

### 3. Investment Allocation When My Trust Does Not Have Outstanding Obligations

During any period when my Trust does not have any outstanding financial obligations, my Trustee shall maintain the following investment allocation: 75 percent in Class I, and no more than 25 percent, in the aggregate, of both Classes II and III, with no more than 10 percent in Class III.

### 4. Requirement to Replenish Principal

With respect to Class III investments, I instruct that my Trustee shall have the discretion to counsel with my beneficiaries who show a desire to engage in an actively managed business, and to assist in the funding of such businesses with an investment of trust principal. In the event that such investment(s) do not demonstrate the potential to generate a positive return on the investment for a period of 12 months and/or require continual capital expenditures in excess of the investment's return aggregating to 150% the value of the initial investment, my Trustee shall not invest any additional trust principal in Class III until such time as the principal lost in the business venture is replenished to the level that existed prior to the investment in the failed business.

### 5. Asset Allocation within Class I

Specifically with respect to investments in Class I assets, my Trustee shall follow reasonably prudent asset allocation guidelines with respect to country classes (developed v. emerging), industry classes, and currency classes. In addition, my Trustee shall specifically limit all investments in futures, options and all other derivatives to no more than five (5%) percent of the total value of trust principal invested in Class I assets.

### 6. Base Principal Amount

The base principal amount shall be adjusted every five years. For purposes of adjusting the base principal amount the value shall be the value of the trust on the 31<sup>st</sup> day of December of the year in which the adjustment is required.

## 7. Investment Loans

My Trustee is authorized to make loans to beneficiaries for investment or business purposes, as defined in the Code, in the foregoing asset classes. Loans will be allocated to the asset class for which the loan proceeds are used by the beneficiaries, and treated as a direct investment by the Trust in the asset class.

In the event my Trustee provides loans for a business investment in Class III, my Trustee shall require that the beneficiary obligated on the loan shall provide my Trustee with audited financial statements as soon as practicable following the close of each fiscal year of the business investment.

My Trustee, in connection with any loan made under this investment policy shall have the right to audit the use of loan proceeds by beneficiaries. If a beneficiary refuses to respond to my Trustee's audit requests, then my Trustee shall have full discretion to not distribute any trust assets to such beneficiary until such time as the audit is complete. In the event a beneficiary breaches the terms of a loan, my Trustee may, in its discretion, require the beneficiary to restore amounts lost due to the beneficiary's breach of the loan or may charge the loss against the beneficiary's trust share.

## NOTIFICATION OF DEMAND RIGHT

This notice is to inform you that on \_\_\_\_\_ a gift was made to the BEATRICE DAVIS FAMILY HERITAGE TRUST, dated July \_\_\_\_, 2000, under which you are a beneficiary. As a beneficiary, you have the right to withdraw your share of this gift or any other subsequent gifts made to the trust within a 30 day period following receipt of this notice. However, in no event can the total amount withdrawable by you in any calendar year exceed the annual limit on withdrawals as provided in the trust. You may contact the Trustee to find out your share of this or of any other gifts made as to which you have a right of withdrawal. No notice will be given to you of any other gifts made to the trust this year, so you must contact the Trustee to find out the status of your right to withdraw.

Generally, if you wish to exercise your withdrawal rights, you must file a demand to withdraw in writing with the Trustee prior to 30 days following the date you receive this notice. To the extent that the withdrawal right is not exercised in a timely fashion, it lapses in whole or in part, and the lapsed share of the gift is added permanently to the trust fund. Although generally withdrawal rights as to a gift lapse at the end of the 30 day period following the date the gift has been made, they may continue to be exercisable in whole or in part based on the formula contained in Article Three of the trust.

The amount that may have been withdrawn under a lapsed withdrawal power cannot be withdrawn later, but the lapse of a right to withdraw a contribution to the trust does not affect your right to withdraw future gifts to the trust.

If you need any additional information to assist you in making a decision regarding the exercise of your withdrawal rights, or if you wish to exercise your withdrawal rights, you must contact the Trustee in writing.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Trustee

### WAIVER OF WITHDRAWAL

I acknowledge receipt of this Notification of Demand Right. I waive and release my right to demand my share of this gift from the trust. I do not waive or release my right to subsequent gifts made to the trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CAROLINE D. DAVIS

## NOTIFICATION OF DEMAND RIGHT

This notice is to inform you that on \_\_\_\_\_ a gift was made to the BEATRICE DAVIS FAMILY HERITAGE TRUST, dated July \_\_\_\_\_, 2000, under which you are a beneficiary. As a beneficiary, you have the right to withdraw your share of this gift or any other subsequent gifts made to the trust within a 30 day period following receipt of this notice. However, in no event can the total amount withdrawable by you in any calendar year exceed the annual limit on withdrawals as provided in the trust. You may contact the Trustee to find out your share of this or of any other gifts made as to which you have a right of withdrawal. No notice will be given to you of any other gifts made to the trust this year, so you must contact the Trustee to find out the status of your right to withdraw.

Generally, if you wish to exercise your withdrawal rights, you must file a demand to withdraw in writing with the Trustee prior to 30 days following the date you receive this notice. To the extent that the withdrawal right is not exercised in a timely fashion, it lapses in whole or in part, and the lapsed share of the gift is added permanently to the trust fund. Although generally withdrawal rights as to a gift lapse at the end of the 30 day period following the date the gift has been made, they may continue to be exercisable in whole or in part based on the formula contained in Article Three of the trust.

The amount that may have been withdrawn under a lapsed withdrawal power cannot be withdrawn later, but the lapse of a right to withdraw a contribution to the trust does not affect your right to withdraw future gifts to the trust.

If you need any additional information to assist you in making a decision regarding the exercise of your withdrawal rights, or if you wish to exercise your withdrawal rights, you must contact the Trustee in writing.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Trustee

### WAIVER OF WITHDRAWAL

I acknowledge receipt of this Notification of Demand Right. I waive and release my right to demand my share of this gift from the trust. I do not waive or release my right to subsequent gifts made to the trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CHRISTOPHER D. DAVIS



## NOTIFICATION OF DEMAND RIGHT

This notice is to inform you that on \_\_\_\_\_ a gift was made to the BEATRICE DAVIS FAMILY HERITAGE TRUST, dated July \_\_\_\_, 2000, under which you are a beneficiary. As a beneficiary, you have the right to withdraw your share of this gift or any other subsequent gifts made to the trust within a 30 day period following receipt of this notice. However, in no event can the total amount withdrawable by you in any calendar year exceed the annual limit on withdrawals as provided in the trust. You may contact the Trustee to find out your share of this or of any other gifts made as to which you have a right of withdrawal. No notice will be given to you of any other gifts made to the trust this year, so you must contact the Trustee to find out the status of your right to withdraw.

Generally, if you wish to exercise your withdrawal rights, you must file a demand to withdraw in writing with the Trustee prior to 30 days following the date you receive this notice. To the extent that the withdrawal right is not exercised in a timely fashion, it lapses in whole or in part, and the lapsed share of the gift is added permanently to the trust fund. Although generally withdrawal rights as to a gift lapse at the end of the 30 day period following the date the gift has been made, they may continue to be exercisable in whole or in part based on the formula contained in Article Three of the trust.

The amount that may have been withdrawn under a lapsed withdrawal power cannot be withdrawn later, but the lapse of a right to withdraw a contribution to the trust does not affect your right to withdraw future gifts to the trust.

If you need any additional information to assist you in making a decision regarding the exercise of your withdrawal rights, or if you wish to exercise your withdrawal rights, you must contact the Trustee in writing.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Trustee

### WAIVER OF WITHDRAWAL

I acknowledge receipt of this Notification of Demand Right. I waive and release my right to demand my share of this gift from the trust. I do not waive or release my right to subsequent gifts made to the trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CHERYL L. DAVIS

## NOTIFICATION OF DEMAND RIGHT

This notice is to inform you that on \_\_\_\_\_ a gift was made to the BEATRICE DAVIS FAMILY HERITAGE TRUST, dated July \_\_\_\_, 2000, under which you are a beneficiary. As a beneficiary, you have the right to withdraw your share of this gift or any other subsequent gifts made to the trust within a 30 day period following receipt of this notice. However, in no event can the total amount withdrawable by you in any calendar year exceed the annual limit on withdrawals as provided in the trust. You may contact the Trustee to find out your share of this or of any other gifts made as to which you have a right of withdrawal. No notice will be given to you of any other gifts made to the trust this year, so you must contact the Trustee to find out the status of your right to withdraw.

Generally, if you wish to exercise your withdrawal rights, you must file a demand to withdraw in writing with the Trustee prior to 30 days following the date you receive this notice. To the extent that the withdrawal right is not exercised in a timely fashion, it lapses in whole or in part, and the lapsed share of the gift is added permanently to the trust fund. Although generally withdrawal rights as to a gift lapse at the end of the 30 day period following the date the gift has been made, they may continue to be exercisable in whole or in part based on the formula contained in Article Three of the trust.

The amount that may have been withdrawn under a lapsed withdrawal power cannot be withdrawn later, but the lapse of a right to withdraw a contribution to the trust does not affect your right to withdraw future gifts to the trust.

