**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ALASKA PERPETUAL FAMILY TRUST**

**THE [INSERT NAME] ALASKA FAMILY TRUST**

**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. If the trust is structured so transfers to it are complete for Federal gift and estate tax purposes, the trust should not be included in the grantor’s estate at death. The trusts for successor beneficiaries may last perpetually under Alaska law.*

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**[INSERT NAME] ALASKA FAMILY TRUST[[1]](#footnote-2)**

**THIS AGREEMENT OF TRUST** made the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_ \_, between , residing in ,

\_\_\_\_\_\_\_\_\_\_\_\_\_, as Grantor, and PEAK TRUST COMPANY-AK of Anchorage, Alaska, as Trustee.[[2]](#footnote-3)

**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 Family Trust,1 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 Provisions During Life Depositive 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 Trustee, 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 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-4) the Grantor’s spouse (the “Spouse”) and the Grantor’s descendants, until the death of the Grantor;[[4]](#footnote-5) 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 Trustee shall advise the Grantor in writing of the 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 Trustee in writing not to make the payment or application, and, if such veto is exercised by the Grantor, the 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.[[5]](#footnote-6) Without in any way limiting the sole and absolute nature of the discretion of the 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 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.[[6]](#footnote-7) 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 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 Article, 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[[7]](#footnote-8) and, to the extent not so effectually appointed,[[8]](#footnote-9) (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 Depositive 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 with the 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,[[9]](#footnote-10) 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 Trustee, 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 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.[[10]](#footnote-11) 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 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 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.[[11]](#footnote-12) 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.[[12]](#footnote-13) 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:[[13]](#footnote-14)

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 Trustee or thereafter becomes unproductive, the Trustee may retain the same if the Trustee deems the retention of such property to be in the best interests of the trust estate, provided, however, that the Trustee, upon written demand of the Spouse, shall make such property productive or convert it to productive property within a reasonable time.

2. The 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 Trustee, in the exercise of sole and absolute discretion, shall determine.[[14]](#footnote-15)

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 Trustee 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 hereon (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 increasing 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 Trustee, in the exercise of sole and absolute discretion, shall determine. The 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 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[[15]](#footnote-16)**

## 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 Trustee 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 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 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 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 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.

**[[16]](#footnote-17)** Upon the death of the primary beneficiary, the Trustee 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 Trustee[[17]](#footnote-18) 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 Trustee, release such power of appointment with respect to any or all of the property subject to such power or may further limit the persons or entities in whose favor 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 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.

[[18]](#footnote-19) 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 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 Trustee, in the exercise of sole and absolute discretion, shall determine.[[19]](#footnote-20)

# **ARTICLE FIFTH TRUSTEE’S POWERS**

## 5.1 Powers of Trustee.

A. In addition to all powers conferred by law upon trustees, and all other powers herein granted to the Trustee, the Grantor expressly authorizes the Trustee, subject to Paragraph 6.3 of Article SIXTH, and Article SEVENTH, in the exercise of sole and absolute discretion:

(1) 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, foreign real estate or foreign securities, securities of a corporation in which any Trustee is a director, officer, employee or shareholder, securities of any corporate Trustee or any successor or affiliate corporation, 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 (including, but without limitation, common trust funds maintained by any corporate Trustee or by any successor or affiliate corporation), investment companies, investment trusts, mutual funds, real estate and other investment trusts, and interests in any partnership, limited liability company or other entity, whether or not such investments be of the character permissible for investments by fiduciaries; to make or retain any such investment without regard to the proportion any such investment or similar investment may bear to the entire trust estate, without regard to degree of diversification and without regard to whether such investment is unproductive or underproductive, provided, however that nothing herein to the contrary, the Spouse shall have the right to demand that any property held in trust created under Subparagraph B of Paragraph 2.3 hereof be made productive; to invest in interest bearing deposit accounts, or hold funds in non-interest bearing deposit accounts pending investment or disbursement thereof, in any bank, including any bank that is acting as a Trustee hereunder or any bank affiliated with any Trustee; to invest in registered mutual funds for which any Trustee hereunder, or an affiliate of any Trustee, provides investment advisory, custodial or other services for compensation paid from such mutual funds; and to execute trades of securities by, purchase from or sell securities to the dealer portfolio of, and purchase securities from the underwriting position of any affiliate of any Trustee;

