

# Living trust

[Business](#), [Company](#)



trust agreement THIS TRUST AGREEMENT, MADE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20XX, BETWEEN \_\_\_\_\_, PRESENTLY RESIDING AT \_\_\_\_\_ (SETTLOR), \_\_\_\_\_, PRESENTLY RESIDING AT \_\_\_\_\_ (TRUSTEE), AND \_\_\_\_\_, PRESENTLY RESIDING AT \_\_\_\_\_ (SUCCESSOR TRUSTEE).

THE TRUST CREATED BY THIS AGREEMENT SHALL BE KNOWN AS THE \_\_\_\_\_ TRUST. W I T N E S S E T H: WHEREAS, THE SETTLOR DESIRES TO CREATE AND ESTABLISH A REVOCABLE INTER VIVOS TRUST OF THE PROPERTY DESCRIBED IN SCHEDULE A ATTACHED HERETO AND MADE A PART HEREOF, WHICH PROPERTY, TOGETHER WITH THE INVESTMENTS, REINVESTMENTS, ACCUMULATED INCOME AND PROCEEDS THEREOF, AND ADDITIONS THERETO, SHALL HEREINAFTER CONSTITUTE THE PROPERTY OF THIS TRUST (THE TRUST FUND); AND

WHEREAS, the Trustee has agreed to hold, manage, invest, and reinvest the Trust Fund to collect the income therefrom and after paying all expenses properly attributable thereto, to distribute the Trust Fund in accordance with the terms and conditions herein. NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, Settlor has assigned and delivered, and the Trustee acknowledges receipt of the Trust Fund, in Trust, nevertheless, for the following purposes and under the following terms and conditions: ARTICLE I [Description] A)The Trust Fund shall be maintained by the Trustee in one (1) trust for the exclusive benefit of Settlor. Settlor reserves the right to add additional beneficiaries hereunder

and Trustee agrees to undertake the duties and responsibilities of Trustee in accepting, holding, managing, and disbursing the principal and interest of the Trust Fund in accordance with the terms and conditions of this Trust Agreement. (B) Trustee may receive any other real or personal property from Settlor or from any other person or persons, by lifetime gift, under a will or trust or from any other source.

Such property shall be indicated by adding same to Schedule A which shall be held by Trustee subject to the terms of this Trust Agreement. Trustee agrees, if he accepts such additions, to hold and manage such additions in trust for the uses and in the manner set forth herein. (C) Trustee shall receive any real or personal property derived as income produced by the Trust Fund. Such accumulated income shall be added to the Trust Fund and held by Trustee subject to the terms of this Trust Agreement. ARTICLE II [Description]

The Trustee shall pay the entire net income arising from the Trust Fund in approximately equal monthly installments to or for Settlor during Settlor's entire lifetime, or as directed by Settlor from time to time, retain and reinvest designated portions thereof, provided, however, that if the net income from the principal of the said Trust Fund, together with such other income as may be available to Settlor and Settlor's spouse (Settlor's spouse) from other sources be insufficient for their comfortable support, welfare, and maintenance, then, and in such case, Trustee is authorized to pay to or use for the benefit of Settlor and Settlor's spouse during Settlor's lifetime so much of the principal of the said Trust Fund as, in Trustee's sole discretion, Trustee may deem necessary for such purposes, or to provide for an

emergency of any sort, nature, or description; provided, however, subject to Article IV but notwithstanding anything else contained in this Trust Agreement to the contrary, Settlor may, at any time and from time to time during the existence of said Trust Fund, withdraw all or any part of the principal and accumulated income, if any, by filing with the Trustee a notice to that effect and filing subsequently with said Trustee a receipt for the funds so disbursed.

If either or both Settlor and Settlor's spouse shall be determined, in accordance with Article III hereof, to be incapable of the care, custody, and management of the principal and income of the Trust Fund because of advanced age, impaired health, or mental or physical disability, then the Successor Trustee is specifically authorized and empowered, acting in his sole and absolute discretion, to retain all or such part of the income and principal as he deems best, and then to distribute all or part of the income and/or principal for the suitable support, welfare, and maintenance of Settlor and/or Settlor's spouse in such of the following ways as the Successor Trustee shall deem best: a) directly to such beneficiary; b) to such person as such beneficiary may nominate in writing; c) to the legally appointed guardian(s) or conservator(s) of such beneficiary; d) to some person(s) having the care of such beneficiary; or e) by the Successor Trustees using the amounts involved for or on behalf of such beneficiary for his suitable support, comfort, health, welfare, and maintenance. ARTICLE III [Description]

During such period that Settlor is the sole Trustee, and if in the judgment of the Successor Trustee, such step is deemed necessary, then the Successor Trustee may appoint three (3) doctors of medicine licensed to practice in the

State of Settlor's then current residence, one of whom shall be Settlor's personal physician, if possible, to determine whether Settlor has become incapable of the care, custody, and management of the principal and income of the Trust Fund because of advanced age or impaired health or mental or physical disability. If the three (3) doctors unanimously determine in writing, as evidenced by signed Certificate(s) of Incapacity, that Settlor has become incapable as herein defined, of the care, custody, and management of the principal of the Trust Fund or any income from the

Trust Fund, or upon the determination of a court of competent jurisdiction of the physical or mental incapacity of Settlor, then Settlor shall no longer be Trustee nor shall Settlor have the right to become Trustee, and the Successor Trustee shall possess and be subject to those rights, duties, and obligations which they or it would assume if they or it had been nominated as initial Trustee under the terms of this Trust Agreement; provided, however, upon the revocation of the court order hereinabove referred to, or upon the revocation of two (2) of said Certificate(s) of Incapacity, either by any two (2) of the original certifying doctors or by any two (2) duly licensed doctors selected by the Successor Trustee, the rights and powers under this Trust Agreement shall become operative again and shall revert to Settlor. In addition to the above, Settlor is authorized, at any time and from time to time, voluntarily to relinquish his investment control by an acknowledged, written instrument to that effect, delivered to the Successor Trustee. Said instrument shall be known as a Certificate of Authorization. Such Certificate of Authorization shall specify a date after its delivery to the Successor Trustee, as the date on which investment control is to be relinquished.