If you need any additional information to assist you in making a decision regarding the exercise of your withdrawal rights, or if you wish to exercise your withdrawal rights, you must contact the Trustee in writing.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Trustee

## WAIVER OF WITHDRAWAL

I acknowledge receipt of this Notification of Demand Right. I waive and release my right to demand my share of this gift from the trust. I do not waive or release my right to subsequent gifts made to the trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
WINFIELD B. DAVIS

# Exhibit 2

# Exhibit 2

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI – PROBATE DIVISION  
AT 415 East 12<sup>th</sup> Street, Kansas City, MO 64106

IN THE ESTATE OF

ESTATE NUMBER

Beatrice B. Davis,  
Deceased

12P8-PR00143

STATEMENT AS TO DEATH AND PRESENTMENT OF  
INSTRUMENT IN WRITING FOR PROBATE

The undersigned states that the above named decedent, who resided at 1001 West 59<sup>th</sup> Terrace,  
Kansas City, MO 64113 and died on January 5<sup>th</sup>, 2012 at 8101 Mission Road Apt. 25, Prairie Village,  
KS 66208

That the surviving spouse of decedent is none

whose address is n/a

That said decedent left two (2) instruments in writing, dated 11 May 1998 and 18 May 2004

- \* That said instrument dated 11 May 1998 self-proved, per Sec. 474.337, RSMO
- \* That said instrument dated 18 May 2004 self-proved, per Sec. 474.337, RSMO
- \* That the subscribing witnesses to instrument dated 11 May 1998 are Christopher J. Anderson and John A. Vering III.
- \* That the subscribing witnesses to instrument dated 18 May 2004 are Christopher D. Davis and Terry M. Watts.

WHEREFORE, your petitioner prays that after said instrument has been duly proved, that an order be entered admitting the same to probate and recorded as the Last Will and Testament of said decedent.

FILED - PROBATE DIV.  
JACKSON CO. MO - KC  
12 MAY 18 PM 12:48  
[Signature]

The undersigned swears that the matters set forth are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: \_\_\_\_\_

PETITIONER: CHRISTOPHER D. DAVIS

ADDRESS: 514 W. 26<sup>th</sup> Street, Suite 3E, Kansas City, MO zip: 64108

TELEPHONE NUMBER: ( 816 ) 822-8536

ATTORNEY FOR ESTATE;

Lehnardt & Lehnardt, LLC

Stephen K. Lehnardt



MO Bar No. 44968

TELEPHONE NUMBER: ( 816 ) 407-1400

E-MAIL ADDRESS: STEPHEN@LEHNARDT.COM

# Exhibit 3

# Exhibit 3

# AlaskaUSA<sup>®</sup> Trust Company

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## ACCEPTANCE AS TRUSTEE

WHEREAS Alaska Trust Company, the currently serving Trustee of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, has been removed as Trustee by Stephen K. Lehnardt, the Trust Protector, and

WHEREAS Alaska USA Trust Company has been appointed as successor Trustee by the above-referenced Trust Protector,

NOW THEREFORE, Alaska USA Trust Company hereby accepts its appointment as Trustee of the BEATRICE B. DAVIS FAMILY HERITAGE TRUST dated July 28, 2000.

Dated this 21<sup>st</sup> day of August, 2011.

Alaska USA Trust Company

By:

Its:

*James F. Campbell*  
*Senior Trust Officer*

# Exhibit 4

# Exhibit 4



# AlaskaUSA<sup>®</sup> Trust Company

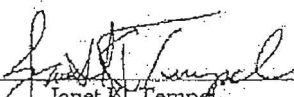
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## RESIGNATION OF TRUSTEE

Alaska USA Trust Company is the currently serving trustee of THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST dated July 28, 2000 (the "Trust"). Pursuant to Article Eleven, Section 1 of the trust document, Alaska USA Trust Company does hereby tender its resignation as trustee of the Trust effective as of December 5, 2013 or upon the acceptance of trusteeship by a successor trustee, whichever occurs earlier.

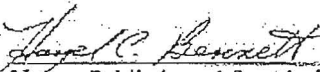
Dated this 30<sup>th</sup> day of October, 2013.

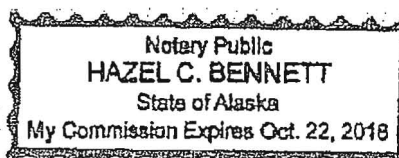
Alaska USA Trust Company

  
By: Janet K. Tempel  
Its: Senior Trust Officer

STATE OF ALASKA       )  
                                  )  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of October, 2013, by Janet K. Tempel, Senior Trust Officer of Alaska USA Trust Company, an Alaska corporation, on behalf of said corporation.

  
Notary Public in and for Alaska  
My commission expires: 10/22/16



# Exhibit 5

# Exhibit 5

# **First Amendment to the Beatrice B. Davis Family Heritage Trust**

On July 28, 2000 Beatrice B. Davis, signed the Beatrice B. Davis Family Heritage Trust ("my trust"), more formally known prior to amendment as:

Alaska USA Trust Company, Trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000.

Article Fourteen of the trust permits the Trust Protector to amend the trust in writing as set forth in the "Memorandum of Action by Trust Protector" integrated and incorporated herein by this reference as if set out here in full. This Amendment represents the First Amendment to the trust and is made in order to effectuate a change in situs, applicable state law, trustee, capital and surplus requirements, and trust administration necessary to accomplish the foregoing.

## **Section 1.01 Amendment**

The Trust Protector hereby amends the trust as follows:

**FIRST: SITUS AND APPLICABLE STATE LAW.** Article One, Section 2 is hereby amended in its entirety to read as follows:

### **Article One, Section 2. Application of Nevada Trust Law**

I intend that this trust and the trusts created under this Agreement are trusts described in Nev. Rev. Stat. §§ 166.010-166.170 and any other relevant Nevada Statutes as amended from time to time. Accordingly, unless the Trustee moves the situs of this trust or any trust created hereunder to another jurisdiction, I direct that

At all times at least one trustee of each trust shall be a "qualified person" under Nevada law; and

The duties of that trustee shall include the duty and responsibility to maintain books and records of the trust in Nevada and to prepare or to arrange for the preparation of the tax returns of the trust; and

At least some assets of the trust shall be deposited in or subject to the laws of Nevada as and if required by Nevada law; and

At least part of the administration of the trust shall occur in Nevada as required by law and in accordance with Nevada law.

Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

Any course of study or instruction at any institution for specialized, vocational, or professional training.

Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

Distributions for education may include tuition, fees, books, supplies, living expenses, travel, and spending money to the extent that they are reasonable.

**e. Personal Representative**

For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee, or any other form of personal representative.

**f. Disability**

Except as otherwise provided in this agreement, any individual may be treated as disabled, incompetent, or legally incapacitated if:

The individual has been declared or adjudicated as such by a court of competent jurisdiction, or

A guardian, conservator, or other personal representative of such individual's person or estate has been appointed by a court of competent jurisdiction, or

The individual has been certified as such in writing by at least two licensed physicians, or

The individual has disappeared or is absent for unexplained reasons, or the individual is being detained

under duress where the individual is unable to effectively manage his or her property or financial affairs, or

The individual suffers from a drug, alcohol, chemical, gambling or other dependency addiction, as certified in writing by our Trustee and at least one licensed physician. If the disability of a Trustee is in question, that individual Trustee shall not participate in the decision.

**g. Independent Trustee**

As used in this agreement, an "independent" Trustee must be one or more persons other than me, no more than half of whom are "Related or Subordinate Parties", as defined in Section 672(c) of the Code, who are subservient to my wishes within the meaning of Section 674(c) of the Code.

**h. Duress or Legal Compulsion**

A person shall be deemed to be acting under "duress or legal compulsion" if that person has been compelled by legal process to take an action, or if such person has been threatened with legal sanctions or liability if such person fails to take an action.

**i. Immediate Family**

*Immediate Family* means Beatrice B. Davis, Christopher D. Davis and Caroline D. Davis, their spouses, other than a spouse who is legally separated from the person under a decree of divorce or separate maintenance, and their descendants.

**j. Spouses**

An individual is a "spouse" if such individual is the then current spouse of a child of mine on the signing date of this trust. If an individual enters into a valid marital union, as defined in paragraph a. of this section, with a child of mine or a beneficiary of mine following the signing date of this trust, then such individual may qualify as a "spouse" if that if the marital union exists continuously for a period of ten years, and that individual is not legally separated from the person under a decree of divorce or separate maintenance.

## Section 2. The Rule Against Perpetuities

It is my intent and desire that the trust shares created in this agreement shall last in perpetuity for the benefit of my descendants.

The trust shares created in my trust shall exist in perpetuity to the fullest extent permitted by Alaska law. If the situs of this trust is changed to another jurisdiction, the trust share created in my trust shall exist in perpetuity to the fullest extent permitted by the law of the trust situs. My trust or any trust share created in my trust that is deemed to be subject to a Rule Against Perpetuities or similar rule in any jurisdiction which limits the period during which property can be held in trust shall terminate upon the expiration of the longest period that property may be held under the law of such jurisdiction. This restriction shall not apply to a trust created by any exercise of a power of appointment conferred in my trust that effectively commences a new rule against perpetuities period consistent with the law of that jurisdiction.

This period shall include any applicable period in gross, (such as 21 years, 90 years or 110 years). However, if the jurisdiction has a Rule Against Perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this Section shall apply only to such property.

If under the law of such jurisdiction the longest period under which property may be held in trust is determined or is alternatively determined with reference to the death of the last survivor of a group of individuals living on the date my trust was created, each trust created in this agreement shall terminate twenty-one years after the death of the last survivor of the group composed of me, the descendants of my grandparents and the descendants of his late majesty King George VI living on the date this trust is created. At that time, the property held in trust shall be discharged of any further trust, and shall immediately vest in and be distributed to those persons entitled to receive or have the benefit of the income from the respective trust.

For purposes of distributions under this Section only, it shall be presumed that any person then entitled to receive any discretionary payments of the income of a separate trust is entitled to receive all of the income, and it shall be presumed that any class of persons entitled to receive discretionary payments of income is entitled to receive all of such income.

### **Section 3. Protective Clause**

The Trustmaker intends that the trusts created under this Agreement are described in Alaska Statutes (AS) 34.40.110, 13.36.035(a) and (c) and shall at all times meet the requirements of such trusts, except on transfer to another permitted situs.

The Trustee, within the meaning of AS 34.40.110(a) shall not either voluntarily or involuntarily transfer a beneficiary's interest, including the Grantor, of any trust hereunder before the payment or delivery of the interest to the beneficiary. 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. 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. 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.

