) of the Internal Revenue Code of 1986 as amended (“Code”), to such extent, in such amounts and proportions, and in such lawful interests or estates, whether absolute or in trust, as the Spouse may by Last Will and Testament appoint by a specific reference to this power.[[10]](#footnote-10) The Spouse may, at any time and from time to time during life, release such power of appointment with respect to any or all of the property subject to such power and may further limit the persons or organizations in whose favor such power may be exercised. If the power of appointment is for any reason not effectively exercised in whole or in part by the Spouse, the principal of the trust, to the extent not effectually appointed by the Spouse, shall, upon the Spouse’s death, be divided into a sufficient number of equal shares such 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 each child of the Grantor who is not then living.[[11]](#footnote-11) 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 who is then living for whom a share is set aside and each descendant who is then living of a child who is not then living for whom a per stirpital share 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 upon the terms and conditions as set forth in Article THIRD hereof. If no descendant of the Grantor is living upon the death of the Spouse, the income and principal of the trust, as it is then constituted, shall be disposed of in accordance with the terms and conditions set forth in Article FOURTH hereof.

B. If the Spouse survives the Grantor and is married to the Grantor at the Grantor’s death and if without reference to any of the provisions of this paragraph any portion of the trust estate not effectually appointed by the Grantor pursuant to paragraph 2.2. of this Article SECOND shall be includible in the Grantor’s estate for Federal estate tax purposes, then such portion of the trust estate (but such portion only) shall be disposed of as follows:[[12]](#footnote-12)

1. The Trustees shall hold such portion IN TRUST, NEVERTHELESS, to manage, invest and reinvest the same, to collect the income thereof, and to pay over or apply the net income, in as nearly equal quarterly installments as may be practicable, but at least annually, to or for the benefit of the Spouse during her life. It is the Grantor’s intention by this paragraph to create an interest which is a “qualifying income interest for life” as defined in section 2056(b)(7) of the Code, and which, if and to the extent the Grantor so elects, will constitute “qualified terminable interest property” as defined in that section. This Agreement shall be construed and this trust shall be administered in all respects so as to effectuate this intention. Notwithstanding anything to the contrary contained in this Agreement, if any property forming a part of the principal of the trust created under this paragraph is unproductive at the time of its receipt by the Investment Trustee or thereafter becomes unproductive, the Investment Trustee may retain the same if the Investment Trustee deems the retention of such property to be in the best interests of the trust estate, provided, however, that the Investment Trustee, upon written demand of the Spouse, shall make such property productive or convert it to productive property within a reasonable time.

2. The Benefits Trustee is hereby authorized, at any time and from time to time, to pay over to, or apply for the benefit of, the Spouse out of the principal of the trust held pursuant to this paragraph, such part or all thereof as the Benefits Trustee, in the exercise of sole and absolute discretion, shall determine.[[13]](#footnote-13)

3. Upon the death of the Spouse, the balance of the principal of the trust created under this Paragraph, as it is then constituted, after the payment of taxes provided for in Subparagraph 4 of this Paragraph, shall be transferred, conveyed and paid over to such one or more of the Grantor’s descendants and such organizations described in and meeting the requirements of sections 170(c) and 2055(a) of the Code to such extent, in such amount or proportions, and in such lawful interests or estates, whether absolute or in trust, as the Spouse appoints by Last Will and Testament by specific reference to this power. The Spouse may, at any time and from time to time during life, release such power of appointment with respect to any and all of the property subject to such person and may further limit the persons or organizations in whose favor such power may be exercised. If the power of appointment is for any reason not effectually exercised in whole or in part by the Spouse, the principal of the trust, as it is then constituted, after the payment of taxes provided for in subparagraph 4 of this Paragraph, to the extent not so effectually appointed, shall upon the Spouse’s death 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 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 THIRD hereof. If no descendant of the Grantor is living upon the death of the Spouse, the income and principal of the trust, as it is then constituted, shall be disposed of in accordance with the terms and conditions set forth in Article FOURTH hereof.

4. Upon the death of the Spouse, except to the extent that the Spouse’s Will by specific reference to this provision directs to the contrary, the Benefits Trustees shall pay from the principal of the trust created pursuant to this paragraph the increase in all estate, inheritance, legacy, succession, transfer or other death taxes, including any interest and penalties thereon (hereinafter “taxes”), imposed by any domestic or foreign taxing authority on the death of the Spouse by reasons of the inclusion in the Spouse’s gross estate for the purposes of any such tax of all or any part of the principal of the trust created pursuant to this paragraph B (such increase being the difference between all such taxes actually paid by reason of the death of the Spouse and the taxes which would have been payable if such part or all of the trust principal had not been included in the Spouse’s gross estate); provided, however, that such payments shall be made only from the portion of such trust which, without regard to the provisions of this paragraph, shall be includible in the gross estate of the Spouse for federal estate tax purposes. Such payments shall be made either to the legal representative of the estate of the Spouse for payment by such legal representative of such taxes, interest and penalties or directly to such taxing authorities as the Benefits Trustee, in the exercise of sole and absolute discretion, shall determine. The Benefits Trustee may rely solely upon the written certification of the legal representative of the estate of the Spouse as to the amount of such increase payable to each taxing authority, may pay any such increase in one or more installments and shall have no duty or responsibility to make any further inquiry or take part in the determination or apportionment of such taxes, and upon making payment of such increase as the same shall be finally determined, the Benefits Trustee shall have no further liability in connection therewith. Payment of such increase in such taxes, interest and penalties shall fully discharge all liability of the trust for such taxes, interest and penalties, it being the Grantor’s intention and direction that the Spouse not have any power to apportion additional taxes, interest or penalties against the trust.

**ARTICLE THIRD**

**TRUST FOR A PRIMARY BENEFICIARY[[14]](#footnote-14)**

**3.1 During Primary Beneficiary’s Lifetime.** Each share or part of a share set aside for a primary beneficiary which is directed to be held upon the terms and conditions as set forth in this Article or this paragraph shall be held by the Trustees hereinafter named, 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, that primary beneficiary’s spouse, and that primary beneficiary’s descendants living from time to time during the trust term (hereinafter collectively 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), in such amounts and proportions (including all to one to the exclusion of others), and at such time or times, as the Benefits Trustee (other than any beneficiary), 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 Benefits Trustee (other than any beneficiary), in the exercise of sole and absolute discretion, shall select. Any net income not so paid over or applied shall be added to the principal of the trust at least annually and thereafter held, administered and disposed of as a part thereof. Without in any way limiting the sole and absolute nature of the discretion conferred upon the Benefits Trustee and without imposing any fiduciary duty to do so, it would be in keeping with the Grantor’s current intention, although it is not the Grantor’s direction, if the Benefits Trustee would consider the interests of the primary beneficiary as paramount to the interests of the other beneficiaries.

**3.2 Power of Appointment Upon Death Of Primary Beneficiary.[[15]](#footnote-15)**

Upon the death of the primary beneficiary, the Trustees shall transfer, convey and pay over the principal of the trust, as it is then constituted, to or for the benefit of such one or more of the Spouse of the primary beneficiary and the descendants of the Grantor (other than the primary beneficiary, his or her estate or creditors or the creditors of his or her estate) and the spouses of such descendants to such extent, in such amount or proportions, and in such lawful interests or estates, whether absolute or in trust including but without limitation, the granting of a presently exercisable general or non-general power of appointment, 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 prohibited without the prior written consent of the Benefits Trustee[[16]](#footnote-16) from 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 Code to apply by reason of such exercise, and any such exercise shall be void; and provided further that any appointment in favor of the spouse of a descendant of the Grantor shall consist only of the greater of an income interest for life or a 6% unitrust interest for life in the portion appointed for such spouse, the remainder of which shall be payable to or for the benefit of one or more descendants of the Grantor (other than the primary beneficiary, the primary beneficiary’s estate and creditors, and the creditors of the primary beneficiary’s estate).

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 Trustees, 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 or the extent to which 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 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 Paragraph 3.3 of this Article.