(2) To sell, lease, pledge, mortgage, transfer, exchange, convert or otherwise dispose of, or grant puts, calls or options with respect to, any and all property 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 which extend beyond the period fixed by statute for leases made by fiduciaries and beyond the duration of any trust;

(3) To borrow money from any lender, including any corporate fiduciary, for any purpose connected with the protection, preservation or improvement of the trust estate, and as security to mortgage or pledge upon any terms and conditions any real or personal property forming a part of any trust estate;

(4) To permit any business in which the trust holds an interest to establish a commercial lending relationship with any corporate fiduciary and to permit such corporate fiduciary to earn interest, take and enforce security interests in collateral owned by that business, enforce all its creditor’s rights with respect to any loan to such business and otherwise profit from such lending relationship;

(5) To complete, extend, modify or renew any loans, notes, bonds, mortgages, contracts or any other obligations which may be liens or charges against the trust estate; to pay, compromise, compound, adjust, submit to arbitration, sell or release any claims or demands of the trust against others or of others against any trust 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;

(6) 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;

(7) To take part in the management of any business in which investment is retained or made hereunder and to delegate duties with respect to such management, with the requisite powers, to any employee, manager, partner or associate of such business, without liability for such delegation; to reduce, expand, limit or otherwise fix and change the operation or policy of any such business and to act with respect to any other matter in connection with any such business; to subject to the risks of any such business, any part or all of any trust estate, for such term or period as the Trustee, 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; 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 Trustee may deem necessary with respect to the continuance, management, sale or liquidation of any such business;

(8) 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;

(9) To form or cause to be formed, alone or with others, such corporations, partnerships, limited partner­ships, limited liability companies, business trusts 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 Trustee, in the exercise of sole and absolute discretion, may deem advisable;

(10) 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; provided, however, that in no event shall the situs of any trust created hereunder be changed except as provided in Paragraph 8.2 of Article EIGHTH hereof;

(11) Whenever no corporate trustee is acting hereunder, to place all or any part of the securities which at any time are held by any trust 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; to have all stocks and registered securities placed in the name of such bank or trust company or in the name of its nominee; and to appoint such bank or trust company agent and attorney to collect, receive, receipt for and disburse any income, and generally to perform the duties and services incident to a so‑called “custodian” account.

(12) To employ a broker‑dealer as custodian for all or any part of the securities at any time held by any trust and to register such securities in the name of such broker‑dealer; to register securities in the name of a nominee with or without the addition of words indicating that such security is held in a fiduciary capacity, or to hold securities in bearer form, or in uncertificated form; and to use a central depository, clearing agency or book-entry system, such as The Depository Trust Company, Euroclear or the Federal Reserve Bank of New York.

(13) To purchase life insurance 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, neither the Grantor nor the Grantor’s spouse may be designated as such beneficiary; to modify, exchange, surrender or cancel any such policies of insurance; to borrow upon and pledge any such policy in connection with a loan; to assign and distribute any and all of the rights thereunder to or for the benefit of any beneficiary of the trust; to direct the disposition of dividends or surplus; to convert said policies into different forms of insurance; and to elect methods of settlement with respect thereto;

(14) To drill, test, explore, maintain, develop and

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

(15) To manage any trust in a consolidated manner with any other trust created under Article SECOND or Article THIRD hereof or with any other trust created by the Grantor, the Grantor’s spouse or any other person which has similar terms, conditions and beneficiaries;

(16) To make a joint purchase with or to make a sale at less than fair market value to any beneficiary of a trust created hereunder; to make loans without interest or at less than market rate interest to any beneficiary; and to enter into any other transaction or agreement whether or not of a commercial nature with any beneficiary which the Trustee, in the exercise of sole and absolute discretion, may determine to reflect what would be the wishes of the Grantor;