To the fullest extent permitted by Alaska law, the interests of all the beneficiaries in the various trusts and trust property subject to this agreement shall not be alienated, pledged, anticipated, assigned, or encumbered unless specifically authorized by the terms of this agreement.

Such interests shall not be subject to legal process or to the claims of any creditors while such interests remain trust property.

Notwithstanding any other provisions of this Trust Agreement, if the Trustee, in the Trustee's sole discretion, determines any part, or all of the Trust property, may be subject to loss in contravention of this section, the Trustee may appoint a Trustee in another jurisdiction, either in or outside the United States, and resign as Trustee, so long as doing so will not terminate the Trust.

### **Section 4. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom my Trustee holds a

trust created under this agreement, such distributions shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

## **Section 5. Contest Clause**

If any person, including a beneficiary, shall in any manner, directly or indirectly, attempt to contest or oppose the validity of this agreement, or commences or prosecutes any legal proceedings to set this agreement aside, then in such event such person shall forfeit his or her share, cease to have any right or interest in the trust property, and shall be deemed to have predeceased me.

Should any person disclaim his or her interest, in whole or in part, in any trust created for his or her benefit in this trust agreement the result of which would be for that person to receive trust property free of trust earlier than provided by the terms of the trust, then the disclaiming person shall forfeit his or her interest in the trust, shall cease to have any right or interest in the trust property, and shall be deemed to have predeceased me.

## **Section 6. Changing the Trust Situs**

Except as expressly provided herein, the situs of this agreement or any subtrust established hereunder may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement or such subtrust, with the consent of any then-acting Protector and the Trustee thereof, which shall be given only after Trustee has obtained advice from counsel as to the tax and other consequences of a change in situs.

Upon a change of situs, the Trust Protector may amend this instrument by its written action to change the references to Alaska or Alaska law to references to such new situs or the law of such new situs, and take such action as may be required to conform the terms of this agreement to the terms of law of such situs in order to achieve the purposes for which this trust was created. During the life of the Trustmaker, the situs may not be changed unless my Trustee has obtained an opinion of legal counsel to the effect that the change in situs will not impact adversely on the spendthrift provisions of this Trust or



cause inclusion of the assets held in this trust in the taxable estate of the Trustmaker or any beneficiary hereof.

In making the determination to change the situs of this trust or of any subtrust created hereunder, I encourage my beneficiaries to consider whether or not any proposed trust situs has a rule against perpetuities which would require the distribution of the corpus of this trust sooner than would otherwise be required in the then current situs.

The situs may be changed to a jurisdiction within or without the United States. If the situs is so changed, this Trust shall then, at the election of the Trustee, be administered exclusively under the laws of such jurisdiction, no acts of administration or investment need be conducted in Alaska, and any requirement for a Trustee to be a qualified person under Alaska law shall, instead, be deemed to be a requirement that the Trustee be a person who is qualified to serve as a Trustee of a trust governed by the laws of such jurisdiction, or as may be required for the trust to be so governed.

If such consent is obtained, the beneficiaries shall notify my Trustee in writing of such change of trust situs, and shall if necessary designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement. A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

## **Section 7. General Matters**

The following general matters of construction shall apply to the provisions of this agreement:

### **a. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

b.           **Headings of Articles, Sections, and Paragraphs**

The headings of Articles, Sections, and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

c.           **Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or.

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

d.           **Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

e.           **Applicable State Law**

The validity of this trust shall be determined by reference to the laws of the State of Alaska.

Questions with regard to the construction and administration of the various trusts contained in this agreement shall be determined by reference to the laws of the state in which the trust is then currently being administered.

**f. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**g. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**h. Disclaimers**

Any beneficiary hereunder may disclaim all or any portion of any interest in property or power with respect to property passing to or for the benefit of such beneficiary under this trust within the time and under the conditions permitted by law with regard to disclaimers.

Such disclaimers may be exercised by delivering an irrevocable and unqualified refusal to accept all or any portion of such interest or power to my Trustee.

**Section 8. Actions for a Minor or Incapacitated Beneficiary**

In the case of any action taken pursuant to this Agreement on behalf of a minor or incapacitated beneficiary, the parent(s), guardian(s), conservator(s) or committee of each minor or incompetent child or descendant of the Trustmaker 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 Trustmaker, 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 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 Trustmaker or which ancestor is the Trustmaker shall act on behalf of the minor or incompetent beneficiary.

I have executed this agreement the day and year first written above.

I certify that I have read my foregoing irrevocable trust agreement, and that it correctly states the terms and conditions under which the trust property is to be held, managed, and disposed of by my Trustees. I approve this irrevocable trust in all particulars, and request my Trustees to execute it.

Beatrice Davis  
BEATRICE DAVIS, Trustmaker

*The remainder of this page intentionally left blank.*



ALASKA TRUST COMPANY, Trustee

BRANDON J. CINTULA

*Vice President & Trust Officer*



*The remainder of this page was intentionally left blank.*

STATE OF MISSOURI  
COUNTY OF JACKSON

)  
) ss.  
)

The foregoing irrevocable trust agreement was acknowledged before me on  
July 28, 2000, by BEATRICE DAVIS, as Trustmaker.

Witness my hand and official seal.

My commission expires:

12/19/2003

  
NOTARY PUBLIC

KARL G KRAUSS  
Notary Public - State of Missouri  
County of Clay  
My Commission Expires Dec 19, 2003

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)  
) ss.  
)

The foregoing irrevocable trust agreement was acknowledged before me on the 22<sup>nd</sup> day of August, 2000, by ALASKA TRUST COMPANY, as Trustee.

Witness my hand and official seal.

My commission expires:

5/8/2004

  
NOTARY PUBLIC

Catherine Johnson, Notary Public  
State of Alaska  
My Commission Expires 5/8/2004





## **Schedule A**

### **Initial Funding**

Ten dollars, the receipt of which is acknowledged.

## Schedule B

### Investment Policy

#### General Investment Rules

My Trustee shall, in determining the proper asset allocation for investing Trust corpus, take into account the following instructions:

##### 1. Definition of Asset Classes

For purposes of this subparagraph a., the following asset classes shall apply:

**Class I—Tradable Liquid Securities.** Class I assets shall consist of stocks, bonds, derivatives, and other types of securities, regularly traded for investment purposes on any stock exchange.

**Class II—Illiquid Passive Investments.** Class II assets shall include: real estate; limited partnerships holding real estate, oil and gas, mining interests, or agricultural interests; venture capital investments; leveraged buyouts; and all other non-operating business interests.

**Class III—Actively Managed Businesses.** Class III assets shall include all active business interests which are owned by the Trust and actively managed by the Trustee or my beneficiaries.

##### 2. Investment Allocation When Trust has Outstanding Obligations

During any period when my Trust shall have any outstanding financial obligations, my Trustee shall maintain the following investment allocation with respect to the amount of trust principal required to generate income sufficient to meet the obligation (the "base principal amount"): 90 percent in Class I, and no more than 10 percent, in the aggregate, of both Classes II and III. My trustee may follow the asset allocation in paragraph 3 below for any amounts of trust principal which exceeds the base principal amount.

My Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

My Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

My Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that my Trustee may choose. My Trustee may open such accounts in the name of the Trustee (with or without disclosing fiduciary capacity) or in the name of my trust. Where an account is in the name of the trust, checks on that account, and authorized signatures need not disclose the fiduciary nature of the account or refer to any trust or Trustee.

**n. Mortgage Powers**

My Trustee shall have the power to enter into any mortgage whether as a mortgagee or mortgagor; to purchase mortgages on the open market, and to otherwise buy, sell, or trade in first or subordinate mortgages.

My Trustee may reduce the interest rate on any mortgage and consent to the modification or release of any guaranty of any mortgage.

My Trustee may continue mortgages upon and after maturity with or without renewal or extension, and may foreclose any mortgage. My Trustee may purchase the mortgaged property or acquire it by deed from the mortgagor without foreclosure.

**o. Nominee Powers**

My Trustee may hold any trust property in the names of my Trustee, or in the name of a nominee, and may enter into agreements to facilitate holding such property. My Trustee may accomplish such with or without disclosing its fiduciary capacity.

p.           Nonproductive Property

My Trustee may hold property which is non-income producing or is otherwise nonproductive if the holding of such property is, in the sole and absolute discretion of my Trustee, in the best interests of the beneficiaries.

q.           Oil, Gas, Coal, and Other Mineral Powers

My Trustee may do all things necessary to maintain in full force and effect any oil, gas, coal, or other mineral interests comprising part or all of the trust property.

My Trustee may purchase additional oil, gas, coal, and other mineral interests when necessary or desirable to effect a reasonable plan of operation or development with regard to the trust property.

My Trustee may buy or sell undivided interest in oil, gas, coal, and other mineral interests, and may exchange any of such interests for interests in other properties or for services.

My Trustee may execute oil, gas, coal, and other mineral leases on such terms as my Trustee may deem proper, and may enter into pooling, unitization, repressurization, and other types of agreements relating to the development, operation, and conservation of mineral properties.

Any lease or other agreement may have a duration that my Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

My Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments which it deems proper.

My Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

My Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interest, and may pay the cost of such services from the principal or income of the trust property.

My Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interest.

r. **Powers of Attorney**

My Trustee may execute, deliver, and grant to any individual or corporation a revocable or irrevocable power of attorney to transact any and all business on behalf of the various trusts created in this agreement.

The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that my Trustee could have exercised.

s. **Powers to Merge Similar Trusts**

My Trustee may merge and consolidate any trust created in this agreement with any other trust created by me, or any other person at any other time, if the other trust contains substantially the same terms for the same beneficiaries, and has at least one Trustee in common with the trust or trusts created in this agreement.