**3.3 Disposition Of Unappointed Property For Descendants.** Upon the death of the primary beneficiary (referred to in this Paragraph as the “deceased primary beneficiary”), if any descendant of the deceased primary beneficiary is then living, the principal, if any, of the trust directed to be disposed of in accordance with the terms and conditions set forth in this Paragraph 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 who is not then living of the deceased primary beneficiary. From each such share so set aside for the collective descendants who are then living of any child who is not then living of the deceased primary beneficiary, there shall be set aside per stirpital parts for such descendants. Each child who is then living of the deceased primary beneficiary for whom a share is set aside and each descendant who is then living of a child of a deceased primary beneficiary 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 Paragraph 3.1 and the other provisions of this Article.

If no descendant of the deceased primary beneficiary is then living, the principal, if any, of the trust directed to be disposed of in accordance with the terms and conditions set forth in this Paragraph 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 Paragraph 3.1 and the other provisions of this Article; provided, however, that if a trust already exists under Paragraph 3.1 of this Article of which that primary beneficiary is also the primary beneficiary, the Benefits 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, if any, of the trust directed to be disposed of in accordance with the terms and conditions set forth in this Paragraph shall be disposed of in accordance with the terms and conditions set forth in Article FOURTH hereof.

**3.4 Intention as to Disposition Under Article THIRD.[[17]](#footnote-17)** 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 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, similarly, to be disposed of through all succeeding generations in perpetuity to the maximum extent permitted under Alaska law.

**ARTICLE FOURTH**

**ALTERNATIVE REMAINDERMAN**

Any property which is directed to be disposed of in accordance with the terms and conditions set forth in this Article, shall be transferred, conveyed and paid over to such one or more organizations described in and meeting the requirements of sections 170(c), 2055(a) and 2522(a) of the Code, as the Benefits Trustee, in the exercise of sole and absolute discretion, shall select, in such amounts and proportions, including all to one to the exclusion of the others, as the Benefits Trustee, in the exercise of sole and absolute discretion, shall determine.[[18]](#footnote-18)

**ARTICLE FIFTH**

**TRUSTEE’S POWERS**

**Powers of Trustee.** In addition to all powers conferred by law upon trustees, and all other powers herein granted to the Trustees, the Grantor expressly authorizes the Trustees in the exercise of sole and absolute discretion:

**5.1 Powers of Investment Trustee.** The Investment Trustee shall have the sole and absolute authority and shall be the only Trustee who needs to execute documents or take other action regarding decisions about the investment of the assets of the trusts hereunder including, but not limited to, the purchase, retention or sale of any assets held in any trust. No Trustee (other than the Investment Trustee) may exercise voting rights with respect to any stock described in section 2036(b) of the Code. In addition to all investment powers conferred by law upon trustees, and all other powers herein granted to the Investment Trustee, the Grantor expressly authorizes the Investment Trustee, in the exercise of sole and absolute discretion:

A. To purchase or otherwise acquire, and to retain, whether originally a part of the trust estate or subsequently acquired, any and all common or preferred stocks, bonds, notes or other securities, or any variety of real or personal property, whether within or without the United States, including, but without limitation, insurance on the life of the Grantor and/or the Grantor’s spouse (including entering into any form of split-dollar agreement with respect to such insurance), foreign real estate or foreign securities, securities of a corporation in which any of the Trustees is a director, officer, employee or shareholder, securities of any corporate fiduciary, interests in any business venture (incorporated or unincorporated), and interests in entities formed principally for the commingling of assets for investment, such as common trust funds, investment companies, mutual funds, real estate and other investment trusts, and interests in any partnership, limited liability company or other entity; provided, however, that the Investment Trustee may, by an acknowledged, written instrument delivered to the beneficiaries hereunder, irrevocably renounce the power to use the income (including capital gain) to pay for insurance on the life of the Grantor and/or the Grantor’s spouse;

B. To sell, lease, pledge, mortgage, transfer, exchange, convert, grant options with respect to, or otherwise dispose of, any and all real or personal property or interest therein, at any time forming a part of any trust estate, in any manner, at any time or times, for any purpose, for any price and upon any terms, credits and conditions; and to enter into leases, mortgages or options which extend beyond the period fixed by law for leases and options made by fiduciaries or beyond the term of the trust;

C. To borrow money from any lender, including, but without limitation any individual or corporate fiduciary hereunder or any member of the Grantor’s family, or any trust, corporation or association in which any one or more of the foregoing may be interested, for any purpose connected with the preservation or improvement of any trust estate, and to mortgage or pledge as security upon any terms and conditions any real or personal property held;

D. To vote in person or by general or limited proxy with respect to any shares of stock or other security; directly or through a committee or other agent, to oppose or consent to the reorganization, consolidation, merger, dissolution or liquidation of any corporation, or to the sale, lease, pledge or mortgage of any property by or to any such corporation; and to make any payments and take any steps proper to obtain the benefits of any such transaction;

E. To the extent permitted by law, to register any security in the name of a nominee with or without the addition of words indicating that such security is held in a fiduciary capacity; to hold any security in bearer or non-certificated form; and to use a central depository for securities; to employ a broker-dealer as custodian of all or part of the securities at any time held by any trust estate and to register such securities in the name of such broker-dealer;

F. To complete, extend, modify or renew any loans, notes, bonds, mortgages, contracts or any other obligations which may at any time form part of any trust estate or which may be liens or charges against any property of the trust; to pay, compromise, compound, adjust, submit to arbitration, sell or release any claims or demands of any trust estate against others or of others against any trust estate upon any terms and conditions, including the acceptance of deeds to real property in satisfaction of bonds and mortgages, and to make any payments in connection therewith;

G. While no corporate fiduciary is acting as to the trust estate, to place and leave all or any part of the funds or securities at any time held by any trust estate in the care and custody of any bank or trust company, with no obligation while such securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank or trust company or its nominee; to appoint such bank or trust company the agent and attorney of the Trustees to collect, receive, receipt for and disburse any income, and generally to perform the duties and services incident to a so-called “custodian account”; and to allocate the charges and expenses of such bank or trust company to income or to principal or partially to income and partially to principal as the Investment Trustee determines;

H. To continue the operation of any business, incorporated or unincorporated, which may be held or acquired by the Trustees, and any successor business thereto, and to purchase or otherwise acquire any business or interest in any business; 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 to 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 Investment Trustee, in the exercise of sole and absolute discretion, 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 (but not to guarantee loans made to or by the Grantor); 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 any Trustee be a corporation, and to receive compensation from such business for so acting; to enter into stockholders’ agreements with corporations in which any trust estate has an interest and/or 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 Investment Trustee may deem necessary with respect to the continuance, management, sale or liquidation of any such business;

I. To manage, insure against loss, subdivide, partition, develop, improve, mortgage, lease or otherwise deal with any real property or interests therein which may form at any time a part of any trust estate; to satisfy and discharge or extend the term of any mortgage thereon; to demolish, rebuild, improve, repair and make alterations from time to time in any of the structures upon any such real property; to plat into lots and prepare any such real property for building purposes; to construct and equip buildings and other structures upon any such real property and to make any and all other improvements of any kind or character whatsoever in connection with the development and improvement thereof; to execute the necessary instruments and covenants to effectuate the foregoing powers, including the granting of options in connection therewith;

J. To form or cause to be formed, alone or with others, such corporations, partnerships, limited partnerships and other business organizations organized under the laws of any state or country and to transfer and convey to such business organizations all or any part of the assets, real or personal, of any trust estate in exchange for such stocks, bonds, notes, other securities or interests of such business organizations as the Investment Trustee may deem advisable;

K. To keep assets held hereunder or the physical evidence of their ownership in any state or country whatsoever, and from time to time to move the same to any other state or country;

L. To manage the assets of any trusts created hereunder in solido with any other trust created hereunder or with any other trust created by the Grantor or the Grantor’s spouse which has similar terms, conditions and beneficiaries;

M. To delegate any duties or powers, discretionary or otherwise, to a cofiduciary or any other person or institution for such periods and upon such terms and conditions as may be designated in an acknowledged, written instrument delivered to such co-fiduciary, other person or institution; and if such duties or powers are delegated to a co-fiduciary, the fiduciary so delegating any duties or powers hereunder shall have no further responsibility with respect to the exercise of such duties or powers so long as such delegation shall remain in effect; and any such delegation shall be revocable by a similar instrument so delivered at any time provided, however, that no duties or powers described in paragraph 6.12 of ARTICLE SIXTH hereof may be delegated to any individual who is prohibited therein from participating in the exercise of such duties or powers and no duties or powers may be delegated to the Grantor;

N. To appoint, employ and remove at any time and from time to time any accountants, attorneys, investment or other expert advisers, agents, clerks and employees; and to fix and pay their reasonable compensation; and to delegate discretionary authority to make changes in investments to investment counsel;

O. To execute and deliver any and all instruments to carry out any of the foregoing powers, no party to any such instrument being required to inquire into the validity of any such instrument, and generally to deal with any trust estate created hereunder as in the Investment Trustee’s judgment the best interests of such trust may require.

