

SAMPLE DOCUMENT

IRREVOCABLE TRUST AGREEMENT

(to hold a second-to-die policy insuring the lives of both Donors) (see Comment 3 below)

— For Use by Legal Counsel Only. Not for use by Financial Representatives with the public. —

This trust agreement is made this ____ day of _____, 20____, by and between [Name of Donors], of [Name of County] County, [Name of State] (the “Donors”) and [Name of Trustee], of [Name of Trustee’s County] County, [Name of Trustee’s State] (the “Trustee”) (hereinafter the Trustee and all successor Trustees are collectively referred to as “Trustee” unless context requires otherwise).

COMMENT 1: *This trust agreement contemplates that both insureds are also the Donors of the trust. It is possible for one spouse to be the Donor and the other spouse to be a beneficiary of the trust. If that is desired, legal counsel might wish to use the Irrevocable Trust Agreement (to hold a single life policy insuring the life of the Donor) as a starting point. Under either agreement, neither of the insured should be the trustee.*

RECITALS

1. The Donors want to establish a Trust for the benefit of their lineal descendants, all of whom are referred to as the “beneficiaries.”
2. The Donors want to set aside property to provide for the beneficiaries.
3. The Trustee is willing to accept the trusteeship.
4. The name of this Trust is the [Name of Donors] Irrevocable Trust.

Donors assign to the Trustee the property described in Schedule “A.” Such property, along with such other property as may be assigned or made payable to the Trustee by the Donors or by any other person shall be known as the Trust Estate.

This sample document is intended only as guidance for the client's own legal counsel. The document is general in nature and does not reflect the specific circumstances of any individual or situation. The document does not constitute tax or legal advice and cannot be used to avoid any penalties that may be imposed on a taxpayer. It is intended that the client's legal counsel will modify the document where necessary to satisfy the client's objectives and the requirements of any applicable federal, state or local law. Northwestern Mutual does not guarantee the effectiveness of this document and is not responsible for any tax or legal consequences resulting from use.

ITEM I
NO RIGHT TO REVOKE OR AMEND

Donors have been fully advised as to the difference between revocable and irrevocable trusts and hereby declare this trust agreement to be irrevocable. Donors declare that this Trust is not established to discharge any of the legal obligations of the Donors. Any payment of income or principal to or for the benefit of any beneficiary is not intended to be made, and shall not in fact be made, in lieu of or in discharge of any of Donors' legal obligations.

ITEM II
WITHDRAWAL RIGHTS

A. Withdrawal Amount. After each direct or indirect transfer to this trust which is treated as a gift under the federal gift tax law, each beneficiary who is a current permissible distributee of income or principal from this trust shall have the absolute right and power to withdraw from this trust an amount equal to the lesser of: (i) the maximum amount that can qualify for the gift tax "annual exclusion" as set forth in I.R.C. §2503(b) (currently \$16,000, or \$32,000 if the Donor is married and his or her spouse is then living), considering any prior annual exclusion gifts by the Donor to such beneficiary during the same calendar year, [OPTION TO LIMIT WITHDRAWAL RIGHTS TO THE AMOUNT THAT CAN LAPSE AND NOT BE CONSIDERED A GIFT BY THE BENEFICIARY: (ii) the maximum amount as to which a withdrawal right may lapse without the lapse constituting a release of a general power of appointment under I.R.C. §2514(e) (currently the greater of \$5,000 or 5% of the assets out of which the withdrawal right could have been satisfied), or (iii)] or (ii) the amount of such transfer, divided by the number of beneficiaries holding such withdrawal rights, provided, however, that for purposes of this provision, the trustee shall presume that there have been no prior annual exclusion gifts by the Donor to the beneficiary, unless the Donor provides written notice to the contrary at the time of the transfer to this trust. The aforesaid rights to immediately withdraw trust contributions shall be exercisable for a period of thirty (30) days after the date on which the contribution is made to the Trust that gives rise to the withdrawal right in question. To this end, the Trustee shall, at all times while any such withdrawal right is outstanding, retain sufficient transferable assets to satisfy all such withdrawal rights which are then outstanding.