From and after such specified date, Settlor shall not possess investment control, unless and until he reassumes investment control by a subsequent acknowledged, written instrument to that effect, delivered to the Successor Trustee. Such subsequent instrument shall specify a later date after its delivery to the Successor Trustee, as the date on which investment control is to be reassumed. From and after such specified date, Settlor shall again possess investment control. ARTICLE IV [Description] During such period of time that Successor Trustee is in possession of an apparently proper and effective court order ruling Settlor to be physically or mentally incompetent to act on his behalf, or is in possession of the three (3) Certificate(s) of Incapacity, as provided in Article III, supra, at least two (2) of which are not revoked, any attempt by Settlor to exercise any reserved rights and powers under this Trust Agreement, including, but not by way of limitation, the right of modification, revocation, amendment, withdrawal of principal and/or income, or the sale of principal of the Trust Fund, shall be void and during such period of time this Trust Agreement shall be irrevocable and not amendable; provided that during such period of time that Settlor is incapacitated as hereinabove referred to Settlor shall have the power to appoint to any person(s), including his estate, any and all assets of the Trust Fund upon his death, but only by specific reference to said Power of Appointment in Settlor's Last Will and Testament, duly proved and allowed for probate.

During such period of time that the Successor Trustee is in possession of a properly executed Certificate of Authorization signed by Settlor, Settlor shall retain all reserved rights and powers under this Trust Agreement with the

exception of the investment control of the assets of the Trust Fund pursuant to the terms of this Trust Agreement which shall be reserved to the Successor Trustee. ARTICLE V [Description] Upon Settlor's death, the Successor Trustee shall hold and dispose of the Trust Fund as follows: (A) If Settlor's spouse survives Settlor, the Successor Trustee shall hold, manage, and invest the Trust Fund, collect the income thereon, and pay to or apply for the benefit of Settlor's spouse the net income thereof, in quarterly or other convenient installments (but at least annually), for and during the term of Settlor's spouse's life.

In addition, the Successor Trustee may pay to or apply for the benefit of Settlor's spouse so much or all of the principal of this trust as the Successor Trustee, in his sole and absolute discretion, deems necessary or desirable for the support, maintenance, health, welfare, and benefit of Settlor's spouse. Settlor's spouse, in Settlor's spouse's individual capacity, is hereby authorized by instrument in writing delivered to the Successor Trustee, to withdraw in the month of December of each calendar year any part of all of the principal of the trust to the extent of Five Thousand Dollars (\$5, 000) or five percent (5%) of the value of the principal of the trust on the last day of such year, whichever is the greater amount. This right shall be noncumulative.

Upon the death of Settlor's spouse, the Successor Trustee shall distribute any undistributed net income of this trust, whether collected or accrued, to Settlor's spouse's Personal Representative and shall pay over and distribute the entire remaining principal to such of my issue, in such shares and proportions and either outright or in trust as Settlor's spouse, by specific

reference in her will to said special power of appointment, hereby created, may designate and appoint, or, to the extent, if any, that Settlor's spouse may fail to effectively exercise this said special power of appointment, the remaining principal of this Trust established in this Article V, paragraph (A), supra, shall be distributed by my Successor Trustee as follows: (1) In the event that any portion of this Trust referred to in this Article V, paragraph (A), supra, is included in Settlor's spouse's estate, the Successor Trustee shall pay to the Personal Representative of Settlor's spouse's estate, out of the principal of the Trust, an amount equal to the estate, inheritance, transfer, succession, or other death taxes (death taxes), federal, state, or other, payable by reason of the inclusion of the value of the trust property in her estate.

Such payment shall be equal to the amount by which (i) the total of such death taxes paid by Settlor's spouse's estate exceeds (ii) the total death taxes which would have been payable if the value of the trust property had not be included in Settlor's spouse's estate. The determination of the Settlor's spouse's Personal Representative of the amount payable hereunder shall be final. The Successor Trustee is directed to pay such amount promptly upon written request of Settlor's spouse's Personal Representative. The final determination of the amount due hereunder shall be based upon the values as finally determined for federal estate tax purposes in Settlor's spouse's estate. After payment of the amount finally determined to be due hereunder, the Successor Trustee shall be discharged from any further liability with respect to such payment. Settlor's spouse may waive Settlor's spouse's state's right to payment under this paragraph by a will, executed



after Settlor's death, in which Settlor's spouse specifically refers to the right to payment hereby given to Settlor's spouse's estate. (2) Any then remaining principal, after payment of the taxes as specified in this Article V, paragraph (A)(1), supra, shall be divided, administered, and managed as part of the trust established in Article VI, infra. Notwithstanding anything contained in this Article V, paragraph (A), if Settlor's spouse renounced Settlor's spouse's interest in any portion of the property passing under this Article V, paragraph (A), such portion shall not pass under this Article V, paragraph (A), but shall pass under and be governed by the provisions of Article V, paragraph (B), infra.

Notwithstanding anything contained in this Article V, paragraph (A), if a reduction of the property passing to the Successor Trustee under this Article V, paragraph (A), would not result in any increase in the federal estate tax upon Settlor's estate (after taking into account the unified credit and the credit for state death taxes, but only to the extent that the use of such credit does not increase state death taxes payable by Settlor's estate, and all other estate tax credits available to Settlor's estate and after assuming for this purpose only that all property passing under this paragraph will be qualified for the federal estate tax marital deduction), said property shall be reduced by the largest amount which will result in no such increase, and such amount shall not pass under this Article V, paragraph (A), but shall pass under and be governed by the provisions of Article V, paragraph (C), infra.

In determining the amount of any such reduction, the final determination of the federal estate tax proceeding relating to Settlor's estate shall control, and there shall be taken into account all property passing (or which shall

have passed) to or for the benefit of Settlor's spouse (under Settlor's will, this Trust, or otherwise); however, there shall not be taken into account any renunciation by Settlor's spouse or any interest in any portion of Settlor's residuary estate which, but for such renunciation, would have passed under the provisions of this Article V, paragraph (A), and such determination shall be made on the assumption that there was no such renunciation. Such reduction shall be deemed a dollar amount reduction, and the property passing as a result thereof to the trust created under Article V, paragraph (C), *infra*, shall not participate in increases or decreases during the administration of Settlor's estate.