P. To purchase life insurance payable to any trust held hereunder on the life of any individual 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, provided, however, the Grantor may not be designated as such beneficiary, to modify, exchange, surrender or cancel any such policies of insurance, to borrow upon and pledge any said 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 under this Agreement, 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.

Q. The trustee shall take appropriate action to collect all sums payable under the provisions of or in settlement of any insurance policies, at maturity or otherwise, to which the Trustee may become entitled as the beneficiary named in such policies. The Trustee, however, shall not be responsible for inability to enforce collection of any proceeds or amounts payable under such policies. The Trustee shall not be obligated to enter into or maintain any litigation to enforce payment of any such policies until the Trustee shall have been satisfactorily indemnified against all expenses and liabilities which the Trustee, in the exercise of sole and absolute discretion, may deem incident to such litigation, and the Trustee may utilize any property held hereunder to meet expenses reasonably incurred in connection with enforcing the payment of such policies. The Trustee shall be under no duty whatever to make payments of any premiums, dues, assessments, interest or other charges which may become due and payable on any policy of insurance held hereunder or to which the Trustee is designated as the beneficiary or to see that such payments are made or to notify the insured or any other persons that such payments are or will become due, and the Trustee shall have no responsibility in case such premiums,dues, assessments or other charges are not paid.

**5.2 Powers of Benefits Trustee**. Except as otherwise provided herein, the Benefits Trustee shall have sole and absolute authority and shall be the only Trustee who needs to execute documents or take other action regarding the exercise of, or decision not to exercise, any discretion over beneficial payment, distributions, applications, uses or accumulations of income or principal to or for the benefit of the beneficiaries of the trusts hereunder. In addition to all other powers herein granted to the Benefits Trustee, the Grantor expressly authorizes the Benefits Trustee, in the exercise of sole and absolute discretion:

A. To purchase, acquire, hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of such one or more of the beneficiaries of any trust, as the Benefits Trustee, in the exercise of sole and absolute discretion, determines, and, if the Benefits Trustee, in the exercise of sole and absolute discretion, determines that it would be in the best interests of the beneficiaries of any trust to maintain a residence for the use of such one or more of the beneficiaries, but that the residence owned by the Trustee should not be used for such purposes, the Trustees are authorized to sell said residence and to apply the net proceeds of sale to the purchase of such other residence or to make other arrangements as the Benefits Trustee, in the exercise of sole and absolute discretion, deems suitable for the purpose any proceeds of sale not needed for reinvestment in a residence as provided above to be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof; to pay all carrying charges of such residence, including but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the maintenance of a household for the benefit or one or more of the beneficiaries of the trust as the Benefits Trustee, in the exercise of sole and absolute discretion, shall determine; to expend such amounts to maintain the current lifestyle of any one or more of the beneficiaries, as the Benefits Trustee, in the exercise of sole and absolute discretion, determines, including, but not limited to, complete authority to provide for the personal care and comfort of any one or more of the beneficiaries in any manner whatsoever (and the power conferred upon the Benefits Trustee by this subparagraph A shall usurp the powers of the Investment Trustee to the extent the Benefits Trustee so directs in an acknowledged, written instrument delivered to the Investment Trustee);

B. To purchase, acquire, hold and maintain as a part of each trust created hereunder any and all articles of tangible personal property for the use and benefit of the beneficiaries of any trust, as the Benefits Trustee, in the exercise of sole and absolute discretion, determines, whether such property is productive, underproductive or unproductive of income, and without any duty to convert such property to productive property; to pay the expenses of safekeeping of any such property, including insurance, and all expenses of the repair and maintenance of such property, and to sell such property and to apply the net proceeds of sale to the purchase of such other property as the Benefits Trustee, in the exercise of sole and absolute discretion, deems suitable for the purpose (and the power conferred upon the Benefits Trustee by this subparagraph B shall usurp the powers of the Investment Trustee to the extent the Benefits Trustee so directs in an acknowledged, written instrument delivered to the Investment Trustee);

C. To permit any one or more of the beneficiaries of any trust hereunder, as the Benefits Trustee, in the exercise of sole and absolute discretion, determines, to occupy any real property and to use any tangible personal property forming part of the trust estate on such terms as the Benefits Trustee in the exercise of sole and absolute discretion, determines, whether for rent, rent-free in consideration of payment of taxes, insurance, maintenance or ordinary repairs, or otherwise;

D. To divide the trust, 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 Benefits Trustee, in the exercise of sole and absolute discretion, determines 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 a Subchapter S corporation as described in section 1364 (d)(3) of the Code, or for any other purpose as the Benefits Trustee, in the exercise of sole and absolute discretion, determines;

E. To grant a term of years interest or a life estate to any one or more of the beneficiaries of any trust created hereunder, as the Benefits Trustee, in the exercise of sole and absolute discretion, determines, and to terminate the same, retaining the reversionary interest in the trust or for the benefit of any other beneficiary of the trust and to make any property of the trust available for the use and benefit of any beneficiary hereunder;

F. To make distributions from any trust in kind or partially in kind and to cause any distributive share to be composed of cash, property or undivided fractional shares in property different in kind from any other distributive share, and without regard to the income tax basis of such property and any property distributed in satisfaction of a distributive share shall be valued as of its date of distribution;

G. To make such elections under the tax laws as the Benefits Trustee, in the exercise of sole and absolute discretion, 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 adjustments of such interests shall be made by reason of any such election;

H. 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 Benefits Trustee shall deem just and equitable; provided, however, that if the trust holds S corporation stock, the Benefits Trustee shall immediately take such actions to insure that the trust qualifies as either an Electing Small Business Trust within the meaning of section 1361 (e)(1)(A) of the Code or a Qualified Subchapter S Trust within the meaning of section 1361 (d)(3) of the Code and (A) if the Benefits Trustee seeks to qualify the trust as an Electing Small Business Trust, the Benefits Trustee shall have the authority to exclude by an acknowledged, written instrument any person or organization from having any interest therein, and (B) if the Benefits Trustee seeks to qualify the trust as a Qualified Subchapter S Trust, the Benefits Trustee shall not make (and no other Trustee hereunder shall be authorized to make) adjustments that would have the effect of denying to the income beneficiary the net income of the trust to which the beneficiary must be entitled in order for the trust to qualify as a Qualified Subchapter S Trust under section 1361 (d) of the Code; and no Trustee shall exercise any power conferred under this Article or under this Agreement that would have the effect of denying to the income beneficiary the net income of the trust to which the beneficiary must be entitled in order for the trust to qualify as a Qualified Subchapter S Trust under section 1361 (d) of the Code; and provided further, during the term of any trust created hereunder, (i) if the Trustees sell 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 sole and absolute discretion of the Benefits Trustee, the Trustees 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;

I. To delegate any duties or powers, discretionary or otherwise, to a cofiduciary or any other person or institution for such periods and upon such terms and conditions as may be designated in an acknowledged, written instrument delivered to such co-fiduciary, other person or institution; and if such duties or powers are delegated to a co-fiduciary, the fiduciary so delegating any duties or powers hereunder shall have no further responsibility with respect to the exercise of such duties or powers so long as such delegation shall remain in effect; and any such delegation shall be revocable by a similar instrument so delivered at any time, provided, however, that no duties or powers described in paragraph 6.12 of ARTICLE SIXTH hereof may be delegated to any individual who is prohibited therein from participating in the exercise of such duties or powers and no duties or powers may be delegated to the Grantor;

J. To keep assets held hereunder or the physical evidence of their ownership in any state or country whatsoever, and from time to time to move the same to any other state or country;

K. To appoint, employ and remove at any time and from time to time any accountants, attorneys, investment or other expert advisers, agents, clerks and employees; and to fix and pay their reasonable compensation;

L. To execute and deliver any and all instruments to carry out any of the foregoing powers, no party to any such instrument being required to inquire into the validity of any such instrument, and generally to deal with any trust estate created hereunder as in the Benefits Trustee’s judgment the best interests of such trust may require.