My Trustee may administer such merged and consolidated trusts as a single trust or unit. If, however, such a merger or consolidation does not appear feasible, as determined in the sole and absolute discretion of my Trustee, my Trustee may consolidate the assets of such trusts for purposes of investment and trust administration while retaining separate records and accounts for the respective trusts.

t. **Powers of an Interested Trustee**

An Interested Trustee is any Trustee who has an interest as a beneficiary in this trust agreement or any trust created by it. In all instances where an Interested Trustee distributes, or participates in

the distribution, of trust income or principal to or for the benefit of such Trustee (including distributions to or for a beneficiary for which the Trustee has an obligation of support), then the distribution shall be limited by the ascertainable standard to amounts reasonably necessary for the education, health, maintenance, and support of the beneficiary. Notwithstanding anything in this agreement to the contrary, in making such distributions, the Interested Trustee shall not use discretion in applying those ascertainable standards.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support, as to that support obligation. An Interested Trustee may, from time to time, retain (and remove or replace) an Independent Special Trustee who has no interest as a beneficiary under this agreement and any trust created hereunder to make any discretionary determination with regard to the amount of any distribution that would be required by the ascertainable standards of health, education, maintenance and support, and such Interested Trustee shall be bound to comply with such determination.

An Independent Special Trustee must be one or more persons other than the Trustmaker or a beneficiary (or the Trustmaker's or beneficiary's spouse), none of whom are "Related or Subordinate Parties" to the Trustmaker or a beneficiary (or the Trustmaker's or beneficiary's spouse), as defined in Section 672(c) of the Code, and none of whom are subservient to the wishes of the Trustmaker within the meaning of Section 674(c) of the Code.

**u. Powers of an Insured Trustee**

Any individual Trustee under this agreement, other than me, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If my Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated

pursuant to the provisions of the agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**v. Real Estate Powers**

My Trustee may make leases and grant options to lease for any term, even though the term may extend beyond the termination of any trust created under this agreement.

My Trustee may grant or release easements and other interests with respect to real estate; enter into party wall agreements, execute estoppel certificates, and develop and subdivide any real estate.

My Trustee may dedicate parks, streets, and alleys or vacate any street or alley; construct, repair, alter, remodel, demolish, or abandon improvements.

My Trustee may elect to insure, as it deems advisable, all actions contemplated by this subsection.

My Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

**w. Sale, Lease, and Other Dispositive Powers**

My Trustee may sell, lease, transfer, exchange, grant options with respect to, or otherwise dispose of the trust property.

My Trustee may deal with the trust property at such time or times, for such purposes, for such considerations and upon such terms, credits, and conditions, and for such periods of time, whether ending before or after the term of any trust created under this agreement, as it deems advisable.

My Trustee may make such contracts, deeds, leases, and any other instruments it deems proper under the immediate circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

x.           **Settlement Powers**

My Trustee may compromise, adjust, arbitrate, alter the terms of, or abandon any claim in favor of or against any trust created under this agreement, and may take deeds in lieu of foreclosure.

y.           **Trust Addition and Retention Powers**

My Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from me or any other person, corporation, or entity.

Upon receipt of any additional property, my Trustee shall administer and distribute the same as part of the trust property.

My Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds, or may result in inadequate diversification of the trust property.

My Trustee is authorized to purchase property and casualty insurance to protect against theft, damage, or loss regarding any asset retained in trust.

z.           **Trustees' or Fiduciaries' Powers Act**

In addition to all of the powers specifically granted my Trustee in this Article, my Trustee may exercise those powers set forth under the Trustees' or Fiduciaries' Powers Acts, or their equivalent, of the State of Alaska together with any amendment to such laws.



My Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

All of the powers granted to my Trustee in this Article shall be in addition to those powers conferred upon Trustees under all applicable state and federal statutes.

Each power conferred upon my Trustee under this Article, or upon Trustees in general, by applicable state or federal statutes, shall be subject to any express limitations or contrary directions contained in this agreement.

#### **Section 4. Qualified Family Owned Farm and Business Powers**

My Trustee shall have the power to amend the terms of any trust holding "qualified family-owned business interests," as defined in section 2057 of the Internal Revenue Code, in order to permit trust property to qualify for the "family owned business deduction," including an amendment that changes beneficial interests and that directs the segregation of trust property into more than one trust.

#### **Section. 5 Provisions Governing S Corporation Stock**

After my death or at such earlier time as any trust created hereunder is not a grantor trust under Section 671 of the Code, if any stock of a corporation which is an S corporation within the meaning of Section 1361(a) of the Code is allocated to a trust created under this agreement including, but not limited to any stock of a corporation which elects, under Section 1362(a) of the Code to be treated as an S corporation, then the provisions of this Section shall apply to the administration of this trust and to any trust created under this agreement.

##### **a. Segregation into Separate Trust Shares**

Notwithstanding any provision in this agreement to the contrary, the stock of each S corporation (herein referred to as "S Corporation Stock") may be segregated by the Trustee, in its sole and absolute discretion, and held in a separate trust or as a separate

share created as a separate trust and the Trustee may elect any of the following options:

**i. Electing Small Business Trust (ESBT)**

The Trustee may elect in accordance with Section 1361 (e)(3) of the Code to qualify any trust or any portion thereof as an Electing Small Business Trust within the meaning of Section 1361(e)(1);

**ii. Qualified Small Business Trust (QSST)**

The Trustee may request that the Current Income Beneficiary (hereinafter defined) of each separate trust, with the assistance of the Trustee, make an election in accordance with Section 1361 (d)(2) of the Code to qualify that trust as a Qualified Subchapter S Trust within the meaning of Section 1361 (d)(3) of the Code (herein referred to as a "Qualified Sub-chapter S Trust").

**iii. Any Other Form of Eligible Stockholder**

The Trustee may elect to qualify any trust as any other form of eligible stockholder of an S corporation under similar future legislation.

The decision to elect treatment as an Electing Small Business Trust or as a Qualified Subchapter S Trust or any other form of eligible Subchapter S stockholder shall be in the sole discretion of the Trustee, and the Trustee is hereby authorized to take any actions necessary to effect such elections.

**b. Provisions Governing Qualified Subchapter S Trust (QSST)**

Each separate Qualified Subchapter S Trust (or separate share) shall have the same name as the trust to which the stock was originally allocated, plus the name of the Current Income Beneficiary thereof, followed by the name of the S Corporation whose stock is held in trust, and the words "Trust S" (herein referred to as a "Trust S"). Each Trust S shall be administered in

accordance with the same provisions contained in the trust to which the stock was originally allocated; provided however, that the provisions of this Section shall control the administration of each Trust S created to the extent inconsistent with the provisions of the original trust.

i. Current Income Beneficiary

A Trust S shall have only one Current Income Beneficiary. The current Income Beneficiary of a Trust S is the person who has a present right to receive income distributions from the trust to which the S Corporation Stock was originally allocated.

If more than one person has a present right to receive income distributions from the trust to which the S Corporation Stock was originally allocated, the Current Income Beneficiary shall be determined by the Trustee.

If the Trustee, in the Trustee's sole and absolute discretion, determines there is more than one person who has a present right to receive income distributions from the trust the Trustee may cause the S Corporation Stock to be segregated into more than one Trust S, each with a different Current Income Beneficiary.

ii. Distributions

The Trustee shall distribute all of the income (as that term is defined in Section 643(b) of the Code) to the Current Income Beneficiary of that trust as least annually. If a Trust S ceases to hold S Corporation Stock, then in the discretion of the Trustee, distributions of income shall be governed by the terms of the trust from which the S Corporation Stock was originally severed, except that income may only be distributed to the Current Income Beneficiary of each Trust S.

Distributions of principal shall be governed by the terms of the trust to which the S Corporation Stock was originally allocated except that principal may only be distributed to the Current Income Beneficiary of each Trust S by the Trustee.

### iii. Termination of a Trust S

If any Trust S is terminated during the lifetime of the Current Income Beneficiary, all of the principal and undistributed income of that Trust S shall be distributed to the Current Income Beneficiary.

If not earlier terminated by distribution of the entire trust estate under the foregoing paragraph, each Trust S shall terminate on the death of the current Income Beneficiary, at which time the Trustee shall administer or distribute any property in that Trust S in accordance with the provisions that would have been applicable to the administration of those as if that Trust S had never been created. If, upon application of those provisions, S Corporation Stock would remain in a trust created hereunder, the Trustee, in the Trustee's sole and absolute discretion, may segregate the stock in a separate trust or separate share for purposes of Section 1361(d)(3) of the Code.

The Trustmaker requests that the current Income Beneficiary of that trust make an election, with the assistance of the Trustee, to qualify the trust as a Qualified Subchapter S Trust in accordance with Section 1361 (d)(2) of the Code. The stock of each S Corporation shall be held in a separate trust to be administered in accordance with this Section. If the Trustee, in the Trustee's sole and absolute discretion determines that there is more than one income beneficiary, the Trustee may cause the S Corporation Stock to be segregated into more than one Trust S, each with a different Current Income Beneficiary.

### c. Governance of the Trusts

The separate trusts or trust shares created under this Section shall be governed by the following additional provisions:

#### i. No Disqualification of "S" Status

No trust created or administered under this Section shall be administered in such a manner as to cause the termination of the S Corporation status of any corporation

whose stock is held as a part of such trust. Accordingly, to the extent the terms of this agreement are inconsistent with any trust created or administered hereunder qualifying as an Electing Small Business Trust, a Qualified Subchapter S Trust, or any other form of eligible Subchapter S stockholder, it is my intent that the terms of the trust be construed and administered in a manner that is consistent with qualifying the trust as an Electing Small Business Trust, a Qualified Subchapter S Trust or any other form of eligible Subchapter S stockholder, during any period that the trust holds S Corporation Stock, and any provision incapable of being so construed or applied shall be disregarded.

**ii. Method of Distribution**

No method of distribution permitted herein may be utilized in a manner that would jeopardize the qualification of a trust as an Electing Small Business Trust, a Qualified Subchapter S trust or any other form of eligible subchapter S stockholder.

**iii. Elections**

Any reference in this agreement to any person, acting in an individual or fiduciary capacity, making an election for himself or for or on behalf of any person, shall include, but not be limited to, an election made in accordance with Section 1361(e)(3), Section 1361(d)(2) or any other applicable subsection of Section 1361 of the Code.