To the extent possible, assets with respect to which the marital deduction is not allowable for purposes of federal estate tax on Settlor's estate, or with respect to which a credit for foreign death taxes is allowable for such purposes, shall be allocated to the property passing to the trust created under Article VI, *infra*. It is Settlor's intention that this Trust qualify for the marital deduction allowable in determining the federal estate tax upon Settlor's estate. Accordingly, Settlor hereby authorizes the Settlor's Personal Representative to elect that any amount passing under this Article V, paragraph (A), be treated as qualified terminable interest property for the purposes of qualifying for said marital deduction.

If Settlor's spouse is not living at the time of Settlor's death, the foregoing provisions of this Article V, paragraph (A), shall be of no effect and the property otherwise segregated for and allocated to the trust created in this Article V, paragraph (A), shall rather be held, administered, and disposed of under and in accordance with the provisions of the trust established in

Article VI, *infra*. In the event that Settlor or Settlor's spouse shall die under circumstances that the order of death cannot be established by adequate proof, it shall be conclusively presumed that Settlor's spouse [survived] [predeceased] Settlor, and this Trust Agreement shall be administered as though Settlor's spouse [survived] [predeceased] Settlor, and its terms shall be so interpreted and construed. Such presumption shall be conclusive and binding upon all parties having an interest under this Trust Agreement. B) If Settlor's spouse survives Settlor and renounces her interest in any amount or any portion which would otherwise have passed under the provisions of Article V, paragraph (A), *supra*, or renounces any portion of Settlor's estate passing to Settlor's spouse pursuant to Settlor's Last Will and Testament, such renounce amount or portion shall be held, managed, and invested by the Successor Trustee, IN TRUST, NEVERTHELESS, upon the terms and conditions and for the uses and purposes hereinafter set forth. The Successor Trustee shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, shall, at least as often as quarter annually, pay or apply all of such net income to or for the use and benefit of Settlor's spouse.

If the principal of the Trust established under the provisions of Article V, paragraph (A), *supra*, is exhausted for any reason, then, from and after such exhaustion, the Successor Trustee may pay to or apply for the benefit of Settlor's spouse, so much or all of the principal as the Successor Trustee, in his sole and absolute discretion, deems necessary or desirable for the support, health, welfare, and benefit of Settlor's spouse. With regard to any property passing under this Article V, paragraph (B), Settlor directs Settlor's

Personal Representative not to elect to have the same treated as qualified terminable interest property for the purposes of qualifying for the marital deduction allowable in determining the federal estate tax on Settlor's estate. Upon the death of Settlor's spouse any then remaining principal of the trust referred to in this Article V, paragraph (B), shall be held, administered, and distributed as part of the trust established in Article VI, infra. C) If Settlor's spouse survives Settlor, and if any amount is directed to be disposed of under and governed by the provisions of this Article V, paragraph (C), said amount shall be held, managed, and administered by the Successor Trustee, IN TRUST, NEVERTHELESS. The Successor Trustee shall collect the income thereon and pay to or apply for the benefit of Settlor's spouse so much or all of the net income thereof as Successor Trustee, in his sole and absolute discretion, deems necessary or desirable for Settlor's spouse's support, health, welfare, and benefit. Any balance of net income not so paid or applied shall be added to principal annually.

If the principal of the trusts established under the provisions of Article V, paragraphs (A) and (B), supra, is exhausted for any reason whatsoever, then, from and after such exhaustion, the Successor Trustee may pay to or apply for the benefit of Settlor's spouse so much or all of the principal of this trust as the Successor Trustee, in his sole and absolute discretion, deems necessary or desirable for the support, health, welfare, and benefit of Settlor's spouse. Settlor's spouse is hereby authorized, in Settlor's spouse's individual capacity, by instrument in writing delivered to the Successor Trustee, to withdraw in the month of December of each calendar year any part of all of the principal of the trust to the extent of Five Thousand Dollars

(\$5, 000) or five percent (5%) of the value of the principal of the trust on the last day of such year (which principal shall not be deemed to include undistributed income of the current year), whichever is the greater amount. This right shall be noncumulative.

Settlor's spouse is hereby authorized, in Settlor's spouse's individual capacity, by instrument in writing delivered to the Successor Trustee during Settlor's spouse's lifetime, to direct the Successor Trustee to pay over and distribute, at any time or from time to time during her lifetime, so much or all of the principal of this trust to such of Settlor's then living issue, in such shares and proportions and either outright or in trust, as Settlor's spouse, in Settlor's spouse's sole and absolute discretion, may designate and appoint, provided that, no such appointment shall be effective to the extent it relieves Settlor's spouse of any obligations she may have to support any of the Settlor's then living issue. If, in Successor Trustee's sole and absolute discretion, the financial security of Settlor's spouse would not be jeopardized, the Successor Trustee may, at any time or from time to time, pay to or apply for the benefit of any one or more of Settlor's then living issue so much or all or any accumulated income and so much or all of the principal of this trust as the Successor Trustee, in his sole and absolute discretion, deems necessary or desirable for the support, health, education, welfare, and benefit of such then living issue or any of them.

Upon the death of Settlor's spouse, the Successor Trustee shall pay over and distribute the principal of this trust as then constituted, together with any undistributed net income, whether collected or accrued, to such of Settlor's then living issue, in such shares and proportions and either outright or in

trust, as Settlor's spouse, by express reference to this provision in her will, may designate and appoint, or, to the extent, if any, that Settlor's spouse shall fail to effectively exercise this power of appointment, the remaining principal of this Trust established in this Article V, paragraph (C), shall be held, administered, and distributed as part of the trust established in Article VI, infra. ARTICLE VI [Description]

Upon the death of the Settlor's spouse after Settlor's death or if Settlor's spouse does not survive the Settlor then upon the death of the Settlor, the Successor Trustee shall divide the Trust Fund, as then constituted, into separate trusts, equal in value, one for each then living child of Settlor and one for the issue, collectively, of each child of Settlor who predeceases Settlor or Settlor's spouse leaving issue who survive Settlor. The share or portion of a share allocated to each beneficiary shall constitute and be administered as a separate trust. Separate books and records shall be kept for each trust, but it shall not be necessary that physical division of the assets be made to each trust. These trusts shall be administered as follows:

(A) Each share so provided for a then living child of the Settlor who has not then attained the age of \_\_\_\_\_ (\_\_\_) years shall be paid over and distributed to such child, outright and free of trust. (B) Each share so provided for a then living child of Settlor who has not then attained the age of \_\_\_\_\_ (\_\_\_) years shall be held, managed, invested, and reinvested by the Successor Trustee, who shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, shall, at any time and from time to time, pay or apply to or for the support, health, education (including college and professional education), and

maintenance of the child for whom such share has been placed in trust so much (even to the extent of the whole) of the net income of such share and/or principal of such share as the Successor Trustee, in his sole and absolute discretion, shall deem advisable for such purposes. The Successor Trustee need not consider such child's other sources of income when determining whether to invade the principal of such share. The Successor Trustee shall accumulate and add to the principal of such share any balance of such net income not so paid or applied. From such time as such child attains the age of \_\_\_\_\_ (\_\_\_) years until such time as such child's share is terminated, the Successor Trustee shall pay over and distribute to such child, outright and free of trust, all income of such child's share, at least as frequently as quarter annually.

At such time as such child attains the age of \_\_\_\_\_ (\_\_\_) years, the Successor Trustee shall pay over and distribute to such child outright and free of trust, all then remaining principal and undistributed income, if any, of said share. Upon the death of such child, said child's share, if not previously distributed in full pursuant to the foregoing provisions hereof, shall then be distributed as follows: The Successor Trustee shall pay over and distribute all then remaining principal and undistributed income, if any, of said share, outright and free of trust, to the then living issue of such child, subject to the provisions of Article VII, paragraph (A), infra, per stirpes; or, if none, outright and free of trust, to the then living children of Settlor, per stirpes; or, if none, outright and free of trust , to the Settlor's heirs.

Such distributions to Settlor's surviving children or to their surviving issue shall be made by the Successor Trustee herein appointed if any portion of

the trust of such child or children hereinbefore established has not been distributed. If, however, such trust has been distributed, then such share shall pass directly to Settlor's then living children or their surviving issue, if any. (C)Each share so provided for the then living issue of a child of the Settlor who is then deceased shall, subject to the provisions of Article VII, paragraph (D), infra, be paid over and distributed, outright and free of trust, to such then living issue, per stirpes. D)Recognizing the possibility that the amount of the funds or property held in the trust created under this Article VI may be insufficient to justify the continuance of the trust, the Successor Trustee, in his discretion, may terminate any trust created hereunder whenever in his judgment such trust no longer serves a useful purpose, and upon any such termination, distribute the trust assets to the beneficiary of the trust, free and clear of any trust. (E)If neither Settlor's spouse, Settlor's children, nor any of the issue of Settlor's children survive Settlor, the entire Trust Fund shall be paid over and distributed by the Successor Trustee, outright and free of trust, to Settlor's heirs. ARTICLE VII [Description] (A)If any part of the Trust Fund is distributable to a person who is under the age of \_\_\_\_\_ (\_\_\_) years, then, in each case where it shall be lawful to do so, such property shall continue to be held IN TRUST by the Trustees.

The Trustees shall hold, invest, and reinvest the same, collect the income therefrom and, after deducting from said income all amounts properly chargeable thereto, at any time and from time to time, pay to or apply to the support, health, education (including college and professional education), and maintenance of such person so much of the net income as the Trustees, in their sole and absolute discretion, shall deem advisable for such purposes.



The Trustees shall accumulate and add to the principal of said Trust any balance of such net income not so paid or applied. The provisions of this Article VII, paragraph (A), shall not refer to any child of the Settlor who is a beneficiary of a trust created under Article VI, supra.

In addition, the Trustees shall be authorized, at any time and from time to time, to pay to or apply to the support, health, education (including college and professional education), and maintenance of such person so much (even to the extent of the whole) of the principal of said Trust as the Trustees, in their sole and absolute discretion, shall deem advisable for such purposes. The Trustees need not consider such person's other sources of income when determining whether to invade the principal of said Trust. The Trust hereunder with respect to property shall terminate when such person attains the age of \_\_\_\_\_ (\_\_\_) years or sooner dies, but in no event later than the time set forth in Article VII, paragraph (B), infra.

Upon such termination, the Trustees shall pay over and distribute outright and free of trust, the then remaining principal and undistributed income, if any, of said Trust to the person for whose benefit said Trust was established, if he or she is then living; or if deceased, to his or her then living issue, per stirpes; or, if none, to any other issue of the Settlor then living, per stirpes; or, in default of all issue of the Settlor, to such deceased person's estate. (B)Notwithstanding any designation of age or distribution or any other provision contained herein, if the creation of interests herein in any person shall violate the Rule Against Perpetuities or any other rule of law, then the interest of that person shall be accelerated and shall be deemed to vest

within such time as will not violate the Rule Against Perpetuities or any other rule of law.

In no event shall any such trust created pursuant to the terms of this Trust Agreement terminate later than twenty one (21) years after the death of the last to survive of the group consisting of Settlor's spouse, Settlor's children, and the issue of Settlor's children living at the time of the death of the Settlor. Upon such termination, the Successor Trustee shall pay over and distribute the then remaining principal and undistributed income, if any, of such trust, outright and free of trust, to the person for whose benefit said trust was so provided, if he or she is then living; or, if then deceased, to his or her then living issue, per stirpes; or, if none, to any descendant of the Settlor, per stirpes; or, if one, to any then living issue of Settlor, per stirpes; or, if none, outright and free of trust, pursuant to Article VI, paragraph (E), supra. (C)Notwithstanding the foregoing provisions of this Article VII, whenever, upon the death of a beneficiary of any trust created under this Trust Agreement, all or any part of the then remaining principal and undistributed income, if any, of such trust shall be payable or distributable to a person for whose benefit the Successor Trustee is then holding property in trust under this Trust Agreement, then and in that event (in each case where it may lawfully be done) the same shall not be paid or distributed to such person, but shall instead be added to and thereafter constitute a part of the principal of the trust for such person. D)Whenever any property may be distributed to or for the support, health, welfare, education, and maintenance of a person under the age of \_\_\_\_\_ ( ) years (minor), or the net income or principal of any trust created under this Trust

Agreement may be paid or applied to or for the support, health, welfare, education, and maintenance of a minor, there shall be no necessity for the appointment of a guardian to receive distributions, payments, or applications for any on behalf of such minor. Rather, any such distribution, payment, or application may be made by distributing the same or paying the amount thereof to a parent, the guardian (if there is one), or any other person then caring for or having custody of such minor.