**5.3 Powers of Administrative Trustee.** In addition to all other powers herein granted to the Administrative Trustee, the Grantor expressly authorizes the Administrative Trustee, in the exercise of sole and absolute discretion:

A. To maintain books and records of the trusts created hereunder;

B. To prepare and file or to arrange for the preparation and filing of all tax returns required to be filed by any trust created hereunder;

C. To the extent deemed appropriate by the Investment Trustee, to maintain custody of all assets of the trusts created hereunder (other than real property and other than tangible personal property which the Benefits Trustee, in the exercise of sole and absolute discretion, may determine to make available for the use of any beneficiary hereunder);

D. To undertake any other duties to assist the Investment Trustee as the Investment Trustee, in the exercise of sole and absolute discretion, may determine to be appropriate;

E. To implement without responsibility therefore any decisions of the Investment Trustee or the Benefits Trustee hereunder;

F. To appoint, employ and remove, at any time and from time to time, any accountants, attorneys, expert advisers, agents, clerks and employees in furtherance of fulfilling the responsibilities of Administrative Trustee hereunder, and to pay them such reasonable compensation for their services;

G. While no corporate fiduciary is acting as to the trust estate, to place and leave all or any part of the funds or securities at any time held by any trust estate in the care and custody of any bank or trust company, with no obligation while such securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank or trust company or its nominee; to appoint such bank or trust company the agent and attorney of the Trustees to collect, receive, receipt for and disburse any income, and generally to perform the duties and services incident to a so-called “custodian account”; and to allocate the charges and expenses of such bank or trust company to income or to principal or partially to income and partially to principal as the Trustees determine; and

H. To execute and deliver any and all instruments to carry out any of the foregoing powers, no party to any such instrument being required to inquire into its validity or to see to the application of any money or other property paid or delivered pursuant to the terms of any such instrument.

**5.4 Trustees Powers Exercised Without Court Authorization.** The powers granted to the Trustees hereunder in and by 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 Trustees hereunder shall have all of 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 special powers herein enumerated (subject, however, to the division of responsibilities between the Benefits Trustee, Investment Trustee and Administrative Trustee hereunder). If any power is not specifically granted to the Benefits Trustee, Investment Trustee or Administrative Trustee hereunder, such power shall be exercisable solely by the Benefits Trustee.

**5.5 “Prudent Person” and “Prudent Investor” Rules Waived.** In addition to the investment powers conferred above, the Investment Trustee is authorized (but is 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, or any other rule or law which restricts a fiduciary’s capacity to make investments. The Investment Trustee, in the exercise of sole and absolute discretion, may invest in any type of property, wherever located, including any type of security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, corporations, mutual funds, business trusts or any other form of participation or ownership whatsoever. In making investments, the Investment Trustee may disregard any or all of the following factors:

A. Whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal.

B. 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. The Grantor intends that no such duty shall exist, and hereby waives any such duty which otherwise would exist.

C. Whether the trust is diversified. The Grantor intends that no duty to diversify shall exist, and hereby waives any such duty which otherwise would exist.

D. 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 intends the Investment Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy.

The Grantor’s purpose in granting the foregoing authority is to modify the “prudent person” rule, “prudent investor” rule, 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 Investment Trustee broad discretion in managing the assets of the trusts created hereunder. Accordingly, the Investment Trustee shall not be liable for any loss in value of an investment merely because of the nature of the investment or the degree of risk presented by the investment.

**5.6 Division and Combination Provision.** The Benefits Trustee, in the exercise of sole and absolute discretion, is authorized to divide (whether before or after any trust is funded and whether before or after any allocation of GST exemption under section 2631 of the Code is made to property passing to a trust created under this Agreement) any trust or any property used or to be used to fund or augment any trust created hereunder into two or more fractional shares and each such share shall be a separate trust within the meaning of the Treas. Reg. § 26.2654-1(a)(1)(i). The shares shall be held and administered by the Benefits Trustee as separate trusts but may, in the sole and absolute discretion of the Benefits Trustee, be managed and invested in solido. Any distribution from any such trust shall be allocated solely to that trust and not pro rata among the separate trusts held hereunder. One of the purposes for granting this authority is to provide an inclusion ratio (within the meaning of section 2642 (a) of the Code) of zero for the separate trust receiving the fractional share to which the allocation of GST exemption is made.

If two trusts created under this Agreement 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, the

Benefits Trustee is authorized, 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 and each such trust shall be a separate trust within the meaning of Treas. Reg. § 26.2654-1(a)(1)(i). Any distribution from any such trust shall be allocated solely to that trust and not pro rata among the separate trusts held hereunder. However, the Benefits Trustee may, in the sole and absolute discretion of the Benefits Trustee, manage and invest such separate trusts in solido. If anyone adds or is deemed to add by gift or bequest property to a trust created hereunder, the Benefits Trustee, in the exercise of sole and absolute discretion, is authorized to hold the added property as a separate trust with terms identical to the trust to which it would have been added and the Benefits Trustee may manage and invest such separate trusts in solido and each such trust shall be a separate trust within the meaning of Treas. Reg. § 26.2654- 1(a)(1)(i). Any distribution from any such trust shall be allocated solely to that trust and not pro rata among the separate trusts held hereunder.

The Benefits Trustee is authorized, in the exercise of sole and absolute discretion, to combine any one or more trusts with identical terms for an identical beneficiary or beneficiaries created under this Agreement as a single trust. The Benefits Trustee is also authorized, in the exercise of sole and absolute discretion, later to divide such trust as provided above in this Article. Without in any way limiting the discretion of the Benefits Trustee granted by this Article, it is envisioned that the Benefits Trustee will not elect to combine two or more trusts with different inclusion ratios for generation-skipping transfer tax purposes.

Any division or combination effected by the Trustees pursuant to this paragraph 5.6 shall be manifested by an acknowledged, written instrument executed by the Trustees, a copy of which shall be delivered by first class mail or in person to each beneficiary then eligible to receive distributions from the trust or trusts with respect to which the division or combination is taken.

**5.7 Special Trustee Liability Provision.** The Grantor recognizes that some persons may be hesitant to serve as Trustees hereunder because of a concern about potential liability. Therefore, the Grantor directs that with respect to any trust created hereunder: (i) no Trustee shall incur any liability by reason of any error of judgment, mistake of law, or action of any kind taken or omitted to be taken in connection with the administration of any trust created hereunder if in good faith reasonably believed by such Trustee to be in accordance with the provisions and intent hereof, except for matters involving such Trustee’s own willful misconduct or gross negligence proved by clear and convincing evidence, (ii) the Investment Trustee shall not have any fiduciary responsibility to observe, monitor or evaluate the actions of the Benefits Trustee or the Administrative Trustee and shall not be liable to any party for the failure to seek to remedy a breach of trust, or in a recurring situation to request instructions from a court having jurisdiction over the trust, even if a Trustee may be guilty of a gross violation of fiduciary duties hereunder, (iii) the Benefits Trustee shall not have any fiduciary responsibility to observe, monitor or evaluate the actions of the Investment Trustee or the Administrative Trustee and shall not be liable to any party for the failure to seek to remedy a breach of trust, or in a recurring situation to request instructions from a court having jurisdiction over the trust, even if a Trustee may be guilty of a gross violation of fiduciary duties hereunder, (iv) the Administrative Trustee shall not have any fiduciary responsibility to observe, monitor or evaluate the actions of the Investment Trustee or the Benefits Trustee and shall not be liable to any party for the failure to seek to remedy a breach of trust, or in a recurring situation to request instructions from a court having jurisdiction over the trust, even if a Trustee may be guilty of a gross violation of fiduciary duties hereunder, and (v) each Trustee shall be fully indemnified by the trust estate against any claim or demand by any trust beneficiary or trust creditor, except for any claim or demand based on such Trustee’s own willful misconduct or gross negligence proved by clear and convincing evidence. Expenses incurred by a Trustee in defending any such claim or demand shall be paid by the trust estate in advance of the final disposition of such claim or demand, upon receipt of an undertaking by or on behalf of such Trustee to repay such amount if it shall ultimately be determined that such Trustee is not entitled to be indemnified as authorized by this paragraph 5.7. In no event shall any Trustee hereunder be liable for any matter with respect to which he, she or it is not authorized to participate hereunder (including the duty to review or monitor trust investments and distributions).