**iv. Apportionment of Receipts and Expenses**

The Trustee hereunder shall characterize receipts and expenses of any Trust S in a manner consistent with qualifying that trust as a Qualified Subchapter S Trust.

v. Trust Consolidation

The Trustee may not consolidate any Trust S with another if doing so would jeopardize the qualification of one or both of the trusts as Qualified Subchapter S Trusts.

vi. Disposition of S Corporation Stock

If the continuation of any trust or Trust S created under this Section would, in the opinion of the Trustee's legal counsel, result in the termination of the S Corporation status of any corporation whose stock is held as a part of the trust estate, the Trustee, in the Trustee's sole discretion, shall have, in addition to the power to sell or other wise dispose of such stock, the power to distribute the stock of such S Corporation to the person then entitled to receive the income therefrom.

vii. Reformation to Conform with S Corporation Requirements

It is my intent that any S Corporation Stock comprising a portion of the trust estate be eligible to be held pursuant to the terms of this trust, either as an Electing Small Business Trust, a Qualified Subchapter S Trust, or in any other manner permitted by the Code or the regulations or rulings thereunder. Accordingly, the Trustee is granted the power to amend or modify this trust by written instrument without the ruling of any court when, in the sole opinion of the Trustee, amendment is required to this trust or any trust established hereunder to permit S Corporation Stock to be held pursuant to the terms of this trust.

Notwithstanding the foregoing, no reformation of this trust, in order to permit the Trustee to hold S Corporation Stock, shall have the effect of benefiting me, directly or indirectly, including granting to me any interest, right, or power, administrative or other wise in the trust estate, the trust funds, or the income thereof. The sole purpose of this power to amend the trust is to enable the Trustee to make technical amendments to the Trust Agreement as necessary to permit the trust to hold S Corporation Stock

during the continuance of this trust in accordance with the  
Code and regulations promulgated thereunder.

## Article Fourteen

### Definitions and General Provisions

#### Section 1. Definitions

For purposes of this agreement, the following words and phrases shall be defined as follows:

##### a. Adopted and Afterborn Persons

Persons who are legally adopted while they are under 18 years of age (and not those persons adopted after attaining 18 years of age) shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

An afterborn person is a descendant of mine who is born after the date that I sign this agreement. A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

I intend for my trust to benefit only those of my descendants who result from legitimate marital unions and adoptions. Therefore, notwithstanding the foregoing, no adopted or afterborn person shall be accepted as a descendant of mine unless that person is the product of a valid marital union in existence prior to the birth or adoption of such person and continuously for at least ten years thereafter. A valid marital union exists if the husband and wife are legally married and actually reside with each other in the same principal residence. The burden shall be on the person to establish that a particular marital union satisfies the requirements of this paragraph. Any legal separation during the ten-year period shall break the continuity of the marital union. Any informal separation during the ten-year period that suggests the possibility of marital disunity shall be evaluated by my Trustee to determine whether the separation is sufficient to signify the dissolution of the marital union. Any involuntary separation during the ten-year period due to circumstances beyond the control of the spouses, including death of one of the spouses, shall not indicate dissolution of the marital union.



During the ten year qualification period, my Trustee shall hold such beneficiary's trust share, if any, and shall not make any distributions for the benefit of such beneficiary. The beneficiary shall not enjoy any rights or privileges associated with such trust share until and unless such beneficiary qualifies. Nothing in this paragraph shall operate to deny any current beneficiary from receiving benefits from his or her trust share, nor in limiting the discretion of my Trustee in determining those benefits.

**b. Descendants**

A person's descendants shall include all of his or her lineal descendants through all generations.

A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation.

An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

**c. Per Stirpes Distributions**

Whenever a distribution is to be made to a person's descendants, per stirpes:

The distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants.

Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

**d. Education**

As used in this trust, "education" shall include:

to a share from which a generation-skipping transfer is more likely to occur.

**e. Taxable Distributions**

If my Trustee considers that any distribution from a trust under this agreement, other than pursuant to a power to withdraw or appoint, is a taxable distribution subject to a generation-skipping tax payable by the beneficiary, my Trustee shall augment the distribution by an amount which my Trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates.

**f. Taxable Terminations**

If my Trustee considers that any termination of an interest in trust property is a taxable termination subject to a generation-skipping tax, my Trustee shall pay the tax from the portion of the trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

**g. No Duty to Make Generation Skipping Allocations**

No provision of this Section 12 or any other provision of this trust shall impose or imply any affirmative duty on my Trustee to make any allocation of my generation skipping exemption unless my Trustee is expressly requested in writing to make such allocation and is provided the information necessary to properly make the allocation.

### **Section 13. My Beneficiary's General Power of Appointment**

The beneficiary of any separate trust share created in this trust agreement shall have the unlimited and unrestricted testamentary general power to appoint by a valid last will and testament, by a valid living trust agreement or by any other written instrument which expressly refers to this power any property remaining in the trust share the distribution of which would otherwise constitute a taxable generation-skipping transfer. In exercising this general power of appointment, my Primary Beneficiary shall specifically refer to this power. The Primary Beneficiary of the trust share shall have the sole and exclusive right to exercise this general power of appointment.

This general power of appointment specifically grants to my Primary Beneficiary the right to appoint property to his or her own estate. It also specifically grants to my Primary Beneficiary the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the Primary Beneficiary may elect.

Any property in the trust share which is not distributed pursuant to the exercise of the general power of appointment or is not subject to such power because it is not taxable as a generation-skipping transfer shall be distributed under the lapse and other provisions of the beneficiary's trust share.

This provision shall apply to all trust shares created for a beneficiary under this trust agreement unless the provisions of the separate trust share, by reference to this provision, provides otherwise.

## Article Thirteen

### My Trustee's Administrative and Investment Powers

#### Section 1. Introduction to Trustee's Powers

Except as otherwise provided in this agreement, my Trustee shall have both the administrative and investment powers enumerated under this Article and any other powers granted by law with respect to the various trusts created by this agreement.

My Trustee shall also have the express power to employ attorneys, accountants, agents, auditors, trust departments and officers and other financial advisors (including brokers, financial planners, professional money managers, and registered investment advisors) in order to assist in carrying out the responsibilities of the position of Trustee.

Unless otherwise specifically provided in this Agreement, the decision to employ such assistants, as well as determining the terms and conditions of such employment (including the decision to terminate such assistant) is at the sole and absolute discretion of my Trustee.

So long as a Trust Protector serves with regard to this Trust, my Trustee may delegate the investment powers with regard to the assets hereof to such persons or entities as are designated by my Trust Protector in a written instrument. However, my Trustee is authorized, without approval from the Trust Protector, to establish one or more bank accounts or transactional accounts with a broker dealer, for the purpose of holding not more than \$10,000 on a long term basis, or through which funds may be transferred between investments or to beneficiaries. My Trustee is further authorized, without approval from my Trust Protector, to invest Trust assets, or incur liabilities on account of the Trust, for the purpose of acquiring any asset from me, a beneficiary of this Trust or a trust for my benefit or that of any beneficiary hereof.

## **Section 2. Powers to Be Exercised in the Best Interests of the Beneficiaries**

My Trustee shall exercise the following administrative and investment powers without the order of any court, as my Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Despite any conflicting provision in my trust, my Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

### **a. Waiver of Prudent Investor Rule**

In addition to the investment powers conferred in this Trust, 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 life insurance policy, 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:

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

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 Trustmaker intends that no such duty shall exist.

Whether the trust is diversified. The Trustmaker intends that no duty to diversify shall exist.

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

The Trustmaker'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 Trustmaker does this because the Trustmaker 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.

**b. Investment Policy**

I have attached, as Schedule B, a suggested set of investment rules and guidelines in the form of a written investment policy. I desire that my Trustee follow the investment policy when making investment and management decisions affecting trust assets.

Notwithstanding any investment policy contained in Schedule B, my Trustee is expressly authorized to acquire and retain any interest in any insurance policy insuring the life of any member of my immediate family other than myself. Likewise, my Trustee is authorized to acquire and retain any interest in a business entity in which a majority of the equity interest is owned by me, members of my immediate family or by trusts established for their benefit.

In the event my Trustee determines that the investment policy should be modified, my Trustee shall submit the proposed modification(s) to the then current beneficiaries of my Trust for review. The proposed modifications shall become effective only upon the consent of 85% of the then current beneficiaries of my Trust. If the requisite consent is not obtained, the then existing policy shall remain in effect.

c. **Fiduciary Capacity**

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.

**Section 3. Administrative and Investment Powers**

My Trustee is hereby granted the following administrative and investment powers:

a. **Agricultural Powers**

My Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

My Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

My Trustee may engage and participate in any government farm program, whether state or federally sponsored.

My Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

My Trustee may improve and repair all farm and ranch properties, construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

My Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

**b. Business Powers**

My Trustee may retain and continue any business in which this Trust acquires an ownership interest (including, but not limited to, an ownership interest as a shareholder, partner, sole proprietor, member, or participant in a joint venture), even though that interest may constitute all or a substantial portion of the trust property, without regard to any duty to diversify that might otherwise apply.

I recognize that the value of a non-controlling interest in a business entity held by this trust, including a limited partnership, may be less than underlying value of the net assets of such entity. Notwithstanding any duty to diversify, I authorize my Trustee to continue to hold such interest to maximize its long-term value, rather than to liquidate such asset at a discount, so long as the entity continues to be controlled by, or for the benefit of, members of my family.

To the extent that my Trustee determines that it may be advantageous, I authorize my Trustee to sell all, or a portion, of the interest of this Trust in any business entity or other asset to a segregated asset account held under a variable life insurance contract for cash, a private annuity or an installment note (or a combination thereof) with a fair market value equal to the fair market value of the interest sold. My Trustee may rely upon a determination by my Trust Protector, or a person appointed by my Trust Protector, in this regard. For the purposes of this provision, "fair market value" shall be determined by my Trustee in its reasonable discretion in a manner consistent with the principles applicable for Federal estate and gift tax purposes. No such sale shall be permitted, however, unless a majority of the interests in such life insurance contract are held by some combination of me, my Spouse, my descendants and trusts established primarily for the benefit of such persons.