COMMENT 2: *The withdrawal rights created in ITEM II qualify gifts to the trust for the annual gift tax exclusion. Each beneficiary has an annual withdrawal right up to the lesser of the maximum allowable annual exclusion. An option is included that permits limiting the withdrawal right to the amount that can lapse without being considered a gift by the beneficiary (i.e., the "lapse amount"). If the option to limit withdrawal rights to the lapse amount is not included, provisions should be included to address how to treat the excess amounts subject to withdraw that exceed the lapse amount. Two options are provided below: either a hanging power or a testamentary power of appointment.*

[OPTION 1 - Hanging Powers: To the extent that a withdrawal right has not been exercised, such withdrawal right shall lapse and the beneficiaries shall forever cease to have any further withdrawal right with respect to the transfer to the trust which gave rise to the withdrawal right, except to the extent that the amount subject to such lapse exceeds the amount as to which a withdrawal right may lapse without the lapse constituting a release of a general power of appointment under I.R.C. §2514(e) (currently the greater of \$5,000 or 5% of the assets out of which the withdrawal right could have been satisfied). Any portion of the withdrawal right that does not lapse as provided in the foregoing sentence shall continue in existence, and shall lapse at such future date to the extent such lapse does not constitute a release of a general power of appointment under I.R.C. §2514, after giving due consideration to any prior lapse during the same calendar year of any withdrawal right held by such beneficiary over property in this or any other trust.]

[OPTION 2- Power of Appointment: To the extent that a withdrawal right has not been exercised, such withdrawal right shall lapse and the beneficiaries shall forever cease to have any further withdrawal right with respect to the transfer to the trust which gave rise to the withdrawal right. Except that, to the extent that the amount subject to such lapse exceeds the amount as to which a withdrawal right may lapse without the lapse constituting a release of a general power of appointment under I.R.C. §2514(e) (currently the greater of \$5,000 or 5% of the assets out of which the withdrawal right could have been satisfied), each beneficiary who theretofore had a withdrawal right shall have the ongoing right and power to appoint the value of such property to any then living lineal descendants of Donor, or to a trust or trusts for their benefit. Any portion of the amount subject to the power of appointment described in the preceding sentence shall lapse at such future date to the extent such lapse does not constitute a release of a general power of appointment under I.R.C. §2514, after giving due consideration to any prior lapse during the same calendar year of any withdrawal right held by such beneficiary over property in this or any other trust. The power of appointment shall be exercised only by a provision in the last will of the person expressly exercising such power. Unless within ninety (90) days following such person's death the Trustee has actual notice of the existence of a will exercising such power, the Trustee shall, without incurring any liability to any appointee, proceed as if such power had not been exercised; provided, however, that this sentence shall not bar any right which an appointee may have to enforce this appointment.]

B. Distribution in Satisfaction of Withdrawal Right. The Trustee may satisfy the exercise of any right of withdrawal by distributing to the beneficiary making the withdrawal cash or other assets, including without limitation insurance policies or interests therein, in kind.

C. Exercise. A right of withdrawal granted herein shall be exercised by delivery to the Trustee of a written instrument signed by the beneficiary to whom the right applies. If a beneficiary lacks legal capacity, a withdrawal right may be exercised on his or her behalf by his or her legal guardian, any other person who may act in such beneficiary's behalf under state law (other than the Donor), or any other disinterested person selected by the Trustees.

D. Specific Withdrawal Rights. Notwithstanding the foregoing provisions, the Donor shall have the right, by a written instrument filed with the Trustee at the time of the transfer, (i) to exclude

any individual who would otherwise have a power of withdrawal from exercising the power over such transfer, (ii) to increase or decrease the amount subject to such power of withdrawal over such transfer; or (iii) to change the period during which any power of withdrawal may be exercised with respect to such transfer.