**5.8 Special Provisions Regarding Life Insurance.**

**A. Right of Investment Trustees to Accept and Retain Life Insurance Policies Without Liability.** Trustees may, without liability, accept and retain policiesof insurance on the life of either or both Grantors, and member of theGrantor’ family, or any other person in whose life Trustees have an insurableinterest. Trustees shall have no duty at any time during the term of any trusthereunder to diversify with respect to such policies or to inquire into thesuitability of any insurance policy or the financial condition of any insurer.

**B. Right of Investment Trustees to Purchase Life Insurance Without Any Duty To Diversify; Limited Liability.** Trustees may purchase insurance on the life of eitheror both Grantor, any member of Grantors’ family, or any other person in whose lifeTrustees have an insurable interest. Such purchase and payment of subsequentpremiums may utilize all or any part of trust assets without any duty to diversify theinvestments of the trust in assets other than life insurance. Trustees may purchase allinsurance held hereunder from one or more insurers without any duty to diversify thetypes of policies or to purchase policies for more than one insurer. Trustees may,without incurring any liability to any person, purchase such policies upon therecommendation of an experienced insurance advisor. Trustees shall be under noliability at any time during the term of any trust hereunder to any person for any losssuffered as a result of the financial condition, including insolvency, of any insurer.

**C. Payment of Life Insurance Premiums. Investment** Trustees may pay premiums on life insurance policies and may utilize all or any part of trust assets to do so without any duty to diversify the investments of the trust in assets other than life insurance and without incurring any liability to any person in this trust.

**5.9 Direction Not to Inform or Account to Discretionary**

**Beneficiaries.** As provided for in the provisions of AS 13.36.080 (b), during the shorter of the Grantor’s lifetime or judicial determination of the Grantor’s incapacity, the Trustee shall not be required to inform any beneficiary (other than the Grantor) who is not entitled to a mandatory distribution of income or principal from the trust on an annual or more frequent basis of the trust or the court in which the trust is registered and the Trustee’s name and address. In addition, during the shorter of the Grantor’s lifetime or judicial determination of the Grantor’s incapacity, the Trustees shall not be required to provide any beneficiary (other than the Grantor) who is not entitled to a mandatory distribution of income or principal from the trust on an annual or more frequent basis with a copy of the terms of the trust and shall not be required to provide a statement of accounts of the trust. The Trustee and the Trustee’s officer, agents, and employees, if any, shall be indemnified out of and held harmless by the trust estate from any and all liability to any beneficiary for any loss of any kind that may result by reason of any action or non-action taken by the Trustee and the Trustee’s officers, agents, and employees in accordance with the directions in this paragraph.

**ARTICLE SIXTH**

**TRUSTEE PROVISIONS[[19]](#footnote-19)**

**6.1 Nomination of Trustees for Trust under ARTICLE THRID for**

**Primary Beneficiaries.** Alaska Trust Company, of Anchorage, Alaska, shall be Investment Trustee of any trust under ARTICLE THIRD. If Alaska Trust Company fails to qualify or ceases to act as Investment Trustee, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_, is appointed as Investment Trustee in its place. Upon attaining the age of thirty-five (35), the primary beneficiary of any trust held under ARTICLE THIRD of this Agreement may elect to become a co-Investment Trustee, to serve with any other successor Investment Trustee then acting, any such election to be exercised by an acknowledged, written instrument delivered to the then acting Investment Trustee of such trust.

**6.2** Alaska Trust Company, of Anchorage, Alaska, shall be Benefits Trustee for each trust held under ARTICLE THIRD of this Agreement. If Alaska Trust Company fails to or ceases to act, the Benefits Trustee shall be such individual or individuals and/or bank or trust company as is appointed in accordance with paragraph 6.9 of this Article.

**6.3** Alaska Trust Company shall be the Administrative Trustee of any trust held under ARTICLE THIRD of this Agreement and any other trust hereunder. If at any time there shall not be a person acting as Administrative Trustee of any trust held under ARTICLE THRID of this Agreement, the successor Administrative Trustee shall be appointed in accordance with paragraph 6.9 of this article.

**6.4 Restrictions on Who May Act as Benefits Trustee.** Notwithstanding anything herein to the contrary, an individual who is then currently or in thefuture may be eligible to receive property from any trust hereunder (other than by reason ofbeing an appointee of the exercise of a power of appointment exercisable in a non-fiduciarycapacity), any spouse or former spouse of any such beneficiary of any trust hereunder, or theGrantor, the Grantor’s spouse, any descendant of the Grantor, any spouse or former spouse ofany descendant of the Grantor, or any person who is related or subordinate, within themeaning of section 672(c) of the Code, to any of the foregoing may not be appointed as aBenefits Trustee of any trust hereunder.

**6.5 Trustee Acting in More Than One Capacity.** A Trustee acting hereunder can act simultaneously as Investment Trustee and/or as Benefits Trustee (if not ineligible to act as a Benefits Trustee under paragraph 6.4 of this Article) and/or as Administrative Trustee, if appointed to so act hereunder.

**6.6 Appointment of Co-Trustee.** At any time that there is an Investment Trustee, a Benefits Trustee and an Administrative Trustee of a trust acting hereunder (and whether or not one person is acting in all of those capacities), the Trustee or Trustees of such trust acting hereunder are authorized (but not directed), by an acknowledged, written instrument delivered to the adult and competent beneficiaries of the trust who are currently eligible to receive the income and/or principal of the trust with respect to which such Trustee or Trustees are acting, and to the parent(s), guardian(s) of the person, conservator(s) or committee of the minor or incompetent beneficiaries of such trust who are currently eligible to receive the income and/or principal of the trust, to appoint as co-Trustee or co-Trustees hereunder such individual or individuals or such bank or trust company (wherever located) as the Trustee or Trustees of such trust, in the exercise of sole and absolute discretion, shall select; provided, however, that no co-Benefits Trustee shall be appointed without the consent of the then-acting Benefits Trustee(s) of such trust (and further provided that the co-Benefits Trustee must not be ineligible to be a Benefits Trustee under paragraph 6.4 of this Article), and no co-Investment Trustee shall be appointed without the consent of the then acting Investment Trustee(s) of such trust, and no co-Administrative Trustee shall be appointed without the consent of the then-acting Administrative Trustee(s) of such trust. Notwithstanding anything in this paragraph to the contrary, there may not be appointed as co- Trustee of any trust an individual who is, or a bank or trust company that is, a related or subordinate party with respect to any person making the appointment within the meaning of section 672(c) of the Code if the vacancy occurred as a result of a removal of a Trustee or Trustees pursuant to paragraph 6.11 of this Article by such person making the appointment of a co-Trustee.

**6.7 Resignation.** Any Trustee or Trust Protector may resign from office without leave of court at any time and for any reason. Such resignation shall be made by a duly acknowledged, written instrument delivered to the Trustees, or if there are no Trustees then in office, to the then living adult and competent beneficiaries of the trust who are currently eligible to receive the trust income and/or principal, and the parent(s), guardian(s) of the property, conservator(s) or committee of the minor or incompetent beneficiaries of the trust who are currently eligible to receive the trust income and/or trust principal.

**6.8 Retirement at Age 75.** Any individual, who serves as a Trustee or a Trust Protector of any trust hereunder from time to time shall cease serving upon reaching the age of seventy-five (75) years.