My Trustee may directly participate in the conduct of any such business or employ others to do so on behalf of the beneficiaries. My Trustee may take part in the management of any business in



which investment is retained or made hereunder and 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 the extent that the interest held by this Trust is not one which has management powers (such as a limited partnership interest, or a membership interest in a limited liability company, or an indirect interest through a segregated asset account in a variable life insurance policy), my Trustee shall have no obligation to supervise the management of the underlying assets, and no liability for the actions of those who manage the respective entity who are not selected by my Trustee.

My Trustee may 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; subject the principal and income of this trust to the risks of any such business for such term or period as the Trustee, in the exercise of sole and absolute discretion, may determine.

My Trustee may advance money or other property to any such business; 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; 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; select and vote for directors, partners, associates and officers of any such business; 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 receive compensation from such business for so acting.

My Trustee may enter into stockholders' agreements with corporations in which any trust estate has an interest and/or with the stockholders of such corporations; liquidate, either alone or jointly with others, any such business or any interest in any such business; and generally exercise any and all powers as the Trustee may deem necessary with respect to the continuance, management, sale or liquidation of any such business.

My Trustee may execute partnership agreements, buy-sell agreements, operating agreements for limited liability companies, and any amendments to them.

My Trustee may participate in the incorporation of any trust property and any reorganization, merger, consolidation, recapitalization, liquidation, dissolution, stock redemption or cross purchase buy-sell agreement. Any powers it may exercise with respect to stock may be exercised with respect to any other form of business interest.

My Trustee may hold the stock of any corporation as trust property, and may elect or employ directors, officers, managers, employees, and agents and compensate them for their services.

My Trustee may sell or liquidate any business interest that is part of the trust property.

To the extent that my Trustee determines that it may be advantageous, I authorize my Trustee to sell all, or any portion, of the interest which this Trust holds in any asset to a segregated asset account held within a variable life insurance contract for cash, a private annuity or an installment note (or a combination thereof) with a fair market value equal to the fair market value of the interest sold. For the purposes of this provision, the "fair market value" of an asset shall be determined by my Trustee in its reasonable discretion in a manner consistent with the principles applicable to the determination of value for Federal estate and gift tax purposes. No such sale shall be permitted, however, unless a majority of the beneficial interests in such life insurance contract are held by some combination of me, my Spouse, my descendants or trusts established primarily for the benefit of such persons.

My Trustee may carry out the provisions of any agreement entered into by me for the sale of any business interest or the stock thereof.

My Trustee may exercise all of the business powers granted in this agreement regardless of whether my Trustee is personally an interested or involved party with respect to any business enterprise forming a part of the trust property.

My Trustee may permit any business in which the trust holds an interest to establish a commercial lending or deposit 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 creditors rights with respect to any loan to such business and otherwise profit from such lending relationship.

c. **Common Fund Powers**

For the purpose of convenience with regard to the administration and investment of the trust property, my Trustee may hold the several trusts created under this agreement as a common fund.

My Trustee may make joint investments with respect to the funds comprising the trust property.

My Trustee may enter into any transaction authorized by this Article with fiduciaries or other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciary is also a Trustee under this agreement.

d. **Power to Establish Sub-Trusts**

My Trustee shall have the power and is expressly authorized to create one or more sub-trusts sited in any jurisdiction in the world for the purpose of acquiring, holding and managing trust property. Any such sub-trust shall provide that this trust shall be the sole beneficiary of such sub-trust.

f. **Compensation Powers**

My Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement.

My Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement, and shall reasonably compensate those persons employed by my Trustee, including agents, auditors, accountants, attorneys, and financial advisors (including brokers, financial planners, professional money managers, registered investment advisors and trust departments and officers).

My Trustee may 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.

My Trustee may 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 a partner, stockholder, officer, director or corporate affiliate to receive such Trustee's share of the compensation paid to such firm or corporation.

**g. Distribution Powers**

My Trustee is specifically authorized to make divisions and distributions of the trust property either in cash or in kind, or partly in cash and partly in kind, or in any proportion of cash or in kind it deems advisable. My Trustee shall be under no obligation or responsibility to make pro rata divisions and distributions in kind.

My Trustee may allocate specific property to any beneficiary or share although the property may differ in kind from the property allocated to any other beneficiary or share.

The foregoing powers may be exercised regardless of the income tax basis of any of the property.

My Trustee may make a joint purchase with, or to make a sale at less than fair market value to, any beneficiary of a trust created hereunder; make loans without interest or at less than market rate interest to any beneficiary; and 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 be in the best interest of the trust or its beneficiaries as a group.

My Trustee may 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 provide for the personal care and comfort of any one or more of the beneficiaries in any manner whatsoever.

My Trustee may 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.

#### **h. Environmental Powers**

My Trustee shall have the power to inspect any trust property to determine compliance with any environmental law affecting such property or to respond to any environmental law affecting property held by my Trustee. "Environmental Law" shall mean any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or of human health.

My Trustee shall have the power to refuse to accept property if my Trustee determines that there is a substantial risk that such property is contaminated by any hazardous substance or has previously, or is currently, being used for any activities directly or indirectly involving hazardous substances which could result in liability to the trust assets. "Hazardous substance" shall mean any substance defined as hazardous or toxic by any federal, state, or local law, rule, regulation, or ordinance.

My Trustee shall have the power to take any necessary action to prevent, abate, clean up or otherwise respond to any actual or threatened violation of any environmental law affecting trust property prior to or after the initiation or enforcement of any action by any governmental body.

My Trustee may disclaim or release any power granted to it or implied by any document, statute, or rule of law that the Trustee determines may cause the Trustee to incur liability under any environmental law.

My Trustee may charge the cost of any inspection, review, prevention, abatement, response, cleanup, or remedial action authorized under this power against the trust property.

My Trustee shall not be liable to any beneficiary or to any other party for any decrease in value of the trust property by reason of my

Trustee's compliance with any environmental law, specifically including any reporting requirement under such law.

My Trustee may 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. 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.

**i. Funeral and Burial Expenses**

My Trustee may in its sole discretion pay the funeral and burial or cremation expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial or cremation expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as my Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

**j. Income and Principal Powers**

My Trustee may determine in a fair, equitable, and practical manner how all Trustee's fees, disbursements, receipts, and wasting assets shall be credited, charged, or apportioned between principal

and income. Except to the extent otherwise required by law, my Trustee shall allocate capital gains to principal, and not to income.

My Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and for the equalization of payments to or for the beneficiaries; it may select any and all accounting periods with regard to the trust property.

k. Investment Powers in General

My Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, rare coins, bullion, or other property, real or personal, as it shall determine.

My Trustee may invest in investment trusts as well as in common trust funds.

My Trustee may purchase life, annuity, professional liability, accident, sickness, disability and medical insurance on the behalf of and for the benefit of any trust beneficiary.

My Trustee may place all or any part of the securities which at any time are held by any trust in the care and custody of another 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 such bank or trust company; may have all stocks and registered securities placed in the name of such bank or trust company or in the name of its nominee; and may 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.

My Trustee may employ a broker-dealer as a 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; 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 hold securities in bearer form, or in uncertificated form; and 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.

So long as any trust holds a substantial amount of marketable securities, I encourage my Trustee to retain one or more professional investment advisers to manage the investment in such marketable securities, and I authorize such Trustee to delegate to any registered investment adviser or corporate fiduciary the discretion to manage such investments, in which event my Trustee shall be relieved of any liability or responsibility for the manner in which such investments are managed by the registered investment adviser or corporate fiduciary.

**l.           Loan, Borrowing, and Encumbrance Power**

My Trustee may loan money to any beneficiary other than myself, with or without interest, on any term or on demand, with or without collateral, as my Trustee deems to be in the best interests of the trust beneficiaries.

My Trustee may loan money to any person or entity, including me, on terms or on demand. Any such loan shall be fully secured with good collateral and shall bear a market rate of interest appropriate for the nature of the transaction.

It may borrow money upon such terms and conditions as it shall deem advisable, including, in the case of a corporate fiduciary, the power to borrow from its own banking or commercial department.

My Trustee shall have the power to obligate the trust property for the repayment of any sums borrowed where the best interests of the beneficiaries have been taken into consideration.

My Trustee shall have the power to encumber the trust property, in whole or in part, by a mortgage or mortgages, deeds of trust, or by pledge, hypothecation or otherwise, even though such encumbrance may continue to be effective after the term of any trust or trusts created in this agreement.

**m.           Margin, Brokerage, Securities, and Bank Account Powers**

My Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales and on margin. My Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by my Trustee with such brokers as securities for loans and advances made to my Trustee.



## **Article Eleven**

### **The Resignation, Replacement, and Succession of My Trustee and the Protector**

#### **Section 1. The Resignation of a Trustee**

Any Trustee may resign by giving thirty days' written notice to me or to my legal representative. If I am not living, the notice shall be delivered to my Trustees, if any, and to all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income from any trust created under this agreement.

If a beneficiary is a minor or is legally incapacitated, the notice shall be delivered to that beneficiary's guardian or other legal representative.

#### **Section 2. The Removal of a Trustee**

Any Trustee may be removed as follows:

**a. No Removal by Me**

I shall have no right to remove any Trustee.

**b. Removal by My Protector**

During my lifetime, any Trustee may be removed by my Protector, unless my Protector is acting under duress or legal compulsion.

**c. Removal by Other Beneficiaries After My Death**

After my death, a majority of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement may remove any Trustee.

**d. No Cause for Removal Needed**

No person having a right to remove a Trustee need give any Trustee being removed a reason, cause, or ground for such removal.

