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, in the case of the Peak Trust Company as Trustee, the Grantor directs that: (1) the Trustee shall not incur any liability by reason of any error of judgement, 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 believe by such Trustee to be in accordance with the provisions and intent hereof, except for matter involving such Trustee’s own willful misconduct or gross negligence proved by clear and convincing evidence, and (2) 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. 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 the Trustee hereunder be liable for any matter with respect to which it is not expressly authorized to participate hereunder.

Indemnification of Distribution Trust Adviser/Trustee:

**Limitation on Trustee.** During such time that a distribution trust adviser is serving hereunder, it is my intent that the then serving Trustee be deemed a “directed fiduciary” as defined under Nevada Law, as same may be amended from time to time, with respect to that portion of any trust with respect to which such distribution trust adviser is serving hereunder. Accordingly, during such time when a distribution trust adviser is serving hereunder, the trustee (i) shall be prohibited from exercising any power described in this article with respect to that portion of any trust which the distribution trust adviser is currently acting as distribution trust adviser, unless acting at the direction of the distribution trust adviser, (ii) shall have no responsibility or liability for any loss that may occur by reason of depreciation or for any other loss that may occur from the exercise of the power described in this article, including but not limited to the purchase, retention, sale or other disposition of any investment and for making any such investment decisions upon the written direction of the distribution trust adviser, except in a case of the trustees own willful misconduct or gross negligence, and (iii) shall be indemnified and held harmless for any losses, liabilities, claims or other actions which the trustee may incur by reason of the distribution trust adviser’s acts or for acting in accordance with such written directions. Any expenses incurred by the trustee in defending an action brought against the trustee and arising from the activities of the distribution trust adviser shall be paid out of the property of the trust for which the distribution trust adviser is serving.

**No Liability for Trustee’s Acts.** The Distribution Trust Adviser need not inquire into the Trustee’s performance of its duties and shall not be held liable for any loss whatsoever to any trust hereunder, unless it results from actions taken by the distribution trust adviser in bad faith.

Indemnification of Investment Trust Adviser/Trustee:

**Limitation on Trustee.** During such time that an investment trust adviser is serving hereunder, it is my intent that the then serving trustee be deemed a “directed fiduciary” as defined under Nevada Law, as same may be amended from time to time, with respect to that portion of any trust with respect to which such investment trust adviser is serving hereunder. As a directed fiduciary, the trustee (i) shall have no power or authority to exercise any power described in this article as exercisable by the investment trust adviser, unless acting at the direction of the investment trust adviser, (ii) shall have no responsibility or liability for any loss that may occur by reason of depreciation or for any other loss that may occur from the exercise of the powers described in this article, including but not limited to the purchase, retention, sale or other disposition of any investment and for making any such investment decisions upon the written direction of the investment trust adviser, except in a case of the trustees’ own willful misconduct, and (iii) shall be indemnified and held harmless, to the fullest extent permitted under applicable law, for any losses, liabilities, claims, or other actions which the trustee may incur by reason of the investment trust adviser’s acts or for acting in accordance with such written directions. Any expenses incurred by the trustee defending in action brought against the trustee and arising from the activities of the investment trust adviser shall be paid out of the property of the trust with respect which the investment trust adviser was serving.

**No Liability for Trustee’s Acts.** The Investment Trust adviser need not inquire into the trustee performance of its duties and shall not be held liable for any loss whatsoever to any trust hereunder, including any loss attributable to the acts or omissions of the trustee, unless it results from actions taken by the investment trust adviser in bad faith.

Authority to Resign as Trustee

Any Trustee may resign from office without leave of court at any time and for any reason. Any such resignation shall be made by an acknowledged instrument in writing delivered to the other Trustee or Trustees, or if there are no Trustees then in office to the competent adult beneficiaries and the parents or guardians of the minor or incompetent beneficiaries.

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 Nevada 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

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 estate created here under 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 Internal Revenue Code of 1986, as amended, with respect to interests herein.

Situs Provision – Intent to Create a Nevada Trust

The original situs of the trusts contained hereunder shall be Nevada. The situs of any trust created hereunder may be maintained in any jurisdiction (including outside of 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 elect to change the situs of any such trust, the Trustee of said trust are hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

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