(17) With respect to a trust, if any, of which both individuals and charity are beneficiaries, to create or make an addition to a so‑called qualified charitable lead trust with remainder to or in further trust for any one or more of the beneficiaries of the trust, or a qualified charitable remainder trust initially for the benefit of any one or more of the beneficiaries of the trust, as the Trustee, in the exercise of sole and absolute discretion, may determine; to select the qualified charitable organizations receiving a benefit from any such split-interest trust; to determine whether the trust is of the annuity, unitrust or income-only unitrust variety, the annual payout percentage or amount, and the length of the trust; provided, however, that it is the Grantor’s intention that any split-interest charitable trust created by the Trustee pursuant to this Subparagraph shall constitute a trust conferring a charitable interest which qualifies for a Federal income, gift and estate tax charitable deduction, if applicable, and accordingly, the Grantor directs that the provisions of this Agreement applying to any such split-interest charitable trust shall be construed in a manner consistent with sections 170(c), 501(c)(3), 642(c), 664, 2055 and 2522 of the Code and with the regulations and rulings which from time to time may be promulgated thereunder, and that any such trust shall be administered solely in conformity with said sections applicable to it and the regulations and rulings thereunder;

(18) To grant a term of years interest or a life estate with respect to any asset to any one or more of the beneficiaries of a trust created hereunder, as the Trustee, in the exercise of sole and absolute discretion, may determine, and to retain the power to terminate the same, retaining the reversionary interest in the trust or for the benefit of any other beneficiary of the trust, and to make any property of any trust created hereunder available for the use and benefit of any beneficiary of the trust on such terms as the Trustee, in the exercise of sole and absolute discretion, may determine;

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

(20) To permit any one or more of the beneficiaries of any trust created hereunder, as the Trustee, in the exercise of sole and absolute discretion, may determine, to occupy any real proper­ty and to use any tangible personal property forming part of the trust on such terms as the Trustee, in the exercise of sole and absolute discretion, may determine, whether for rent, rent‑free, in consideration of payment of taxes, insurance, maintenance or ordinary repairs, or otherwise, provided, however that, in the case of any trust hereunder which is eligible for the marital deduction under subparagraph B of Paragraph 2.3 hereof, such occupancy shall be rent free and any other condition shall be consistent with the Grantor’s intention that the Spouse have that degree of beneficial enjoyment of the trust property during life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust, so that the Spouse’s interest is a qualifying income interest for life for purposes of the marital deduction;

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

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

(23) If anyone adds or is deemed to add by gift or bequest property to a trust created hereunder, in the exercise of sole and absolute discretion, to hold the added property as a separate trust with terms identical to the trust to which it would have been added;

(24) In the exercise of sole and absolute discretion, to merge all or any part of the assets of any trust created hereunder with the assets of any other trust created by the Grantor, the Grantor’s spouse or any other person (whether during life or by Will) and held by the same Trustee for the benefit of the same beneficiaries and upon substantially the same terms and conditions as those set forth herein, and at the Trustee’s discretion, either (i) administer the merged assets as a single trust hereunder, or (ii) transfer the trust assets to that other trust, to be administered under the instrument governing that other trust, and thereafter terminate the trust hereunder as a separate entity; if the Trustee elects to administer the merged assets as a single trust under this Agreement, then the Trustee, in the exercise of sole and absolute discretion, may later divide that trust as provided above in this Article; without in any way limiting the discretion of the Trustee granted by this subparagraph, it is envisioned that the Trustee will not elect to combine two or more trusts with different inclusion ratios for generation-skipping transfer tax purposes;

(25) To make distributions in kind and to cause any distribution to be composed of cash, property or undivided fractional shares in property different in kind from any other distribution without regard to the income tax basis of the property distributed to any beneficiary or any trust;

(26) To allocate receipts and expenses between income and principal as the Trustee, in the exercise of sole and absolute discretion, may determine;

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

(28) To make such elections under the tax laws as the 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 adjustment of such interests shall be made by reason of any such election;

(29) To make any application of principal or income for the benefit of any beneficiary by payment to such person or persons (including, but without limitation, other trusts, estates, individuals and institutions) as the Trustee, in the exercise of sole and absolute discretion, determine (including, but without limitation, a trust of which any Trustee hereunder is also acting as Trustee, and whether such trust was created pursuant to authority granted to the Trustee hereunder or otherwise); the written receipt of the person or persons so paid shall be a full discharge to the Trustee from all liability with respect thereto, and any such payment or application may be made without bond, without intervention of any guardian, conservator or committee, and without the order of any court;