**e. Notice of Removal**

Notice of removal shall be effective when made in writing by either:

Personally delivering notice to the Trustee and securing a written receipt, or

Mailing notice in the United States mail to the last known address of the Trustee by certified mail, return receipt requested.

**Section 3. Replacement of Individual Trustees**

If an individual Trustee is removed, dies, resigns, becomes legally incapacitated, or is otherwise unable or unwilling to serve, that Trustee shall be replaced as follows:

**a. Replacement By Me**

I shall have no right to replace any Trustee.

**b. Replacement by Others During My Lifetime**

While I am living, if a Trustee dies, resigns, is removed or is unable or unwilling to continue serving as a Trustee of this trust, my Trustee shall be replaced by one or more successor Qualified Trustees selected by the Protector.

If the Protector fails to act within a reasonable period of time but in any event delays longer than 30 days to fill a vacancy in Trusteeship, a successor Trustee may be appointed by my surviving children but only if they both agree. If both of my children are incapacitated, deceased or otherwise fail to act within a reasonable time but in any event delay longer than 30 days, a majority in interest of the beneficiaries who are my descendants and who are then eligible for

distributions of income or principal from this trust shall have the right to name a Qualified Trustee.

The authority of any beneficiary who is not of legal age or otherwise suffers from a lack of legal incapacity shall be exercised by his or her legal or natural guardian or conservator, as the case may be.

**c. Replacement After My Death**

After my death, my Trustee shall be replaced by one or more successor Qualified Trustees selected by the Protector.

If the Protector fails to act within a reasonable period but in any event delays longer than 30 days, a successor Trustee may be appointed by my children, but only if they both agree. If both of my children are incapacitated, deceased or otherwise fail to act within a reasonable period of time but in any event delay longer than 30 days, a majority in interest of the beneficiaries who are my descendants and who are then eligible for distributions of income or principal from this trust shall have the right to name a Qualified Trustee.

The authority of any beneficiary who is not of legal age or otherwise suffers from a lack of legal incapacity shall be exercised by his or her legal or natural guardian or conservator, as the case may be.

**Section 4. Replacement of Corporate Trustees**

If a corporate Trustee is removed, resigns, or is otherwise unable or unwilling to serve, that Trustee shall be replaced in the same manner as any other Trustee.

**Section 5. Qualified Trustee**

A "Qualified Trustee" shall mean a corporate fiduciary that satisfies the requirements of Section 6 of this Article or an individual fiduciary acceptable to my Protector. If the person authorized to appoint a successor Trustee fails to designate a Qualified Trustee, any beneficiary (including a contingent beneficiary) may petition a court of competent jurisdiction, ex parte, to designate a Qualified Trustee to serve as a Trustee.

The court that designates the successor Trustee shall not acquire any jurisdiction over any trust created under this agreement, except to the extent necessary to name a Qualified Trustee as a successor Trustee

## **Section 6. Corporate Fiduciaries**

Any corporate fiduciary named in this trust agreement or appointed by a court of competent jurisdiction as a Trustee must be a bank or trust company situated anywhere in the world having trust powers under applicable law.

Such corporate fiduciary shall:

- a. have a combined capital and surplus of at least 5 million dollars; or
- b. maintain in force a policy of insurance with policy limits of not less than 5 million dollars covering the errors and omissions of the Trustee with a solvent insurance carrier licensed to do business in the jurisdiction in which the Trustee has its corporate headquarters.

## **Section 7. Powers and Liabilities of Successor Trustees**

Any successor Trustee, whether corporate or individual, shall have all of the rights, powers, and privileges, and be subject to all of the obligations and duties, both discretionary and ministerial, as given to the original Trustee.

Any successor Trustee shall be subject to any restrictions imposed on the original Trustees. No successor Trustee shall be required to examine the accounts, records, and acts of any previous Trustees.

No successor Trustee shall in any way be responsible for any act or omission to act on the part of any previous Trustee.

## **Section 8. The Protector**

If the initial Protector or any subsequent Protector is unable or unwilling to serve or to continue to serve in that capacity, the successor Protector shall be

an individual designated in writing by the previously serving Protector as provided in this Section. If a Protector dies, resigns, becomes incapacitated and has not named a successor Protector, the then serving Protector shall be replaced by the following individuals who shall serve as Protector in the order in which their names appear:

First, STEPHEN K. LEHNARDT, my Protector

Second, an individual person who is designated in a written instrument given by CHRISTOPHER D. DAVIS and CAROLINE D. DAVIS, or the survivor of them.

If at any time there is no Protector designated herein who is acting as to any trust hereunder, the Protector of such trust shall be such individual as the last serving Protector has designated in an instrument in writing.

In the absence of any such designation, the Protector shall be an individual person (other than me) selected by a court of competent jurisdiction in Alaska. I request that any individual named by my children, the last serving Protector or any court be an individual with mature judgment who has the interests of myself and my beneficiaries as his or her primary concern. A Protector may resign in the same manner as a Trustee may resign.

I have appointed the Trust Protector to give advice to the Trustee and to ensure that the Trustee properly fulfills its duties. Trustmakers often rely on their trustees to exercise broad discretion, and rely on such trustees to make determinations that would be consistent with the Trustmakers' desires. However, my Trustee hereunder may not know me and my family well enough to be able to do this well. Therefore, I have selected persons to act as Trust Protector whom I believe know me and can determine what I would have desired with regard to my family better than my Trustee. I do not wish or expect my Trust Protector to be subservient to my desires, or to consult me with regard to the advice my Trust Protector gives and the actions my Trust Protector takes.

Some of the persons selected as Trust Protector or successor Trust Protector may have other personal or professional relationships which may impose or imply fiduciary or other duties to me. I hereby fully relieve such Trust Protector from any such duties to the extent the Trust Protector is acting as Trust Protector. I instruct the Trust Protector to make independent decisions regarding what my Trust Protector believes would best serve my family and the broad objectives for my family expressed in this instrument.

The actions of my Trust Protector shall not be subject to any review or supervision by any court. My Trust Protector may act, or refrain from acting, free of any duty, fiduciary or otherwise, to me or any member of my family. Instead, I direct my Trust Protector to act freely and independently, taking my broad objectives into account only to the extent that my Trust Protector believes they are important, and without consultation with, or influence by, me.

The Protector shall be invested with the following authority:

**a. Power Respecting Trustees**

During my life, the Protector is authorized, in the exercise of sole and absolute discretion, in accordance with the provisions of Article Eleven hereof, to designate successor Trustees and to remove any and all Trustees acting hereunder and appoint successor Trustees in their place; provided, however, that no Protector may appoint me, himself or herself, any person who is married to the Protector or who is related to the Protector or his or her spouse within the third degree of consanguinity, or who is a partner or fellow shareholder of the Protector in any enterprise in which the Protector holds a ten percent (10%) interest or to which he devotes on an average more than 10 hours per week, or who is any subsequent spouse of mine, or any spouse of any descendant of mine.

**b. Power to Advise Regarding Distributions**

The Protector may advise the Trustee with regard to distributions that the Protector believes would carry out the intentions of the Trustmaker and which the Protector believes would be in the best interests of the beneficiaries. However, the Trustee shall have no legal or moral obligation whatsoever to act in accordance with any such advice.

This agreement does not impose any fiduciary responsibility on the Protector to monitor the acts of the Trustees. The 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.

**c. Power to Add Beneficiaries During My Lifetime**

The Protector shall have the authority to appoint the following persons or classes of persons as additional discretionary beneficiaries under Article Three of this agreement:

- i. Myself
- ii. Any descendant of my grandparents;
- iii. The spouse of any beneficiary identified in Article Three of this agreement

Such appointment may identify the added beneficiary generally or may limit the distribution discretion of my Trustee to an amount specified in the written instrument exercising this power delivered to my Trustee. My Trustee shall have discretion to make distributions to, or for the benefit of, such appointee subject to the other limitations of Section 9 of Article Three.

The Trust Protector shall not exercise this power at any time that this Trust holds real property in a jurisdiction where the holding of such real property would impact adversely on the spendthrift restrictions hereof or on the ability to maintain a perpetual trust after such exercise. My Trustee shall have no obligation to distribute to any such appointee the amounts specified in such instruments. My Trustee shall have discretion to make distributions (limited by the aggregate amounts specified in such appointments) to, or for the benefit of, such appointee subject to the other limitations of Section 9 of Article Three.

**d. Power to Allow Beneficiaries to Purchase Property from the Trust on Favorable Terms.**

The Protector shall have the authority to allow any beneficiary of this trust (other than a beneficiary added by my Protector under the preceding clause), without the approval or consent of any adverse party, to purchase, exchange, or otherwise deal with or dispose of any portion of the principal or the income of this trust for less than an adequate consideration in money or money's worth, but in no event for less than 90% of the fair market value of such portion of the principal or income from this trust.

e.       **Limitation on Exercise of Powers of the Protector**

No action of the Protector shall have any force or effect unless accompanied by a representation, warranty and declaration by the Protector that its action is not made under duress or legal compulsion.



**Article Twelve**  
**General Matters and Instructions**  
**with Regard to my Trustee**

**Section 1. Use of "Trustee" Nomenclature**

As used throughout this agreement, the word "Trustee" shall refer to the initial Trustee as well as any single, additional, or successor Trustee. It shall also refer to any individual, corporation, or other entity acting as a replacement, substitute, or added Trustee.

**Section 2. No Requirement to Furnish Bond or Registration**

My Trustee shall not be required to furnish any bond for the faithful performance of its duties. This trust shall be registered with the State of Alaska in the manner required by Alaska law

If a bond is required by any law or court of competent jurisdiction, it is my desire that no surety be required on such bond.

**Section 3. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by my Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

#### **Section 4. My Trustee's Responsibility to Make Information Available to Beneficiaries**

During my lifetime, my Trustee shall report at least semi-annually to my Protector and to my children or to the survivor of them. After the death of my children, my Trustee shall report, at least semiannually, to the beneficiaries then eligible to receive mandatory or discretionary distributions of the net income from the various trusts created in this agreement and all of the receipts, disbursements, and distributions occurring during the reporting period along with a complete statement of the trust property.