Any distribution payment or application made to such parent, guardian, other person, or directly to such minor, pursuant to this paragraph (D), shall constitute a complete discharge and acquittance to the Successor Trustee, with respect to such distribution of the sum so paid or applied. (E) Except for the trust created in Article V, paragraph (A), supra, any trust created under this Trust Agreement shall be construed as a spendthrift trust. No part of the income, accumulated income, or principal of such trust is ever to be subject to transfer, assignment, sale, pledge, or anticipation in any manner by any beneficiary or remainderman, nor is the interest of any beneficiary or remainderman, prior to the termination of such trust, to be seized in any manner or held liable for the debts, contracts, obligations, or engagements of any kind whatsoever of any beneficiary or remainderman hereunder.

If any beneficiary or remainderman should execute any document by which he attempts to transfer, assign, sell, pledge, or anticipate his or her interest hereunder, the Successor Trustee is to immediately terminate all payments to said beneficiary or remainderman, and the Successor Trustee thereafter may pay over to any person such sums of money or other property which the Successor Trustee, in his sole and absolute discretion, deems to be in the

interest of said beneficiary or remainderman. (F) For all purposes of this Trust Agreement, the terms child or children are defined to mean a lawful descendant or lawful descendants in the first degree, whether by blood or adoption (and whether born or adopted before or after the execution of this Trust Agreement), of the parent designated, and the term issue is defined to mean a lawful descendant or lawful descendants in the first, second, or any other degree, whether by blood or adoption (and whether born or adopted before or after the execution of this Trust Agreement), of the ancestor designated.

The provisions of the preceding sentence to the contrary notwithstanding, for all purposes of this Trust Agreement, any child born to or adopted by persons who are holding themselves out as husband and wife after the performance of a marriage ceremony between them shall be considered as a lawful descendant in first degree of such persons, and therefore a child (as defined in the preceding sentence) of such person even though any divorce or annulment proceeding purporting to terminate a prior marriage of one or both of such persons is or may be invalid; and a blood descendant in the first degree of a person shall be deemed to be a lawful descendant in the first degree of such person, and therefore a child (as defined in the preceding sentence) of such person, if it is established that such person has openly and continuously held out such descendant as his or her own son or daughter. For all purposes of this Trust Agreement the term Settlor's children and terms of like import shall refer not only to the [children / child] of the Settlor now living (viz. , \_\_\_\_\_) but also to any child of Settlor (as defined in this paragraph (F)) born or adopted after the execution

of this Trust Agreement. (G) For all purposes of this Trust Agreement, an infant in gestation who is later born alive shall be deemed to have been in being during such period of gestation for the purposes of qualifying such infant, after its birth, as a beneficiary of any trusts created hereunder. H) Any reference in this Trust Agreement to Settlor's heirs means those persons, other than creditors, who would take Settlor's person property under the laws of the jurisdiction of Settlor's domicile at the time of Settlor's death if Settlor had died at the time stipulated for distribution, unmarried, intestate, and domiciled in such jurisdiction; and distribution to such persons shall be made in the same manner and in the same proportion that Settlor's personal property would be distributed under the laws of such jurisdiction if Settlor had died at the time stipulated for distribution, unmarried, intestate, owning the property available for distribution and no other property, without creditors, and domiciled in such jurisdiction.

ARTICLE VIII [Description] Notwithstanding any other provisions of this Trust Agreement to the contrary: (A) On receipt of a written request from the Settlor's spouse, any unproductive property held as a part of the trust created in Article V, paragraph (A), supra, shall be made productive or converted within a reasonable time into productive property. (B) The powers and discretions of the Trustee or Successor Trustee shall not be exercised in such a manner as would cause the trust created in Article V, paragraph (A), supra, to fail to qualify for the estate tax marital deduction in the computation of the federal estate tax on the estate of the Settlor. (C) The powers and discretions of the Trustee or Successor Trustee shall not be exercised in such a manner as would cause any property remaining in the

trust created under Article V, paragraph (C), supra, at the death of Settlor's spouse to be included in the Settlor's spouse's estate for federal estate tax purposes. ARTICLE IX [Description] In addition to and not in limitation of the rights, powers, privileges, and discretions vested in trustees by law, Settlor gives to the Trustee, in the administration of any trust created hereunder, the following powers, to be exercised, without application to any court, to such extent, at such time or times, upon such terms, and in such manner as the Trustee, shall in his absolute discretion, deem advisable. A) To retain, for so long as is deemed advisable, any property, real or personal, included in the Trust Fund, to abandon any property, to change investments and to invest and reinvest from time to time in such other property, real or personal, within or without the United States (including, but not limited to, improved or unimproved real estate directly or through partnerships, limited liability companies, or joint ventures), stocks of any classification and shares of or interest in any discretionary common trust fund or mutual fund, without being limited in such retention, investment, or reinvestment to property authorized for the investment of trust funds or any applicable local law, without regard to diversification of assets, even though such assets are not income-producing. B) To sell, with or without notice, at public or private sale, for cash or on credit, with or without security, to exchange and to grant options to purchase any property, real or personal, at any time held hereunder, and in so doing to execute all necessary deeds or other instruments. (C) To borrow money, to mortgage or pledge as security, otherwise encumber, any property held hereunder, and, if money is borrowed from the Trustee, to pay interest thereon at the prevailing rate. (D)