(30) To make or terminate elections with respect to S corporation stock, and to make such adjustments between income and principal to compensate for the consequences of the trust’s ownership of S corporation stock as the Trustee may deem just and equitable; provided, however, that if the trust holds S corporation stock, the Trustee shall not make adjustments that would have the effect of denying to the income beneficiary the income of the trust to which the beneficiary must be entitled in order for the trust to qualify as a Qualified Subchapter S Trust under section 1361(d) of the Code; and provided further, that if a trust holds S corporation stock no Trustee shall exercise any power conferred under this Agreement (including, but without limitation, any power conferred on the Trustee under subpar­agraphs (15)‑(29) of this Paragraph 5.1 of this Article FIFTH) that would have the effect of denying to the income beneficiary the income of the trust to which the beneficiary must be entitled in order for the trust to qualify as 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 Trustee sells any interest in a corporation or if the assets of any entity constituting a corporation in which the trust has an ownership interest are sold, and (ii) if that corporation has made an election to be taxed under Subchapter S of the Code, then in the Trustee’s sole and absolute discretion, the Trustee may distribute to the income beneficiary such amounts of principal as shall be necessary to pay any income tax caused by that sale, if the income or gain attributable to that sale is taxed directly to the income beneficiary under applicable Federal tax law;

(31) To appoint, employ and remove, at any time and from time to time, any investment counsel, accountants, depositories, custodians, brokers, consultants, attorneys, expert advisers, agents, clerks and employees, irrespective of whether any person, firm or corporation so employed shall be a Trustee hereunder or shall be a corporate affiliate of a Trustee hereunder and irrespective of whether any firm or corporation so employed shall be one in which a Trustee hereunder shall be a partner, stockholder, officer, director or corporate affiliate or shall have any interest; and to pay the usual compensation for such services out of principal or income as the Trustee may deem advisable; and such compensation may be paid without diminution of or charging the same against the commissions or compensation of any Trustee hereunder, and any Trustee who shall be a partner, stockholder, officer, director or corporate affiliate in any such firm or corporation shall nonetheless be entitled as partner, stockholder, officer, director or corporate affiliate to receive such Trustee’s share of the compensation paid to such firm or corporation;

(32) To delegate any duties or powers, discretionary or otherwise, to a co‑Trustee 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‑Trustee, other person or institution; and if such duties or powers are delegated to a co‑Trustee, the Trustee 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 may be delegated to a beneficiary or a person under a duty to support a beneficiary in contravention of the provisions of Article SEVENTH hereof, or to the Grantor or the Grantor’s Spouse;

(33) 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; and

(34) To use and expend trust property to (i) conduct environmental assessments, audits or site monitoring; (ii) take all appropriate remedial action to contain, clean up or remove any environmental hazard including a spill, discharge or contamination; (iii) institute legal proceedings concerning environmental hazards or contest or settle legal proceedings brought by any local, state, or federal agency concerned with environmental compliance or a private litigant; (iv) comply with any local, state, or federal agency order or court order directing an assessment, abatement or clean-up of any environmental hazard; and (v) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions; and no Trustee shall be liable for any loss or depreciation in value sustained by the trust as a result of the Trustee retaining any property on which there is later discovered to be hazardous materials or substances requiring remedial action pursuant to any federal, state, or local environmental law, unless the Trustee contributed to that loss or depreciation in value through willful default or misconduct or gross negligence.

B. The 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. The shares shall be held and administered by the Trustee as separate trusts but may be managed and invested in solido. One of the purposes for granting this authority, but without establishing any limitation thereby, 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 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. However, the Trustee may 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 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 Trustee may manage and invest such separate trusts in solido.

The 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 Trustee is also authorized, in the exercise of sole and absolute discretion, later to divide such trust as provided above in this paragraph B. Without in any way limiting the discretion of the Trustee granted by this paragraph, it is envisioned that the Trustee will not elect to combine two or more trusts with different inclusion ratios for generation-skipping transfer tax purposes.