**6.9 Appointment of Successor Trustees.** (i) In the event that there is no Investment Trustee acting as to a trust hereunder the successor Investment Trustee(s), or (ii) in the event there is no Administrative Trustee acting as to a trust hereunder the successor Administrative Trustee(s), or (iii) in the event there is no Benefits Trustee acting as to a trust hereunder the successor Benefits Trustee(s), as the case may be, shall be designated as follows:

(1) With respect to any trust under ARTICLE THIRD hereof, as shall be appointed (a) 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, (b) by majority vote of the then living and competent adult beneficiary or beneficiaries of the trust who are currently eligible to receive the income and/or principal of the trust, or, if no such beneficiary is then adult and competent, (c) by majority vote of the parent(s), guardian(s) of the person, conservator(s) or committee of the then living minor or incompetent beneficiaries of the trust who are currently eligible to receive the income and/or principal of the trust (with the parent(s), guardian(s) of the person, conservator(s) or committee of each minor or incompetent beneficiary collectively having only one vote).

(2) With respect to any other trust created hereunder (other than any trust under ARTICLE THIRD hereof), as shall be appointed (a) by the eldest adult and competent descendant of the Grantor who is then eligible to receive distributions of principal and/or income from the trust, or if none, (b) by majority vote of the then living adult and competent beneficiary or beneficiaries of the trust who are currently eligible to receive the income and/or principal of the trust or, if no such beneficiary is then adult and competent, (c) by majority vote of the parent(s), guardian(s) of the person, conservator(s) or committee of the then living minor or incompetent beneficiary or beneficiaries of the trust who are currently eligible to receive the income and/or principal of the trust (with the parent(s), guardian(s) of the person, conservator(s) or committee of each minor or incompetent beneficiary collectively having only one vote).

Any appointment of a successor Trustee pursuant to this Article shall be evidenced by an acknowledged, written instrument delivered to the Trustee so appointed and a copy of which is delivered to each other Trustee acting of the Trust with respect to which the successor is appointed.

Notwithstanding anything contained herein to the contrary, any Administrative Trustee must be domiciled in the same jurisdiction as the Administrative Trustee being replaced, unless the Benefits Trustee consents to the appointment of an Administrative Trustee domiciled in a different jurisdiction, and, unless the Benefits Trustee has determined to change the situs of the trust from Alaska, at least one (1) Trustee must at all times be an individual or bank or trust company domiciled in Alaska.

**6.10 Rights and Duties of Successor Trustees.** Upon appointment of a successor Trustee and the assignment, transfer and conveyance of the trust estate to such successor Trustee, and obtaining receipt therefor, a Trustee shall be released and discharged from any and all claims, demands, duties and obligations arising out of this Agreement and the management of the trust estate hereunder, excepting only claims based upon the Trustee’s gross negligence or intentional wrongdoing proved by clear and convincing evidence. The successor Trustee shall have all the rights, duties, powers, discretions and immunities of the original Trustee, including the right to appoint a successor Trustee. No successor Trustee shall be obligated to investigate the acts of a prior Trustee, except upon written request of any beneficiary, who shall pay the costs thereof.

**6.11 Trust Protector.[[20]](#footnote-20)** The Grantor hereby appoints [INSERT NAME] as the Trust Protector. The Trust Protector is authorized, in the exercise of sole and absolute discretion, but subject to the provisions of ARTICLE NINTH, to designate successor Trustees and to remove any and all Trustees acting hereunder and appoint successor Trustees in their place; provided, however, that no Trust Protector may appoint as Trustee himself or herself, any person who is married to the Trust Protector or who is related to the Trust Protector or his or her spouse within the third degree of consanguinity (other than a descendant of this Grantor), any person who is a partner or fellow shareholder of the Trust Protector in any enterprise in which the Trust Protector holds a ten percent (10%) interest or to which he devotes on an average more than 10 hours per week, any subsequent spouse of the Spouse, or any spouse of any descendant of the Grantor.

The Trust Protector also is authorized, in the exercise of absolute discretion, to designate by instrument in writing delivered to the Trustee a successor Trust Protector and to revoke any such designation before it becomes effective; provided, however, that no person who is a beneficiary of a trust hereunder, a spouse of a beneficiary, under a duty to support a beneficiary, or who is a related or subordinate party within the meaning of section 672 (c) of the Code with respect to any of the foregoing persons, can serve as the Trust Protector. Any successor Trust Protector shall have all the powers of the initial Trust Protector.

The Grantor is not imposing any fiduciary responsibility on the Trust Protector to monitor the acts of the Trustees. The Trust Protector shall not be liable for failing to remove any Trustee even if such Trustee may be guilty of a gross violation of his or her fiduciary duties hereunder.

If at any time there is no Trust Protector acting as to any trust hereunder, the Trust Protector of such trust shall be such individual as the Spouse if living and competent, or if not, the Grantor’s then living and competent children by majority vote shall designate by a written acknowledged instrument filed with the clerk of the appropriate court or, if no such child is then living and competent, as the Grantor’s then living adult and competent descendants who are then eligible or entitled to income or principal of such trust shall designate by majority vote, or, if no such descendant is then living and competent, as the parents, conservation or committees of such then living descendants shall designate by majority vote; provided, however, that no person who is a beneficiary of any trust hereunder, a spouse of a beneficiary, under a duty to support a beneficiary, or who is a related or subordinate party within the meaning of section 672 (c) of the Code with respect to any of the foregoing persons, can serve as the Trust Protector.

**6.12 Restrictions on Beneficiary Trustee.** Notwithstanding any other provision of this Agreement, no Trustee who is a beneficiary of any trust created hereunder shall ever participate as Trustee of that trust in (i) the exercise, or decision not to exercise, any discretion over beneficial payments, distributions, applications, uses or accumulations of income or principal by the Trustee or for any beneficiary, (ii) the exercise of any power of any Benefits Trustee hereunder, or (iii) the exercise of the power in subparagraph D of paragraph 5.2 of ARTICLE FIFTH hereof to divide any trust created hereunder into one or more separate trusts, or (iv) the exercise of any general power of appointment described in section 2041 or 2514 of the Code. If any Trustee is under a duty to support a beneficiary or is acting as a guardian of any person who is a beneficiary, such Trustee shall not participate in the exercise, or decision not to exercise, any discretion over beneficial payments, distributions, applications or uses of trust property in discharge of any obligation of support. No Trustee shall participate in the exercise of any discretion (including, but without limitation, any discretion which would constitute an “incident of ownership” within the meaning of section 2042(2) of the Code) with respect to any insurance policy on his or her life held hereunder. In each case, the determination of the remaining Trustee or Trustees shall be final and binding upon the beneficiaries of such trust. In addition, no individual shall serve as Trustee of any trust which holds property with respect to which such individual has made a qualified disclaimer within the meaning of section 2518 of the Code.

**6.13 Bond.** Except as provided by law, no Trustee shall be required to give any bond. If, notwithstanding the foregoing direction, any bond is required by any law, statute or rule of court, no sureties shall be required thereon.

**6.14 Authorization of Conflict of Interest.** The Grantor has appointed the individuals named in this Article as Trustees hereunder cognizant of the fact that they may also serve as general and limited partners, directors, officers, accountants and/or employees with respect to the partnerships and corporations which form a substantial part of the trust estate and that their interests as Trustees hereunder may conflict with their individual interests as such general and limited partners, directors, officers, accountants and/or employees. Notwithstanding the foregoing, the Grantor wishes these individuals to serve as Trustees because of the Grantors’ confidence in their individual skills and because they are the most appropriate individuals as a result of their involvement with the partnerships and corporations to manage and operate the partnerships and corporations including making decisions related to the sale of any real property held by any such partnership or corporation and the reinvestment of the proceeds of sale in a new real estate project. In addition, the Grantor expressly authorizes any Trustee to act as general and limited partner, director, officer, accountant and/or employee with respect to the said partnerships and corporations and to receive from the said partnerships and corporations compensation for his or her services.

The Grantor also authorizes any Trustee acting hereunder, without court approval or notice, to participate in any decision (1) to purchase or otherwise acquire assets from and (2) sell, transfer, exchange or loan any assets to any other trust of which such Trustee is acting as a Trustee and/or any estate of which such Trustee is acting as an Executor in any manner, at any time or times and upon such terms, credits and conditions as the Trustees may deem advisable notwithstanding that such participation may be an act of selfdealing under applicable state law (and the Grantor expressly directs that Alaska Statutes (“AS”) 13.36.105-13.36.290 shall not apply and relieves the Trustees of any such restriction or liability that would otherwise be imposed under those sections).

**6.15 Certain Actions for Minor or Incompetent Beneficiaries.** In the case of any action taken pursuant to this paragraph, the parent(s), guardian(s), conservator(s) or committee of each minor or incompetent child or descendant of the Grantor collectively shall have only one vote. In addition: (i) both parents together shall act on behalf of a minor beneficiary, unless the parents are divorced or legally separated in which case the parent which is a descendant of the Grantor, or if none, the custodial parent within the meaning of section 1(g) of the Code shall act, unless a legal guardian (whether of the person or of the property) has been appointed for a minor beneficiary in which case the following subsection (ii) shall apply; (ii) if a legal guardian (whether of the person or of the property) has been appointed for a minor beneficiary or if a legal guardian has been appointed for an incompetent beneficiary, such legal guardian shall act on behalf of the minor or incompetent beneficiary, but if no legal guardian has been appointed, the following subsection (iii) shall apply; (iii) if a conservator has been appointed for an incompetent beneficiary, such conservator shall act on behalf of the incompetent beneficiary, but if no conservator has been appointed, the following subsection (iv) shall apply; (iv) if a committee has been appointed for an incompetent beneficiary, such committee shall act on behalf of the incompetent beneficiary, but if no committee has been appointed, the following subsection (v) shall apply; and (v) under this subsection (v), the oldest then living adult and competent descendants of the lineal ancestor of the minor or incompetent beneficiary of the closest degree of consanguinity to the minor or incompetent beneficiary which ancestor is a descendant of the Grantor or which ancestor is the Grantor shall act on behalf of the minor or incompetent beneficiary.

**6.16 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.

**6.17 No Periodic Accounts or Bond.** No Trustee shall be required to file or render periodic accounts in or to any court. No Trustee shall be required to give any bond.

**6.18 Compensation.[[21]](#footnote-21)** The Grantor, the Grantor’s spouse, any descendant of the Grantor and any descendant of the Grantor’s spouse who serves as a Trustee hereunder shall serve as Trustee hereunder without compensation. Each Trustee (other than the Grantor, the Grantor’s spouse, any descendants of the Grantor and any descendants of the Grantor’s spouse), under this agreement, shall receive such compensation, if any, as is provided for in a written agreement between such Trustee and the Trust Protector. In the absence of any such agreement, each individual Trustee shall receive compensation that is reasonable under the laws of the State of Alaska and each corporate Trustee shall be compensated in accordance with its regularly published schedule of fees in effect at the time the compensation is payable. Compensation shall be paid from the income or principle as the Trustee shall deem appropriate. The Trustee shall also be reimbursed without application to any court the reasonable expenses it incurs in the administration of the trust.

**6.19 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 Trust Agreement; provided, however, that in the case of any corporation that is acting as a Trustee hereunder, the provisions of this Paragraph shall apply only if the resulting or transferee corporation is domiciled in the same jurisdiction as the corporation that was acting as Trustee.

**6.20 Trustee Has Absolute Discretion.** Each Trustee shall have full and complete discretion in the exercise of the powers given him or her, and his or her determination as to matters left to his or her judgment or decision shall, to the extent permitted by law, be final and conclusive on all persons, and each Trustee may exercise his, her, or its powers from time to time in respect of all or any part of such property.

**6.21 Use of Terms.** Whenever the terms “Trustee” and “Trustees” are used in this Agreement, they shall be deemed to refer to the Trustee or Trustees acting hereunder from time to time, and shall be construed as masculine, feminine or neuter and in the singular or plural, as the sense requires.

**6.22 Majority Vote.** Subject to the limitations of ARTICLE SIXTH paragraph 6.12 hereof and any effective delegation made by any Trustee, if more than two (2) Trustees are acting as to any trust hereunder they shall act by majority vote.

**ARTICLE SEVENTH**

**TRUSTEES ACTING IN FIDUCIARY CAPACITY**

 Every act done, power exercised or obligation assumed by any 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 or corporation 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 therefore 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.

**ARTICLE EIGHTH**

**TRUSTEES’ AUTHORITY CONTINUES UNTIL DISTRIBUION**

The title, powers, duties, immunities and discretions herein conferred upon the Trustees shall continue after the termination of each trust hereby created until final distribution of the particular trust estate.

**ARTICLE NINTH**

**INTENT TO CREATE ALASKA TRUST**

It is the Grantor’s intention that the trusts created under this Agreement be trusts described in AS 34.40.110, 13.36.035 (a) and (c). Accordingly, unless the Benefits Trustee determines to move the situs of a trust hereunder to another jurisdiction in accordance with paragraph 10.2 of ARTICLE TENTH hereof, (1) notwithstanding the provisions of AS 13.36.080(b) or any other provision of Alaska law, the Trustees shall have no duty to inform the current or future beneficiaries of the trusts created under this Agreement of (a) the court in which the trust is registered and (b) the Trustees’ names and addresses and (2) the Grantor directs that (a) at all times at least one Trustee of each trust shall be a “qualified person” under AS 13.36.390(2), (b) the duties of that Trustee, regardless of whether that Trustee is acting in the capacity of Investment Trustee, Benefits Trustee and/or Administrative Trustee, shall include the duty and responsibility to maintain books and records of the trust in Alaska and to prepare or to arrange for the preparation of the tax returns of the trust, (c) at least some assets of the trust shall be deposited in Alaska within the meaning of AS 13.36.035(c)(1), and (d) at least part of the administration of the trust shall occur in Alaska within the meaning of AS 13.36.035(c)(4).

**ARTICLE TENTH**

**GOVERNING LAW AND TRUST SITUS**

**10.1 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 Alaska.

**10.2 Situs.** The original situs of the trusts created hereunder shall be Alaska. The situs of any trust created hereunder may be maintained in any jurisdiction (including outside the United States), as the Benefits Trustee, in the exercise of sole and absolute discretion, may determine, and thereafter transferred at any time or times to any jurisdiction selected by the Benefits Trustee. Upon any such transfer of situs, the trust estate may thereafter, at the election of the Benefits 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 Benefits Trustee of any trust created hereunder elects to change the situs of any such trust, the Trustees of said trust are 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.

**10.3 Back-Up Perpetuities Provision.** The trusts created hereunder shall be perpetual to the fullest extent permitted by Alaska law. If any trust created hereunder is deemed to be subject to the law of a jurisdiction and that jurisdiction has a rule against perpetuities or similar rule which limits the period during which property may be held in trust, then such trust 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 paragraph 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 commencement of such rule against perpetuities period (or similar rule), those individuals shall consist of all of the descendants of the Grantor’s parents and the Grantor’s spouse’s parents (or similar rule). Upon termination of a trust pursuant to the provisions of this paragraph, the trust property shall be transferred, conveyed and paid over to such one or more of the class consisting of those persons who are eligible to receive the income of such trust, in such amounts and proportions, including all to one to the exclusion of the others, as the Benefits Trustee, in the exercise of sole and absolute discretion, may determine prior to such running of such rule against perpetuities period (or similar rule), or, to the extent the Benefits Trustee does not so effectively determine, to the primary beneficiary.

**ARTICLE ELEVENTH**

**TERMINATION OF GRANTOR TRUST STATUS**

**AND RESTRICTIONS ON GRANTOR**

**11.1 Grantor’s Income Tax.** The Trustee shall not pay to the Grantor or the Grantor’s executors 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.[[22]](#footnote-22)

**11.2 Restrictions Relating to Grantor and Grantor’s Spouse.**

Notwithstanding any other provision of this Agreement, no power enumerated herein or accorded to trustees generally pursuant to law, singly or as a whole, shall be construed to enable the Grantor or any spouse of the Grantor to become a Trustee or Trust Protector hereunder.

**ARTICLE TWELFTH**

**SPENDTHRIFT TRUST PROVISION**

The interest of a beneficiary (including the Grantor) of any trust hereunder may not be either voluntarily or involuntarily transferred before the payment or delivery of the interest to the beneficiary by the Trustee, within the meaning of AS 34.40.110(a). No beneficial interest in any trust created hereunder, whether in income or in principal, shall be subject to anticipation, assignment, pledge, sale or transfer in any manner, 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.

**ARTICLE THIRTEENTH**

**IRREVOCABILITY OF TRUST**

The Grantor has been advised of the difference between revocable and irrevocable trusts and hereby declares that this Agreement and the trust estates created hereby are irrevocable.