To lease for any period (without regard to the duration of any trust created hereunder or to any statutory restriction), exchange, partition, divide, alter, demolish, develop, dedicate (even without consideration), improve, repair, maintain, grant easements on, or otherwise deal with real property. E) To make contracts and agreements, to compromise, settle, release, arbitrate, or accept arbitration of any debts or claims in favor of or against any trust created hereunder, to sue on behalf of any trust created hereunder and to defend any suit against the same, to foreclose any mortgage, deed of trust, or other lien securing any obligation and to bid on the property at foreclosure sale or acquire the property by deed without foreclosure, and to extend, modify, or waive the terms of leases, bonds, mortgages, and their obligations or liens. (F) To vote, in person or by proxy, any stock or securities held hereunder, and to exercise or delegate all rights and privileges (such as subscription rights and conversion privileges) and discretionary powers in connection therewith. (G) To exercise any options or warrants for the purchase of securities on such terms and conditions as the Trustee deems advisable and in the best interests of the beneficiary of any trusts created hereunder; or alternatively, not to exercise any such options or warrants (and allow them to lapse) if the Trustee deems such non-exercise to be in the best interest of such beneficiaries. H) To consent to and participate in any reorganization, consolidation, merger, dissolution, sale, lease, mortgage, purchase, or other action affecting any stock or securities held hereunder, and to make payments in connection therewith. (I) To deposit property with any protective, reorganization, or similar committee, to exercise or delegate discretionary powers in connection therewith, and to share in paying the

compensation and expenses of such committee. (J) To employ agents, attorneys, accountants, brokers, counsel, including investment counsel, or others, whether individual or corporate, and to pay their reasonable compensation and expenses. The Trustee may serve in any such additional capacity and be so compensated for services rendered in such additional capacity. K) To hold any property, real or personal, in the name of a nominee, or in his name as Trustee or to take stock or securities and keep the same unregistered in such condition that such stock or securities will pass by delivery. (L) In dividing or distributing principal of any trust created hereunder, to make such division or distribution in money, kind, or partly in money and partly in kind, or by allotting or assigning undivided interests in the property, even if one or more shares be composed in whole or in part of property different in kind from that of any other share. (M) To hold, in solido, for convenience of investment and administration, property constituting principal of two or more trusts created hereunder, or to make joint or common investments in which the separate trusts shall have undivided interests. N) To perform and carry out the provisions of any business agreements to which Settlor was a party and which may be in force at the time of Settlor's death (including, but not limited to, agreements of partnership, limited partnership, or joint venture, and agreements arising out of Settlor's interest as an officer, director, stockholder, or member of any corporation or limited liability company), and to reorganize or continue to operate any business, whether a sole proprietorship, partnership, limited partnership, joint venture, limited liability company, or corporation, in which Settlor may have an interest at the time of his death, under such terms and



conditions, with such other persons and in such manner as the Trustee, may determine. The Trustee is authorized to have a personal interest as partner, venturer, stockholder, member, owner or investor in, to be employed by, or otherwise to serve any business referred to herein, and to receive compensation for such employment or other services rendered to or for such business. The Settlor owns at the date of execution of this Trust certain business known as \_\_\_\_\_.

In the event that at the time of the death of the Settlor he owns a controlling interest in said business or successor thereto or in another business enterprise (whether operated in the form of a corporation, a partnership, limited liability company, or a sole proprietorship), the Settlor hereby desires that the Successor Trustee shall continue to hold and operate each such business as a part of the Trust Fund herein created. The Settlor hereby vests the said Successor Trustee, severally, including any successors to either, with the following powers and authority, as supplemental to the ones contained in this Article IX the applicability of which to the business of the Settlor confirms without limitation by reason of specification, and in addition to powers conferred by law, all of which may be exercised with respect to every such business, whether a corporation, a partnership, limited liability company, or a sole proprietorship. 1.

To retain and continue to operate the business for such period as the Successor Trustee, as the case may be, may deem advisable. 2. To control, direct, and manage the business. In this connection, the Successor Trustee, in his sole and absolute discretion, shall determine the manner and extent of its active participation in the operation, and the Successor Trustee may

delegate all or any part of his power to supervise and operate, to such person or persons as he may select, including any associate, partner, officer, member, or employee of the business. 3. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants and such other representatives as the Successor Trustee may deem appropriate; including the right to employ any beneficiary (or individual Trustee) in any of the foregoing capacities. 4. To invest other estate or Trust funds in such business; to pledge other assets of the estate or Trust as security for loans made to such business; and to loan funds from the Trust Fund to such business and to borrow from any bank or other lending institution, on such terms as are currently competitive. 5. To organize a corporation under the law of this or any other state or country and to transfer thereto all or any part of the business or other property held in the estate or Trust, and to receive in exchange therefor such stocks, bonds and other securities as the Trustee may deem advisable. 6.

To take any action required to convert any corporation or limited liability company into a partnership or sole proprietorship. 7. To treat the business as an entity separate from the estate or trusts. In its accountings to the court and to any beneficiaries, the Successor Trustee shall only be required to report the earnings and conditions of the business in accordance with standard corporate accounting practice. 8. To purchase, process, and sell merchandise of every kind and description; and to purchase and sell machinery and equipment, furniture and fixtures, and supplies of all kinds. 9. To liquidate all or any part of any business at such time and price and upon

such terms and conditions (including credit) as the Successor Trustee may determine.

The Successor Trustee is specifically authorized and empowered to make such sale to any partner, officer, member, or employee of the business (or to any Trustee) or to any beneficiary hereunder. 10. To exercise any of the rights and powers herein contained in conjunction with another or others. 11. To diminish, enlarge, or change the scope or nature of any business. The Settlor is aware of the fact that certain risks are inherent in the operation of any business and expects that decisions will be required of a businessman's risk nature as contrasted with prudent man rule. Therefore, the Settlor directs that the Trustee shall not be held liable for any loss resulting from the retention and operation of any business unless such loss shall result directly from the Successor Trustee's bad faith and willful misconduct.

In determining any question of liability for losses, it should be considered that the Successor Trustee, as the case may be, is engaging in a speculative enterprise at the Settlor's request. If any business operated by the Successor Trustee pursuant to the authorization contained in this Trust shall be unincorporated, then the Settlor directs that all liabilities arising therefrom shall be satisfied first from the business itself and second out of the estate or Trust Fund; it being the Settlor's intention that in no event shall any liability be enforced against the Successor Trustee personally. If the Successor Trustee shall be held personally liable, he shall be entitled to indemnify first from the business and second from the estate or Trust Fund.