## 5.2 Powers of Trustee Exercised Without Court Authorization.

The powers granted to the Trustee 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 Trustee hereunder shall have all the general powers of fiduciaries as well as all of the special powers herein expressly granted, and all powers incidental to, reasonably to be implied from or necessary to the proper exercise of the powers herein granted.

## 5.3 “Prudent Person” Rule may be Waived in Sole Discretion of Trustee.

In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would be forbidden or would be regarded as imprudent, improper or unlawful by the “prudent person” rule, “prudent investor” rule, or any other rule or law which restricts a fiduciary’s capacity to invest. The 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 Trustee may disregard any or all of the following factors:

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

(2) Whether the acquisition or retention of a particular investment or the trust investments collectively are consistent with any duty of impartiality as to the different beneficiaries. The Grantor intends that no such duty shall exist.

(3) Whether the trust is diversified. The Grantor intends that no duty to diversify shall exist.

(4) 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 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 Trustee broad discretion in managing the assets of the trusts created hereunder.

## 5.4 Life Insurance.

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.

## 5.5 Trustee Acts In Fiduciary Capacity.

Subject to the provisions of Paragraph 5.6 of this Article, every act done, power exercised or obligation assumed by a Trustee pursuant to the provisions of this Agreement shall be held to be done, exercised or assumed, as the case may be, by the Trustee acting in a fiduciary capacity and not otherwise, and every person, firm, corporation or other entity contracting or otherwise dealing with the Trustee shall look only to the funds and property of the trust estate for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Agreement, in whole or in part, and the Trustee shall not be individually liable therefor even though the Trustee did not exempt himself, herself or itself from individual liability when entering into any contract, obligation or transaction in connection with or growing out of the trust estate. The 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, willful default or gross negligence proved by clear and convincing evidence.

## 5.6 Special Trustee Liability Provision.

[[20]](#footnote-21) The Grantor recognizes that some persons may be hesitant to serve as Trustee hereunder because of a concern about potential liability. Therefore, the Grantor directs that: (A) the Trustee shall not 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 the Trust if in good faith reasonably believed by such Trustee to be in accordance with the provisions and intent hereof, except for any matter involving such Trustee’s own willful misconduct or gross negligence proved by clear and convincing evidence and (B) the 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. 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).

## 5.7 Limitations on Powers of Trustee.

Notwithstanding anything herein to the contrary, the powers granted to the Trustee hereunder are subject to, and shall not be exercised in any manner that is inconsistent with, the provisions of Article SEVENTH and/or Article NINTH hereof and shall not be exercised in any manner that would disqualify the trust created under Subparagraph B of Paragraph 2.3 of Article SECOND hereof for the marital deduction, and are subject to the right of the Spouse to demand that any property held in any trust created under said Subparagraph B of Paragraph 2.3 of Article SECOND hereof be made productive and the Grantor’s intent that any such trust qualify for the marital deduction.

# **ARTICLE SIXTH TRUSTEE PROVISIONS**[[21]](#footnote-22)

## 6.1 Nomination of Trustee for Trust under Article SECOND.

[INSERT NAME] shall act as the Trustee of each Trust under Article SECOND of this Agreement.[[22]](#footnote-23)

## 6.2 Nomination of Trustee for Trusts Under Article THIRD for Primary Beneficiaries.

[[23]](#footnote-24) (A) [INSERT NAME] shall act as the Trustee of each trust under Article THIRD of this Agreement.

(B) With respect to any trust created for a primary beneficiary who is a child of the Grantor under Article THIRD of this Agreement such child shall be a co-Trustee of such trust.

## 6.3 Method of Appointment, etc.

Any appointment or acceptance of appointment or removal of any Trustee or Trust Protector pursuant to this Article shall be made by an acknowledged instrument in writing and shall be effective upon acceptance thereof by the Trustee so appointed.

## 6.4 Appointment of Co‑Trustee.

The Grantor authorizes (but does not direct) the Trustee or Trustees acting hereunder, as the case may be, at any time and from time to time, to appoint as co‑Trustee or co-Trustees, respectively, such individual or individuals (other than the Grantor or the Spouse) or such bank or trust company as the Trustee or Trustees, as the case may be, in the exercise of sole and absolute discretion, may select by majority vote.

## 6.5 Appointment of Successor Trustees.

If there is no Trustee acting as to a trust hereunder, the successor Trustee or Trustees shall be such individual or individuals (other than the Grantor or the Spouse) or such bank or trust company as shall be appointed by the Trust Protector in the same manner as provided in Paragraph 6.6 of this Article for the removal and replacement of a Trustee; provided, however, that unless the Trustee has determined to change the situs of the trust from Alaska, at least one (1) of the successor Trustees so appointed must be an individual or a bank or trust company domiciled in Alaska.

## 6.6 Trust Protector.

[[24]](#footnote-25) 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 Paragraph 6.17 of Article SIXTH, 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.

## 6.7 Resignation of Trustees or Trust Protector.

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 acknowledged written instrument and delivered in person or by registered mail to the Trustee, or, if there are no Trustee then in office, in the manner provided in Paragraph 6.8 of this Article.

## 6.8 Manner of Notice.

Any notice directed to be given in the manner provided in this Paragraph shall be by an acknowledged instrument in writing delivered to the Grantor if the Grantor is then living and competent, or, if the Grantor is not then living and competent, to the Grantor’s guardian or conservator, or after the Grantor’s death to the Spouse if the Spouse is then living and competent or if the Spouse is not then living and competent to the primary beneficiary of the trust with respect to which the notice applies if an adult and competent, or, if not, to the parents or other legal guardians of the minor primary beneficiary and to the legal guardians, conservators or committee of the incompetent primary beneficiary of such trust.

## 6.9 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 descendant 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.

## 6.10 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.

## 6.11 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.

## 6.12 Trustee’s Compensation.

[[25]](#footnote-26) During the Grantor’s lifetime, each Trustee acting hereunder shall receive such reasonable compensation for services as trustee of any trust hereunder as is agreed upon in writing from time to time by the Grantor (or if the Grantor is not competent, by the Grantor’s conservator or guardian), or, after the Grantor’s death, by the Spouse (or if the Spouse is not competent, by the Spouse’s conservator or guardian), or, after the death of the survivor of the Grantor and the Spouse, by the primary beneficiary of the trust created hereunder if then adult and competent, or if he or she is not then adult and competent, by the parents, guardians, conservators or committee of the primary beneficiary by majority vote (and acting as provided in Para­graph 6.9 of this Article).

## 6.13 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.

## 6.14 Majority Vote.

Subject to the limitations of Article SEVENTH hereof and any effective delegation made by any Trustee pursuant to Subparagraph (31) of Subparagraph A of Paragraph 5.1 of Article FIFTH hereof, if more than two (2) Trustees are acting as to any trust hereunder they shall act by majority vote.

## 6.15 Retirement at Age [INSERT AGE].

[[26]](#footnote-27) Any individual other than a descendant of the Grantor, who serves as a Trustee or a Trust Protector[[27]](#footnote-28) hereunder from time to time, shall cease to serve upon reaching the age of [INSERT AGE] years.

## 6.16 Evidence of Action.

Any action taken pursuant to this Article relating to any removal, appointment or selection shall be evidenced by an acknowledged, written instrument, delivered to the Trustee, including any removed, appointed or selected Trustee, as the case may be, and in the case of an appointment shall be effective upon acceptance thereof by execution of an acknowledged, written instrument by the Trustee so appointed.

## 6.17 Duties of Alaska Trustee, etc.

It is the Grantor’s intention that the trusts created under this Agreement are described in Alaska Statutes (AS) 34.40.110, 13.36.035(a) and (c). Accordingly, unless the Trustee determines to move situs of a trust hereunder to another jurisdiction, 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 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).

## 6.18 Definition of Trustee.

Wherever 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.

# **ARTICLE SEVENTH TRUSTEE WHO IS A BENEFICIARY**

Notwithstanding any other provision of this Agreement (including, but without limitation, any power specifically conferred upon a Trustee hereunder), no Trustee who is currently eligible or entitled to income or principal 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 payments, distributions, applications, uses or accumulations of income or principal to or for the benefit of a beneficiary by the Trustee, (ii) the exercise or decision not to exercise any power conferred on the Trustee under Subparagraphs (15) through (29)[[28]](#footnote-29) of Paragraph 5.1 of Article FIFTH hereof, (iii) the exercise or decision not to exercise any Trust Protector’s powers, (iv) any decision about whether or not to change the situs of the trust, (v) the exercise or decision not to exercise any power as Trustee to disclaim any property or power, or (vi) 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, conservator or committee of any person who is a beneficiary, such Trustee shall not participate in the exercise, or decision not to exercise, any discretion over payments, distributions, applications or uses of trust property to or for the benefit of a beneficiary 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 Trustees or Trustee 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.

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

## 8.1 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.

## 8.2 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 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 Trustee. Upon any such transfer of situs, the trust estate may thereafter, at the election of the Trustee of said trust, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. Accordingly, if the Trustee of any trust created hereunder elects to change the situs of any such trust, the Trustee of said trust is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

## 8.3 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 that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then such trust (other than a trust created by the exercise of a power of appointment conferred hereunder which exercise commences a new rule against perpetuities period under the law of such jurisdiction) shall terminate in all events upon the expiration of the longest period that property may be held in trust under this Agreement under the law of such jurisdiction (including any applicable period in gross, such as 21 years, 90 years or 110 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this 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 date that the applicable period with respect to the application of the rule against perpetuities or similar rule commenced, those individuals shall consist of all of the descendants of the Grantor’s parents[[29]](#footnote-30) and the descendants of the parents of the Spouse, who were in being on the date such rule against perpetuities period or similar rule commenced. Upon termination of a trust pursuant to the provisions of this Paragraph,[[30]](#footnote-31) 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 or entitled to receive the income of such trust, in such amounts and proportions, including all to one to the exclusion of the others, as the Trustee, in the exercise of sole and absolute discretion, may determine prior to such termination, or, to the extent the Trustee does not so effectively determine, to the primary beneficiary, or, if the primary beneficiary is not then living, to the then living descendants of the primary beneficiary, per stirpes, or, if no descendant of the primary beneficiary is then living, to the then living descendants, per stirpes, of the lineal ancestor of the primary beneficiary of the closest degree of consanguinity to the 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 is (or was) the Grantor, or, if no descendants of such a lineal ancestor of the primary beneficiary, in accordance with the terms and conditions set forth in Article FOURTH hereof.

It is the Grantor’s wish, but not the Grantor's direction, that, if the Trustee chooses other than a per stirpital distribution, the Trustee shall discuss with the eldest living member of that family line the Trustee’s reasons for exercising the discretion so that property passes other than on a per stirpital basis.

# **ARTICLE NINTH TERMINATION OF GRANTOR TRUST STATUS**

**AND RESTRICTIONS ON GRANTOR**

## 9.1 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.[[31]](#footnote-32)

## 9.2 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 TENTH 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 ELEVENTH** **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 TWELFTH** **DEFINITIONS**

## 12.1 Child And Descendant.

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 any individual adopted by the Grantor or by any descendant of the Grantor, and any descendant by blood or adoption of any such adopted individual.

## 12.2 Per Stirpes.

A disposition in this Agreement to the descendants of a person in per stirpital parts, or to the descendants of a person per stirpes, shall be deemed to require a division into a sufficient number of equal shares to make one such share for each child of such person living at the time such disposition becomes effective and one share for each then deceased child of such person having one or more descendants then living, regardless of whether any child of such person is then living, with the same principle to be applied in any required further division of a share at a more remote generation.

## 12.3 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 lawfully married and with 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 THIRTEENTH** **MISCELLANEOUS PROVISIONS**

## 13.1 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.

## 13.2 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.

## 13.3 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.

## 13.4 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.

## 13.5 Headings.

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

## 13.6 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 FOURTEENTH** **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.[[32]](#footnote-33) This Agreement shall be construed and the trusts hereunder administered accordingly.

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

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

[INSERT NAME], Grantor

Peak Trust Company-AK, Trustee

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

TITLE

STATE OF )

) ss.:

COUNTY OF )

On the day of , 20\_ \_, before me personally came to me known and known to me to be the individual described in, is personally known to me and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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

Notary Public

STATE OF ALASKA )

: ss.:

JUDICIAL DISTRICT )

On this day of , 20\_ \_, before me

personally came to me known, who being duly sworn, did depose and say that he resides at ; that (s)he is a of Peak Trust Company-AK, 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 signed his/her name thereto by like order.