**ARTICLE FOURTEENTH**

**DEFINITIONS**

**14.1 Child, Children, Descendant and Descendants.** For purposes of beneficial interests in the income and/or principal of any trust created hereunder, the words “child”, “children”, “descendant” and “descendants” as used herein shall include adopted persons and the descendants of adopted persons whether of the blood or by adoption; provided, however, that unless a descendant of the Grantor or a descendant of the Grantor’s spouse has married the individual who is the parent of the adopted individual, no person who is adopted after he or she has attained the age of eighteen (18) years shall be considered to be a descendant of the Grantor or a descendant of the Grantor’s spouse, as the case may be, for purposes of this Agreement.

**14.2 Per Stirpes.** A disposition in this Agreement to the descendants of a person in per stirpital shares, 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.

**14.3 Spouse.** For purposes of this Agreement, the word “spouse” as used herein, but not the term “Spouse” which shall mean [INSERT NAME OF GRANTOR’S SPOUSE], shall refer to the person to whom an individual is lawfully married and with whom such individual is living as husband or wife, as the case may be and with respect to any deceased primary beneficiary the person to whom such primary beneficiary was living as husband and wife at the time of the death of such primary beneficiary. Persons shall not be treated as not living as husband and wife merely on account of absences due to education, business, health or similar reasons.

**ARTICLE FIFTEENTH**

**MISCELLANEOUS PROVISIONS**

**15.1 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 estate and shall be held, administered and disposed of by the Trustee in all respects subject to the provisions of this Agreement.

**15.2 Disclaimer.** Any beneficiary of any trust created hereunder, in addition to any rights conferred on him or her by Alaska law, is authorized at any time within nine (9) months after the date of this Agreement, and with respect to any additional property placed in trust hereunder within nine (9) months after such addition, to make a qualified disclaimer within the meaning of section 2518 of the Code, 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. Any such disclaimer shall be made by an acknowledged, written instrument executed by that person or by his or her guardian, conservator, committee, executor or administrator, delivered to the Trustee.

**15.3 Receipt.** The Trustee acknowledges the receipt from the Grantor of the property set forth in the annexed Schedule and accept the trusts hereby created upon the terms set forth herein.

**15.4 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.

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

**15.6 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.

**ARTICLE SIXTEENTH**

**GRANTOR’S INTENTION**

It is the Grantor’s intention that the assets held hereunder shall be subject to the claims of the creditors of neither the Grantor nor any other beneficiary hereunder.[[23]](#footnote-23) This Agreement shall be construed and the trusts hereunder administered accordingly.

**IN WITNESS THEREOF,** the undersigned Grantor and Trustee have executed this Agreement as of the date first above written.

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

[INSERT NAME], Grantor

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Alaska Trust Company, Investment Trustee

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

Alaska Trust Company, Benefits Trustee

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

Alaska Trust Company, Administrative Trustee

STATE OF )

) ss.:

COUNTY OF )

On the day of in the year before me, the undersigned, personally appeared , 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 he acknowledged to me that he executed the same, and that by his signature on the instrument, the individual executed the instrument as Grantor, and that such individual made such appearance before the undersigned in

 , .

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

Notary Public

STATE OF )

) ss.:

COUNTY OF )

On the day of in the year before me, the undersigned, personally appeared , 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 he acknowledged to me that he executed the same, and that by his signature on the instrument, the individual executed the instrument as Investment Trustee, and that such individual made such appearance before the undersigned in , .

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

Notary Public

STATE OF )

) ss.:

COUNTY OF )

On the day of in the year before me, the undersigned, personally appeared , 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 he acknowledged to me that he executed the same, and that by his signature on the instrument, the individual executed the instrument as Benefits Trustee, and that such individual made such appearance before the undersigned in , .

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

Notary Public

STATE OF ALASKA )

) ss.:

THIRD JUDICIAL DISTRICT )

On the day of , 200\_, before me, the undersigned, personally appeared , 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(s)he acknowledged to me that (s)he resides at ; that (s)he is a of the Alaska Trust Company, the corporation described in and which executed the foregoing instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of \_\_\_\_\_\_\_\_\_\_\_\_\* of said corporation, and that (s)he executed the instrument by like order, in its capacity as Administrative Trustee and that such individual make such appearance before the undersigned in Anchorage, Alaska.

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

 Notary Public

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

\* “Trustees” or “Directors”

STATE OF )

) ss.:

COUNTY OF )

On the day of in the year before me, the undersigned, personally appeared , 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 he acknowledged to me that he executed the same, and that by his signature on the instrument, the individual executed the instrument as Trust Protector, and that such individual made such appearance before the undersigned in , .

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

Notary Public

SCHEDULE

1. *A different name or no name may be used for the trust.* [↑](#footnote-ref-1)
2. *Different persons may, but need not be, named for each trustee position but the grantor should not be the benefits trustee.* [↑](#footnote-ref-2)
3. *Modify the class of beneficiaries and other language as appropriate.* [↑](#footnote-ref-3)
4. *Delete or modify this statement as appropriate.* [↑](#footnote-ref-4)
5. *Delete or modify this statement as appropriate.* [↑](#footnote-ref-5)
6. *Grantor’s power of appointment could be more narrow.* [↑](#footnote-ref-6)
7. *Modify the following provisions for the balance of this paragraph as appropriate.* [↑](#footnote-ref-7)
8. *Delete this reference to the Grantor’s power to appointment if the Grantor will hold*

*none.* [↑](#footnote-ref-8)
9. *Modify the disposition as appropriate. This might include, by way of example, expanding the class of beneficiaries to include spouses of the Grantor’s descendants.* [↑](#footnote-ref-9)
10. *Delete or modify the Spouse’s power of appointment as appropriate. For example, the class of persons to or for whom the Spouse may exercise the power of appointment could be more narrow or more broad than as provided in the text. However, it probably is not appropriate to permit the Spouse to exercise the power in favor of himself or herself, his or her creditors or estate, or creditors of his or her estate.* [↑](#footnote-ref-10)
11. *Modify the division and disposition provisions as appropriate.* [↑](#footnote-ref-11)
12. *The drafter may wish to direct that the property includible in the Grantor's estate first pass into a so-called "credit shelter trust" to the extent unused unified credit under IRC § 2010 is available. Any such trust could provide that distributions are discretionary.* [↑](#footnote-ref-12)
13. *No provision for invasion for the Spouse need be provided in order for the trust to qualify for the estate tax marital deduction under IRC § 2056(b)(7) as qualified terminable interest property (QTIP). Alternatively, the authorization for invasion could be limited to a standard--e.g., the support and maintenance of the Spouse.* [↑](#footnote-ref-13)
14. *Modify this entire Article as appropriate, including excluding any spouse of the primary beneficiary as a beneficiary if that is the Grantor's wish.* [↑](#footnote-ref-14)
15. *Delete or modify this power of appointment as appropriate. If the power will be granted, the class of potential appointees to or for whom it may be exercised could be more narrow or more broad than shown in the text. However, it probably is appropriate not to permit the primary beneficiary to be able to exercise the power in favor of himself or herself, his or her creditors or estate, or creditors of his or her estate.* [↑](#footnote-ref-15)
16. *The consent of the Trustee is required to avoid inadvertent tax consequences which might occur by exercising the power in certain ways.* [↑](#footnote-ref-16)
17. *Modify or delete as appropriate.* [↑](#footnote-ref-17)
18. *Modify as appropriate but there should be no reverter to grantor under any circumstance--e.g., provide for charities to be the ultimate takers in default.* [↑](#footnote-ref-18)
19. *Modify as appropriate.* [↑](#footnote-ref-19)
20. *Delete or modify as appropriate.* [↑](#footnote-ref-20)
21. *Modify as appropriate.* [↑](#footnote-ref-21)
22. *This prohibition is contained to diminish the risk that a creditor (in this case a taxing authority as a creditor) of the Grantor could force the Trustee(s) to make payments to the Grantor to discharge any income tax obligation to the Grantor with respect to the trust income taxable to the Grantor.* [↑](#footnote-ref-22)
23. *The drafter may wish to delete this sentence if the drafter believes it shows the Grantor is not creating the trust in good faith.* [↑](#footnote-ref-23)