It is recognized that any business interest which may be included in any estate or trust may require additional efforts and expertise on the part of the <https://assignbuster.com/living-trust/>

fiduciary. Accordingly, it is recognized that additional fees may be required. Such fees shall be taken as a director's fee, which shall be remitted to the fiduciary and/or as a management consultant charge by the fiduciary. (O) To make any loans, either secured or unsecured, in such amounts, upon such terms, at such rates of interest, and to such persons, firms or corporations, as is deemed advisable. (P) To receive, receipt for, and collect any and all income of every kind and character whatsoever, which shall, from time to time, be produced by or arise out of the trust estate. Q) The Settlor, while acting as Trustee, shall have the exclusive power and authority (1) to establish and maintain one or more accounts, which may be margin accounts, for the purpose of purchasing, investing in, or otherwise acquiring, selling (including short sales), possessing, transferring, exchanging, pledging, or otherwise disposing of, or turning to account of, or realizing upon, and generally dealing in and with (a) any and all forms of securities, including but not by way of limitation, shares, stocks, bonds, debentures, notes, script, participation certificates, rights to subscribe, options, warrants, certificates of deposit, mortgages, choses in action, evidences of indebtedness, commercial paper, certificates of indebtedness, and certificates of interest of any kind and every kind and nature whatsoever, secured or unsecured, whether represented by trust, participating and/or other certificates or otherwise, and (b) any and all commodities and/or contracts for the future delivery thereof, whether represented by trust, participating and/or other certificates or otherwise; (2) to pledge trust property as collateral for any personal or business loans of Settlor, or for the benefit of any other person or entity designated by Settlor; and (3) to

delegate to any agent of Settlor's choice by power of attorney or otherwise, the conducting of banking activities for Trustee, or the hiring, cancellation or use of entry of a safe deposit box or other storage facilities in the name of Trustee. Said power and authority shall be peculiar to Settlor while acting as initial Trustee. (R) To form, renew, or extend the life of any corporation or business entity while under the laws of any state and/or to subscribe for, or otherwise acquire, all or any part of the capital stock, bonds, or other securities of any corporation or business entity. (S) To pay, satisfy, and discharge all taxes and assessments upon the property comprising the trust estate or upon the income derived therefrom, and, in connection with any estate, inheritance, succession, or other imilar taxes that may be imposed upon Settlor's estate, the Successor Trustee shall make provisions and payment therefor if and to the extent that the Personal Representative of Settlor's probate estate, if any, so desires; provided, further, in the event that there shall be included in the trust property and estate any United States Treasury Bonds or other obligations redeemable at par value in payment of the United States Estate Tax imposed upon or with respect to all or any part of the trust property and estate, the Successor Trustee is hereby directed to apply such Bonds or other obligations toward the payment of said tax in an amount not to exceed the total of such tax and any interest accrued thereon, which Bonds or other obligations may be so applied directly by the Successor Trustee, or, in the Successor Trustee's discretion, may be delivered to the Personal Representative of Settlor's probate estate, if any, in which latter case the Successor Trustee may rely upon any written representations made to it by such Personal Representative as to the total of

said tax and shall be under no duty to verify the same. Further, where it is permitted by law to claim expenses as either income or estate tax deductions, Settlor's Successor Trustee may, but shall not be required to, make such adjustment between income and principal as Successor Trustee shall deem proper. Settlor's Successor Trustee shall not be accountable or responsible to any person interested in Settlor's property for the manner in which it shall exercise such election, and the decisions with respect to adjustment between income and principal shall be binding and conclusive upon all persons interested in Settlor's property. T) To determine what part of cash or other property received by it is income and what part is principal, and to determine what expenses and other charges, including Trustee's fees and disbursements, shall be a charge against principal and what against income; provided, however, that stock dividends, rights to subscribe for any stock or securities, or any profit or gain which may accrue from any sale, exchange, or other disposition of assets and property comprising or included in the Trust Fund, shall not be determined to be income subject to distribution, but shall be determined to be principal and shall be added thereto and treated in all respects in the same manner as the original principal of the Trust Fund after deduction therefrom as a charge against the same of all income taxes payable with respect thereto, and all losses sustained as a result of the sale, exchange, or other disposition of assets and property comprising a part of the Trust Fund shall be charged against the income of the Trust Fund or reduce the amount of such income subject to distribution. All cash dividends except liquidating dividends shall be considered as income. U) To pay, satisfy, and discharge all last illness and

funeral expenses resulting from Settlor's death, and all debts, just claims, and administration expenses outstanding at the time of Settlor's death or resulting from Settlor's death, and to pay or otherwise satisfy all specific bequests under Settlor's will, as admitted to probate, in the Successor Trustee's discretion, to the extent that the fiduciary of Settlor's estate so desires, or to the extent that there are insufficient funds in Settlor's estate to pay said aforementioned items, without requiring any reimbursement from the Settlor's executors or administrators or other persons receiving property as a result of Settlor's death, provided that no qualified pension or profit-sharing plan comprising a part of the trust estate, which are deemed not to be a lump-sum distribution as defined under the Internal Revenue, and otherwise not subject to Federal Estate Tax, or life insurance proceeds shall be used for such purposes. (V) To construe the trust provisions of this Trust Agreement and any construction thereof, any action taken thereon by the Trustee in good faith shall be final and conclusive, and the Trustee may correct any defect, supply any omission, or reconcile any inconsistencies in said trust provisions in such manner, and to such extent, as the Trustee shall deem expedient to carry the same into effect, and the Trustee shall be the sole, final and conclusive judge of such expediency. W) To make all discretionary decisions provided for or required by the provisions of this Trust Agreement, in their sole, absolute and uncontrolled discretion. (X) Generally to do any and all acts and things and to execute any and all written documents with respect to any property at any time held hereunder which the Trustee would be entitled to do were such property owned absolutely by the Trustee. (Y) To elect or not to elect to treat all or any

portion of estimated tax paid by any trust created hereunder as a payment by a beneficiary of such trust, which election may be made pro rata among the beneficiaries or otherwise in the discretion of the Trustee, whose decision shall be conclusive and binding upon all parties in interest.

It is the Settlor's intention and purpose, except as otherwise provided in this Trust Agreement, to confer upon the Trustee and Successor Trustee the broadest and fullest power and authority with respect to each trust created hereunder which it is possible for an individual to exercise over his own property and the Trustee and the Successor Trustee shall exercise such powers and authority in their sole discretion, in such manner, and to such extent, as they shall deem advisable. The provisions of this Article IX shall continue in effect with respect to any property at any time held hereunder until the execution or termination of the trust with respect thereto shall have been completed by the payment or distribution thereof pursuant to the terms of this Trust Agreement.