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

Notary Public

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

\* “Trustees” or “Directors”

SCHEDULE

1. *A different name or no name may be used for the trust.* [↑](#footnote-ref-2)
2. *Different persons can be named for each trustee position but the grantor should not be the independent trustee.* [↑](#footnote-ref-3)
3. *Modify the class of beneficiaries and other language as appropriate.* [↑](#footnote-ref-4)
4. *Eliminate the following “proviso” if gift to trust is intended to be complete for gift tax purposes. Grantor’s power of appointment under Paragraph 2.2 also should be deleted if it is intended that the trust should not be includible in the Grantor’s estate for Federal estate tax purposes.* [↑](#footnote-ref-5)
5. *Delete or modify this statement as appropriate.* [↑](#footnote-ref-6)
6. *Delete or modify this statement as appropriate.* [↑](#footnote-ref-7)
7. *Grantor’s power of appointment could be more narrow. Eliminate this power and the Grantor’s power to veto distribution to others under Paragraph 2.1 if the gift to trust is intended to be complete for gift tax purposes.* [↑](#footnote-ref-8)
8. *Modify the following provisions for the balance of this paragraph as appropriate.* [↑](#footnote-ref-9)
9. *Delete this reference to the Grantor’s power to appointment if the Grantor will hold none.* [↑](#footnote-ref-10)
10. *Modify the disposition as appropriate. This might include, by way of example, expanding the class of beneficiaries to include spouse of the Grantor’s descendants.* [↑](#footnote-ref-11)
11. *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-12)
12. *Modify the division and disposition provisions as appropriate.* [↑](#footnote-ref-13)
13. *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-14)
14. *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-15)
15. *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-16)
16. *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-17)
17. *The consent of the Trustee is required to avoid inadvertent tax consequences which might occur by exercising the power in certain ways.* [↑](#footnote-ref-18)
18. *Modify or delete as appropriate.* [↑](#footnote-ref-19)
19. *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-20)
20. *Modify as appropriate. For example, if different persons hold different trustee positions, this subparagraph could be limited to only certain positions or only certain named trustees.* [↑](#footnote-ref-21)
21. *Modify as appropriate. Trustee provisions are often specially drafted to reflect the specific circumstances and wishes of the Grantor.* [↑](#footnote-ref-22)
22. *Modify as appropriate--e.g., one or more trustees have power over distributions, one or more trustees have power to direct investments, and one or more have only administrative powers, and define these powers if different trustees hold different trustee positions.* [↑](#footnote-ref-23)
23. *Modify as appropriate--e.g., one or more trustees have power over distributions, one or more trustees have power to direct investments, and one or more have only administrative powers, and define these powers if different trustees hold different trustee positions.* [↑](#footnote-ref-24)
24. *Delete or modify as appropriate.* [↑](#footnote-ref-25)
25. *Modify as appropriate. Some drafters may believe it is inappropriate for tax or other reasons for the Grantor to set trustee compensation.* [↑](#footnote-ref-26)
26. *Delete or modify as appropriate. For example, the Grantor may not wish to require that individuals cease serving upon reaching a certain age or may wish it to apply even to the Grantor’s descendants.* [↑](#footnote-ref-27)
27. *Delete reference to Trust Protector if there will be none.* [↑](#footnote-ref-28)
28. *Modify if appropriate if, for example, Subparagraphs are renumbered.* [↑](#footnote-ref-29)
29. *Modify as appropriate.* [↑](#footnote-ref-30)
30. *Modify as appropriate.* [↑](#footnote-ref-31)
31. *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 of the Grantor with respect to the trust income taxable to the Grantor.* [↑](#footnote-ref-32)
32. *The drafter may wish to delete this sentence if the drafter believes it shows the Grantor is not creating the trust in good faith. Add the following sentence if the trust is structured so transfers to the trust are complete for gift tax purposes: It is also the Grantor’s intention that no portion of the assets held hereunder shall be includible in the estate of the Grantor for federal estate tax purposes.* [↑](#footnote-ref-33)