With respect to any trust asset that is not cash or marketable securities, my Trustee shall only have the duty to report to the beneficiaries the information that is provided to my Trustee. My Trustee shall be indemnified and held harmless by the assets in the trust from any loss, claim or damage [including costs and attorney's fees] incurred by my Trustee arising out of any claim by a beneficiary relating to my Trustee's duty to report information relating to any non-marketable securities held by my Trustee.

The trust's books and records along with all trust documentation shall be available and open at all reasonable times to the inspection of the trust beneficiaries and their representatives.

My Trustee shall not be required to furnish trust records or documentation to any individual, corporation, or other entity that is not a beneficiary, does not have the express written approval of a beneficiary, or is not requesting such pursuant to a court order.

#### **Section 5. Delegation Among the Trustees**

Any Trustee may delegate to any other Trustee the power to exercise any or all powers granted my Trustee in this agreement, including those that are discretionary, if allowed by law.

My delegating Trustee may revoke any such delegation at will.

The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing executed by the delegating Trustee.

As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force

and effect as if the delegating Trustee had personally joined in the exercise of such power.

#### **Section 6. Utilization of Substitute Trustee**

If any Trustee is unwilling or unable to act as to any trust property, my Trustee shall designate, in writing, an individual, bank trust department, or trust company to act as a substitute Trustee with regard to such property.

The property being administered by the substitute Trustee, as well as the net income therefrom, shall be distributed or remitted as directed by the delegating Trustee consistent with the terms of this agreement.

Each substitute Trustee shall exercise all of the fiduciary powers granted by this agreement unless expressly limited by the delegating Trustee in the instrument appointing such substitute Trustee, or by any provision within this Section.

Any substitute Trustee may resign at any time by delivering written notice to my Trustee to that effect.

Following my death, a Qualified Trustee may appoint any of my descendants, or the spouse of any of my descendants, as a special Substitute Trustee of this trust, or any subtrust created hereby, whose sole responsibility shall be to determine the amount to be distributed in any period to the beneficiaries of this trust, or any such subtrust. Such Substitute Trustee shall have no authority to exercise any discretion with regard to distributions to, or for the benefit of, such Substitute Trustee and, if such Substitute Trustee has been delegated the power to determine the amount of any distributions to or for the Substitute Trustee's benefit, his/her authority shall be limited by an ascertainable standard only to distributions reasonably necessary for his/her health, education, maintenance and support. The actions of any Substitute Trustee shall be limited by the provisions of the agreement with regard to the actions of an Interested Trustee. Notwithstanding anything to the contrary in this instrument, in the event that the Qualified Trustee delegates to such a Substitute Trustee the responsibility to determine the amount to be distributed in any period to the beneficiaries of this trust, or any such subtrust, the Substitute Trustee shall have all the powers of the Trustees hereof with regard to such distributions, and no other Trustee, including the Qualified Trustee which appointed such Substitute Trustee, shall have any responsibility to determine appropriate distributions under the terms of this Trust.

## **Section 7. Indemnification of the Trustee**

I recognize that some persons may be hesitant to serve as Trustee of this trust agreement because of a concern about potential liability, particularly with respect to the management of assets in closely held corporations or partnerships. Therefore I direct that my 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 respect to the management of any non-marketable securities held by my trust. My Trustee shall be fully indemnified by the trust estate against any claim or demand by any trust beneficiary or trust creditor arising out of any claim relating to the management of such assets, except for any claim or demand based on my Trustee's own willful misconduct or gross negligence proved by clear and convincing evidence. Expenses incurred by my 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 in this Section.

My Trustee shall not incur liability to the trust nor to the trust beneficiaries for a decision to invest or to retain an investment of all or any part of the trust property in a partnership, limited partnership, limited liability company, or other entity which provides additional protection of the assets of the trust or which provides for the convenient management of jointly owned family property (including property held by one or more trusts for members of the family), even if restrictions on transfer and liquidation may cause the ownership interest to have a fair market value which is less than the fair market value of the assets contributed to the entity, or if the lack of control over the interests (or lack of diversification of investments as a result thereof) have an adverse impact on the value of the assets hereof.

## **Section 8. Trustee's Fee**

My Trustee shall be entitled to fair and reasonable compensation for the services it renders as a fiduciary. The amount of compensation shall be an amount equal to the customary and prevailing charges for services of a similar nature during the same period of time and in the same geographic locale.

My Trustee shall be reimbursed for the reasonable costs and expenses incurred in connection with its fiduciary duties under this agreement.

## **Section 9. A Majority of Trustees Required to Control**

Except as otherwise provided herein, when more than two Trustees are acting, the concurrence and joinder of a majority of my Trustees shall control in all matters pertaining to the administration of any trust created under this agreement, except as to matters properly delegated to one of them.

Except as otherwise provided herein, if only two Trustees are acting, the concurrence and joinder of both shall be required, except as to matters properly delegated to one of them.

As to any matter where my Trustees cannot attain the concurrence or joinder of a majority of Trustees, my Trustees may designate by agreement of all of my Trustees a third party to determine such matter, and my Trustees shall abide by the decision of such third party, or, if they cannot agree on a third party, may seek the instructions of a court of competent jurisdiction.

Any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust. The dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

## **Section 10. Successor Corporate Fiduciaries**

If any bank or trust company ever succeeds to the trust business of any corporate fiduciary serving as a Trustee under this agreement, whether because of a name change or any other form of reorganization, or if such corporate fiduciary ever transfers all of its existing business to any other bank or trust company, the successor shall thereupon, without any action being required, succeed to the trusteeship as if originally named.

## **Section 11. Early Termination of Trusts Based on Cost**

Notwithstanding any other provision of this trust, if at any time after my death, any trust created in this trust is reduced to an amount which the Trustee, in the Trustee's sole and absolute discretion, determines that the trust is no longer economically feasible (which shall not be at any time when the reasonably anticipated annual costs of operating the trust do not exceed the greater of 15 percent of anticipated annual trust income or one and one-half percent of the trust's assets), the Trustee may, in the Trustee's sole discretion, either:

terminate such trust and distribute the trust property to the person(s) then entitled to the income or to receive or to have the benefit of the income therefrom or to the legal representative of such person. If there is more than one income beneficiary, the distribution to such income beneficiaries shall be made in the proportion in which they are beneficiaries or if no proportion is designated, in equal shares to such beneficiaries; or

purchase and deliver to the income beneficiary(ies) restrictive savings accounts, certificates of deposit, annuities, endowments, or comparable investments which the Trustee deems proper; or

distribute the trust assets to a custodian for the beneficiary(ies) under the applicable Uniform Transfers (or Gifts) to Minors Act.

## **Section 12. Generation-Skipping Tax Provisions**

In order to minimize the impact of any generation-skipping tax that may be applied to any of the trusts created by this agreement or their beneficiaries, my Trustee, in its sole and absolute discretion, is authorized to take the following actions:

### **a. Division into Exempt and Nonexempt Trusts**

If any trust created under this agreement would be partially exempt from generation-skipping tax by reason of an allocation of a generation-skipping tax exemption to it, prior to such allocation my Trustee shall divide the total trust assets into two separate trust shares of equal or unequal value, to permit allocation of the exemption solely to one trust share (the "exempt trust").

The exempt trust shall consist of a fractional interest of the total trust assets in an amount necessary to cause the exempt trust to be entirely exempt from generation-skipping tax. The other trust share (the "nonexempt trust") shall consist of the remaining fractional interest of the total trust assets.

My Trustee shall have complete authority to make allocations of trust property between the Exempt Shares and the Non-Exempt

Shares established in this Section. Property conveyed or assigned in kind to the Exempt Shares shall be valued at its value as finally determined for federal estate tax purposes. However, if specific property is allocated to these shares, the division of assets shall be made in a manner that fairly reflects net appreciation or depreciation in the value of the assets measured from the valuation date for federal estate tax purposes to the date of funding. My Trustee shall maintain separate accounts for the exempt trust and the nonexempt trust.

Any exempt trust or nonexempt trust and any exempt share or nonexempt share established under this agreement may be referred to by such name as may be designated by my Trustee.

**b. Additions to a Separate Trust**

If a trust under this agreement, whether created under this Section or not, is entirely exempt or nonexempt from generation-skipping tax and adding property to it would partially subject the trust to generation-skipping tax, my Trustee may hold that property in a separate trust in lieu of making the addition.

**c. Terms of the Trusts**

If my Trustee divides a trust into two separate trust shares or creates a separate trust for additions, the trusts or trust shares that result shall have the same terms and conditions as the original trust.

My Trustee shall not make discretionary distributions from the income or principal of an exempt trust to beneficiaries who are non-skip persons as long as any readily marketable assets remain in a nonexempt trust for such beneficiaries.

To the extent possible, my Trustee shall make discretionary distributions to beneficiaries who are skip persons from an exempt trust for such beneficiaries.

**d. Allocation from an Exempt Trust First**

Upon division or distribution of an exempt trust and a nonexempt trust, my Trustee may allocate property from the exempt trust first

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Appellant,

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Respondent.

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	Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014; to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from Christopher D. Davis	
12	Second Amended Notice of Hearing on Petition to Assume Jurisdiction Over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014; to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from Christopher D. Davis	519-523
13	Declaration of Christopher Davis	524-526
14	Christopher D. Davis' Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	527-552
15	Christopher D. Davis' Reply to Caroline Davis' Opposition to His Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	553-578
16	Opposition to Christopher D. Davis' Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	579-591
17	Transcript of Proceedings – Wednesday, April 22, 2015	592-650

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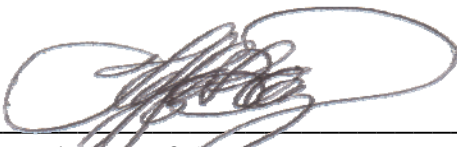
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