No powers of the Trustee enumerated herein or now or hereafter conferred upon the Trustee generally shall be construed to enable Settlor, or Trustee, or Successor Trustee, or any of them, or any other person to purchase, exchange, or otherwise deal with or dispose of all or any part of the Trust Fund for less than an adequate consideration in money or money's worth, or to enable Settlor to borrow all or any part of the principal or income of this Trust, directly or indirectly without adequate interest or security. No person other than Trustee shall have or exercise the power to vote or direct the voting of any shares or other securities of this Trust, to control the investment of this Trust either by directing investments or reinvestments or



by vetoing proposed investments or reinvestments, or to reacquire or exchange any property of this Trust by substituting other property of an equivalent value. ARTICLE X [Description]

This Trust has been accepted by the Trustee in the State of Maryland and it is the intention of the parties hereto that this Trust Agreement shall in all respects be construed, interpreted, and administered according to the laws of the State of Maryland and that the parties in all things in respect thereto shall be governed by such laws. This Article, however, shall not be deemed a limitation upon any of the powers of the Trustee or Successor Trustee, or to prevent their investing in properties, real or personal, located outside of the State of Maryland. ARTICLE XI [Description] The Trust created by this Trust Agreement is revocable by the Settlor who, at any time, may execute such further instruments as shall be necessary to revoke it.

Settlor reserves the right to alter, amend, or revoke this Trust Agreement in whole or in part, at any time or times, and from time to time, by a letter or memorandum in writing delivered to the Successor Trustee; provided that the duties, powers, and liabilities of the Successor Trustee shall not be materially or substantially changed by such alteration or amendment without Settlor's consent thereto in writing. ARTICLE XII [Description] (A) No bond or other security shall be required of the original Trustee hereunder or of any Successor Trustee. (B) The majority of the adult beneficiaries entitled to receive or have the benefit of the income from the Trust estate may approve the accounts of any individual Trustee at any time resigning as such hereunder. The approval of such accounts shall be full and complete discharge of such Trustee and shall have the same effect as if the Trustee

had presented and had its accounts approved by a court of competent jurisdiction. C) In the event any corporate Trustee shall merge or become consolidated with any other corporation, such merged or consolidated corporation is hereby appointed successor corporate Trustee, with all powers, titles, privileges, immunities, discretions, and authorities conferred upon such corporate Trustee so merging or consolidating. (D) Whenever there are co-Trustees hereunder and any Trustee is absent or unavailable, the other Trustee may act without such absent or unavailable Trustee. Any persons dealing with the co-Trustees may rely on a certificate by any one or more of them that he or they have sole authority to act because of the absence or unavailability of the other Trustee, and such certificate shall be binding on the Trust and shall require the Trustee to make fully valid the transaction with any person relying on such certificates. E) The Trustees, and any partnership, firm, corporation, limited liability company, or other business entity in which the Trustees, or any of them are interested, directly or indirectly, whether as a partner, principal, stockholder, member, creditor, employee, or otherwise, may deal with the Trust in the same manner as a third party might, including (by way of illustration and not limitation) purchasing property from and selling services for the Trust, and joining with the Trust in a joint venture, limited partnership, partnership, limited liability company, syndicate, corporation, or other business or non-business arrangement; provided, however, that no such transaction shall take place unless the Trustees decide that the transaction is fair to the Trust and is in the best interests of the beneficiaries. (F) Any Successor Trustee may resign at any time by giving not less than thirty (30) days written notice to the

Settlor, if living; and if the Settlor is then deceased, then to the remaining Successor Trustee, if any; and if there is no remaining Successor Trustee, then to all competent adult persons and the parents or guardians of all minor or incompetent persons who are at the time entitled to receive income or principal hereunder.

Upon the resignation, death, or incapacity of any Trustee or any Successor Trustee, the Settlor shall promptly designate a Successor Trustee; in the event that the Settlor is then deceased, a Successor Trustee shall be promptly designated by the remaining Successor Trustee, if any; and in the event there is no remaining Successor Trustee or if the remaining Successor Trustee fails to designate a Successor Trustee within thirty (30) days, then a Successor Trustee shall be promptly designated by majority vote of all persons who would be entitled to notice of the resignation of a Trustee if a Trustee then resigned. (G) The Settlor shall have the right at any time (i) with the consent of the Successor Trustee(s), to remove any or all of the Successor Trustee(s) and to appoint a Successor Trustee(s) to serve in place of the Successor Trustee(s) who was or were removed, and (ii) with or without the consent of the Successor Trustee(s), to remove any or all of the Successor Trustee(s) and to appoint a bank or trust company having fiduciary powers as a Successor Trustee to serve in place of Successor Trustee(s) who was or were removed. (H) The Trustees (or any of them) shall be paid a fair and reasonable compensation for services performed hereunder. I) No Successor Trustee under this Trust Agreement shall be liable for any act or omission of his predecessor, nor for any loss or expense from or occasioned by any act or omission of his predecessor, nor shall any

Successor Trustee be obligated to inquire into the validity or propriety of any such act or omission. Any such Successor Trustee shall be entitled to accept as conclusive any accounting and statement of assets furnished to such Successor Trustee by his predecessor or by the personal representative of such predecessor and shall further be entitled to receipt only for those assets included in such statement. (J) The use of any gender herein shall be deemed to include the other genders, and the use of the singular shall be deemed to include the plural (and vice versa), wherever appropriate. K) Wherever the term Trustees is employed herein, it shall be deemed to refer to the original Trustee and any Successor Trustee or Successor co-Trustee named herein or other Trustees or co-Trustees appointed hereunder.

ARTICLE XIII [Description] Any Successor Trustee shall have all the duties and powers assumed by and conferred upon the Trustee under this Trust Agreement. The appointment of a Successor Trustee shall be made by a duly acknowledged instrument delivered to the beneficiaries. IN WITNESS WHEREOF, Settlor has signed and sealed this Trust Agreement and, to evidence acceptance of the terms and conditions of this Trust, the Trustee and Successor Trustee have signed and sealed this Trust Agreement, all on the day and year indicated below. witness: | | SETTLOR: