These sample provisions are intended as an option for review and use by competent legal counsel. Peak Trust Company does not provide legal or drafting advice. Prior to acceptance of a trust for which Peak Trust Company will act as trustee, Peak will generally require some form of acceptable language for each of the following areas:

* Trustee Indemnification
* Authority to Resign
* Trustee Compensation
* Spendthrift Provision
* Situs Provision

General Indemnification - Special Trustee Liability Provision[[1]](#footnote-1)

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

Authority to Resign as Trustee

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

Trustee Compensation

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

Spendthrift Provision

The interest of a beneficiary 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 Trustees, within the meaning of Alaska Statute 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.

Situs Provision – Intent to Create an Alaska Trust

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

*OPTIONAL* – Direction Not to Inform or Account to Discretionary Beneficiaries

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

1. *Should be modified depending on the type of Trustees/Advisors acting.* [↑](#footnote-ref-1)