ITEM III
DISPOSITION OF INCOME AND PRINCIPAL

A. Dispositions During Lifetimes of Donors. Until the date of death of the first to die of the Donors, the trust property shall be held in trust by the Trustee upon the following terms and conditions:

1. Distribution of Income. The Trustee shall hold and administer the trust property, collect the income, and shall accumulate or pay the net income in such amounts or proportions and at such times as it may deem appropriate

[OPTION 1- Ascertainable Standard: to or for the benefit of the beneficiaries, for their health, maintenance, support, and education, taking into consideration the needs of each beneficiary and any other known means of support which may be available or, in the opinion of the Trustee, ought to be available, to any such beneficiary. Such distributions of income may be made without equalization from year to year or between beneficiaries or classes of beneficiaries. Any income distributed or applied to or for the benefit of a beneficiary pursuant to this paragraph shall not be used to discharge or satisfy the legal obligations, if any, of Donors to support such lineal descendants.]

[OPTION 2- Broad Distribution Standard: in its sole and absolute discretion to or for the benefit of the beneficiaries, for their maintenance, support, health care, comfort, general welfare and general well-being, as those purposes may from time to time apply. Such distributions of income may be made without equalization from year to year or between beneficiaries or classes of beneficiaries. Any income distributed or applied to or for the benefit of a beneficiary pursuant to this paragraph shall not be used to discharge or satisfy the legal obligations, if any, of Donors to support such lineal descendants.]

2. Distribution of Principal. The Trustee shall have the power to distribute the principal of this trust in such amounts and at such times as it may deem appropriate

[OPTION 1- Ascertainable Standard: to or for the benefit of the beneficiaries, for their health, maintenance, support, and education, taking into consideration the needs of each beneficiary and any other known means of support which may be available or, in the opinion of the Trustee, ought to be available, to any such beneficiary. Such distributions of principal may be made without equalization from year to year or between beneficiaries or classes of beneficiaries. Any income distributed or applied to or for the benefit of a beneficiary pursuant to this paragraph shall be used exclusively for the benefit of such beneficiary and shall not be used to discharge or satisfy the legal obligations of Donors,

if any, to support such lineal descendants. The power to distribute principal shall be subordinate to the exercise of a power of withdrawal provided under Item II.]

[OPTION 2- Broad Distribution Standard: in its sole and absolute discretion to or for the benefit of the beneficiaries, for their maintenance, support, health care, comfort, general welfare and general well-being, as those purposes may from time to time apply. Such distributions of principal may be made without equalization from year to year or between beneficiaries or classes of beneficiaries. Any principal distributed or applied to or for the benefit of a beneficiary pursuant to this paragraph shall be used exclusively for the benefit of such beneficiary and shall not be used to discharge or satisfy the legal obligations of Donors, if any, to support such lineal descendants. The power to distribute principal shall be subordinate to the exercise of a power of withdrawal provided under Item II.]

COMMENT 3: *If the Trustee is a beneficiary of the trust, the distribution standard under Option 1 of Paragraphs A(1) and A(2) of this Item, limited to ascertainable standards of health, education, maintenance and support, is recommended. If an independent Trustee is serving, the distribution standard under Option 2 of Paragraphs A(1) and A(2) of this Item, or any distribution standard which is broader than the ascertainable standard, can be used.*

B. Death of First Donor. Upon the death of the first of the Donors to die, the Trustee shall collect the proceeds of any of the Policies, or any rider thereto, that may be payable by reason of the death of that Donor, and said proceeds, if any, shall continue to be held in trust and administered and distributed pursuant to Paragraph A of this Item.

C. Dispositions After Death of Second Donor. Upon the death of the second of the Donors to die (OPTION – or upon the last to occur of (i) the death of the second of the Donors to die and (iii) the date Donors' youngest living child attains age ____), all the assets then constituting the trust shall be divided into as many equal shares as there are children of Donors who are then living and children of Donors who are not then living who leave issue who are then living. One such share shall be distributed [OPTIONS: outright or in trust] for each then living child. [OPTION IF LIMITED POWER OF APPOINTMENT INCLUDED: Except to the extent a deceased child has exercised his or her limited power of appointment pursuant to paragraph D below,] One such share shall be distributed by right of representation [OPTIONS: outright or in trust] to the then living issue of each then deceased child of Donors.

D. [Limited Power of Appointment] Each child of the Donors shall have the power to appoint by specific reference to this limited power in such child's will, or by a written instrument signed and acknowledged by such child, any such child's share of the trust's assets as determined pursuant to paragraph C above to any one or more of the Donor's lineal descendants, in such manner and such time as said child shall so designate.]

COMMENT 4: *Distributions to the descendants of Donors may be made in many ways and may take into account whether there are minor and/or adult beneficiaries, as well as any tax implications or asset protection reasons for an outright distribution versus a distribution in trust. If a trust is desired,*

the terms of the trust can be tailored to address specific issues or concerns. For example, a trust could be designed to hold the funds in one share to provide for all beneficiaries until the youngest reaches a certain age that generally coincides with the anticipated end of higher education and then the remainder would be divided into separate shares for each beneficiary at that time. This type of provision is intended to ensure that all minors have their education paid for before dividing up funds. In addition, the trust should contain certain provisions, such as, standards for making distributions, the timing for making trust funds available to beneficiaries without restriction (if any), and, if desired, a limited power of appointment of trust assets if the beneficiary dies before the termination of the trust.

E. No Beneficiary Survives. If at any time before the termination of this trust, there is no person surviving to take in accordance with the foregoing provisions of this trust, all the assets then constituting the trust shall be distributed as follows: _____.

ITEM IV
TRUSTEE PROVISIONS

A. Appointment of Trustee. _____ shall serve as the initial Trustee of this Trust. If _____ fails to serve or ceases to serve, then Donor nominates _____ to serve as successor Trustee. The Trustee accepts the Trust and agrees with the Donor that it will execute its duties with due fidelity and will account for all money and property received and disbursed by it to the beneficiaries.

COMMENT 5: *Paragraph A of ITEM IV has a fairly straight-forward trustee designation. A sole trustee, with one successor, is named. The Trustee should not be either Donor. In addition, if, as mentioned in Comment 1, only one of the insureds is the Donor, such spouse who is not a Donor should still not serve as a Trustee when the trust holds the second-to-die policy. .*

B. No Successor Trustee Named. If there is a vacancy in the office of Trustee, and a successor is not appointed or designated pursuant to Paragraph A., then both Donors, if living, or if not, the surviving Donor, shall within thirty (30) days after such office becomes vacant, by instrument in writing delivered to the retiring Trustee, appoint a successor Trustee. If both Donors fail or refuse within thirty (30) days to so appoint such successor, then such successor may be appointed by the Senior Judge of [Name of County and Name of Court of competent jurisdiction] upon application of any person interested in such Trust or upon application of the retiring Trustee. Such retiring Trustee shall, at the cost and expense to the Trust, execute and deliver to such Successor Trustee all conveyances and things as may be necessary to vest Trustee in the Trust Estate. When the retiring Trustee properly accounts to the Successor Trustee for all money and property received and disbursed by it, it shall be discharged from any and all further liability. Notwithstanding any other provision of this Trust, the Donors shall never be permitted to serve as Trustee or Co-Trustee hereunder, and shall not, either alone or in conjunction with any person, have the right to designate the persons who shall possess or enjoy the trust property or the income therefrom.

C. Resignation. The Trustee or its successor or successors may resign its trusteeship by written notice to the then adult parties in interest, if any, and to the person or entity appointed as successor Trustee. Successor Trustees shall have all the powers and be subject to all restrictions to the same extent and in the same manner as herein conferred or imposed upon the initial Trustee. The Trustee and any successor Trustee shall not be required to inquire into or audit the acts or doings of any Executor or any predecessor Trustee or to make any claim against any such Executor or predecessor.

D. Power to Change Trustee. A majority of Donors' adult living children shall have the power and authority to remove the Trustee of this trust and to appoint successor individual or corporate Trustee(s) in replacement, and to exercise this power any number of times. Exercise of a power under this Section shall be subject to the following limitations:

1. Notice. Each exercise shall be by notice in writing to the Trustee then acting with respect to the trust involved, given at least thirty (30) days prior to the effective date of the change and acknowledged before a notary public by persons validly exercising this power.

2. Acceptance. The successor Trustee shall have first indicated in writing its willingness to accept the trust.

[OPTION: Whenever a Trustee is removed and a Successor Trustee is to be appointed by anyone other than a Donor to replace a retiring corporate Trustee, such successor shall be a corporate Trustee.]

E. Situs and Governing Law. If any Trustee or Successor Trustee appointed under this Trust Agreement is domiciled outside the State of [Name of State], such Trustee shall be authorized to remove the Trust assets to the domicile of such Trustee. Thereafter the administration of such Trust shall be governed by the laws of the State in which such Trustee is domiciled, but the construction of such Trust and the right of the beneficiaries thereof shall continue to be governed by the laws of the State of [Name of State].

F. Trustee Prohibitions. Notwithstanding anything to the contrary, any person serving as a Trustee or Co-Trustee hereunder shall not participate in any discretionary decision of the Trustee to:

1. Allocate income or corpus to himself or herself as a beneficiary except as such power of the Trustee is limited by an ascertainable standard relating to the health, education, support or maintenance of himself or herself; or

2. Allocate income or corpus to other beneficiaries for whom such Trustee has a legal obligation of support.

3. In addition, if this trust at any time owns a policy of insurance insuring the life of any Trustee, the Trustee who is the insured shall have no authority, notwithstanding any other

provision of this Trust, to exercise or participate in the exercise of any incident of ownership respecting such policy.

G. Compensation. Each Trustee serving hereunder shall be entitled to reasonable compensation for services and reimbursement for necessary expenses incurred in administering a trust hereunder. Any Corporate Trustee shall receive such compensation for its services as is normally charged to similar trusts under its regularly published fee schedule as the same may from time to time be amended, or as may be otherwise agreed with Donor's spouse or a majority of the current beneficiaries of this Trust.

ITEM V
GRANTOR TRUST PROVISIONS

Each Donor shall have the right, in a non-fiduciary capacity and without the approval or consent of any other person or entity in a fiduciary capacity, to acquire any property of the trust by substituting for that property other property of an equivalent value; provided, however, that the Trustee shall verify that the value of the property acquired by either Donor is equivalent to the value of the property substituted for that property. [OPTION: Notwithstanding the previous provisions of this Item V, the Trust Protector, in its absolute discretion, shall have the right at any time, by notice in writing given to the Donors and the Trustee, to revoke the power of the Donors to acquire property of the trust by substituting other property of equivalent value.]

Notwithstanding any other provisions contained in this Trust, the Trustees shall not:

A. Permit either Donor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or income therefrom for less than an adequate consideration in money or money's worth;

B. Permit either Donor to borrow the corpus or income directly or indirectly without adequate interest or security.

COMMENT 6: For inclusion of this Article, consider whether the parties want the Trust to be a grantor trust under Section 671-678 of the Internal Revenue Code. This trust agreement provides sample language to create grantor trust status under Section 675(4)(C). This Item V could include the ability of a Trust Protector to "flip the switch" and eliminate the grantor trust status. An optional Trust Protector provision has been included in this sample trust agreement.

ITEM VI
MISCELLANEOUS PROVISIONS

A. No Assignable Interests. The income and support provided in this Trust Agreement for the beneficiaries shall not be transferred, assigned or conveyed and shall not be subject to the claims of any creditors of any beneficiary, and the Trustee shall continue to pay such income and support directly to or for the support of such beneficiary notwithstanding any purported transfer, assignment or conveyance, and notwithstanding any action by creditors.

B. Accumulations. If the Trustee is prevented by any transfer, assignment or conveyance or by any proceeding brought by any creditor or by any bankruptcy, receivership or other proceeding, from paying such income or support directly to or for the support of such beneficiary, then the Trustee shall hold and accumulate the income and corpus which would have been paid to or for the support of such beneficiary until the Trustee is able to pay the same directly to or for the support of such beneficiary or until the death of such beneficiary, whichever occurs first. On the death of such beneficiary, any income or support so accumulated shall become a part of the principal of the trust and be disposed of as such.

C. Consolidation of Trusts. If, following the death of the second to die of the Donors, substantially identical trusts for the benefit of the same beneficiary or beneficiaries are being held or are provided for under both the terms of this trust agreement and another trust, then the Trustee is authorized, in the Trustee's sole discretion, to consolidate the assets of those trusts so that they may be administered as one trust, either by terminating the trust created hereunder and distributing its assets to such other trust, to be added to, administered and distributed as a part thereof, or by accepting the assets of such other trust, to be added to, administered and distributed as part of the trust created hereunder.

COMMENT 7: *Paragraph C of this Item may be included, depending on how the assets are to be distributed pursuant to Paragraph C of Item III.*

D. Minor as Beneficiary. Whenever the Trustee is directed to distribute any property outright to a person other than a child of Donors who has not attained age 21, the Trustee shall continue to hold the share of such person in trust for such person until he or she attains age 21, at which time the remaining trust share shall be distributed outright to such person. Meanwhile, the Trustee may distribute the income or principal of the share of such person to provide for the health, maintenance, support, and education of such person. If such person dies before attaining age 21, the property remaining in the share shall be distributed to the personal representative of such person's estate. Whenever the Trustee is directed to pay or use Trust property to or for the benefit of any minor or any person suffering under any legal disability, the Trustee shall not be required to seek the appointment of a guardian. Rather, the Trustee shall be authorized in its best judgment to pay or deliver such property to the person having custody of such beneficiary, or to such beneficiary without the intervention of a guardian, or to a legal guardian of the beneficiary if one has been appointed, or to apply such property for the benefit of such beneficiary.

ITEM VII
CONCERNING INSURANCE POLICIES

A. Incidents of Ownership. If life insurance policies (“Policies”) become a part of the Trust Estate, the Trustee alone shall have all the incidents of ownership with respect to the Policies and shall be vested with all right, title, and interest in and to the Policies. The Trustee is authorized to exercise all the options, benefits, rights, and privileges under the Policies, including the right to borrow upon any policy or to pledge it for a loan. The insurance companies which have issued the Policies are authorized to recognize the Trustee as such absolute owner, and any receipts, releases, and other instruments executed by the Trustee in connection with the Policies shall be binding and conclusive upon such insurance companies. The Donors relinquish all rights and powers which are not assignable. The Trustee shall be under no obligation to pay premiums on the Policies and it shall have no liability if such premiums are not paid.

B. Collection of Proceeds. Upon the death of a Donor, the Trustee shall make reasonable effort to collect the proceeds of the Policies. However, it shall be under no duty to engage in litigation unless its expenses, including counsel fees and costs, have been advanced or guaranteed in an amount and in a manner which is reasonably satisfactory to it. The Trustee shall have full authority to make any compromise or settlement with respect to any such Policies. No issuer of any Policies shall be required to inquire into any of the provisions of this Trust or to see to the application or disposition of the proceeds of such Policies. The receipt of the Trustee to any such insurance company shall release and discharge said insurance company for any payments it makes and shall be binding upon every beneficiary of the Trust.

C. [No Duty of Diversification and No Liability]. The Trustee shall have no duty of diversification with regard to life insurance policies held in the trust, nor shall Trustee have any liability regarding the investment performance of any life insurance policy held in the trust from time to time.]

COMMENT 8: *Paragraph C of this Item may be included depending on if the Donors would to relieve the trustee from these fiduciary duties.*

ITEM VIII TRUSTEE POWERS

A. Powers. The Trustee shall have, the following rights, powers, authorities, exemptions and immunities, all of which may be fairly and equitably exercised without any order of, or report to, any Court.

1. To hold, manage, protect and improve the Trust property and to pay all taxes, fees, costs, charges and expenses which may be necessary or incident to the management and administration of the Trust.

2. To use the whole or any part of the Trust property to form, become interested in, carry on, operate, participate in, or manage any corporation, general or limited partnership,

association, joint venture, limited liability company, or any other form of business organization under the laws of any state or territory, that it in its discretion shall deem advisable and proper and to the best interests of the Trust, and to perform such acts, execute writings, and incur and pay such expenses and obligations as may be necessary or desirable in the formation or continuance thereof.

3. To hire agents, attorneys, appraisers, accountants, managers, foremen, workmen and others to act under them in the administration of the Trust, and to fix the fees, compensation, salaries or wages of such persons.

4. To buy, exchange, sell, pledge, alienate, or deal in any property, at public or private sale, upon such terms as they deem proper; to lease any property of the Trust upon such terms as it deems best and for any duration of time regardless of the duration of the administration of the Trust, all with or without any advertisement.

5. To lend and borrow money, to give credit, and to extend or renew loans.

6. To secure any loan or debt by mortgaging, encumbering, conveying or subjecting to a lien any part of or all the Trust property.

7. To select depositories for the funds, securities and properties administered by it and to designate the manner and method and the persons authorized to deposit and withdraw funds and securities and other properties from such depositories.

8. To retain, invest and reinvest in any property of any nature whatsoever (including common trust funds of any corporate Trustee, stock of any corporate Trustee, and mutual fund shares), whether or not authorized by law as a permitted investment for Trustees, and any investment made or retained by it in good faith shall be proper, although of a kind or in an amount or proportion not authorized by law as suitable for Trustees; to register any stock, bond or other property or security in the name of a nominee with or without disclosure of any fiduciary relationship, but accurate records shall be maintained showing such is an asset of the Trust.

9. To vote directly or by proxy on any matter or question, any stock or security held by it, and to make such exchanges, pay such expenses and otherwise act as it deems proper in any merger, reorganization or consolidation affecting the property of the Trust.

10. To rescind, release, discharge, vary, compromise, settle and adjust any contract, claim, debt, account, action or suit of or against the Trust, and to ask, demand, sue for, recover and receive all property and all sums of money, debts, and dues owing or due the Trust; and to pay any claim or debt upon such evidence as the Trustee deems sufficient.

11. To execute, acknowledge and deliver all the necessary and proper contracts, deeds, receipts, releases, notes, mortgages, deeds to secure debt, deeds of trust, or similar evidence of indebtedness and other instruments, whether or not under seal, incident to any of its powers or rights.

12. In purchasing securities or other assets or property at a premium or discount, to charge or credit such premium or discount to the principal of the Trust, and, subject to standard and sound accounting practice, to allocate expenses or receipts between principal and income.

13. In distributing the income or corpus of the Trust under the provisions of this Trust Agreement, the Trustee may, unless specifically otherwise provided in this Trust Agreement, make such distributions in such amounts and proportions or installments or at such time as it in its sole discretion deems proper.

14. Except as stated otherwise to the contrary, any distribution by the Trustee may be made wholly or partially in kind, or it may sell any part of or all the Trust property and distribute the proceeds of such sale, or it may make such distribution partially in kind and without allocating the same property to different distributees and partially in cash, all as may be deemed best and most advisable in the sole discretion of the Trustee. In determining the value of any property distributed in kind, the judgment or valuation of the Trustee shall be final and binding.

15. Whenever a distribution of principal or income is to be made to a beneficiary, the Trustee may in its discretion, make such distribution directly to such beneficiary, whether or not such beneficiary has a guardian, or it make such distribution to the beneficiary's parent or guardian, or it may make distribution to the spouse of such person in any manner which in its discretion it may deem proper, or it may make such distribution to a custodian for such beneficiary or to another trust or trusts for such beneficiary's benefit (even if such trust has other beneficiary's) and in the case of any distribution made for the benefit of such person in any of the manners just authorized, the receipt of the person to whom payment is made shall be a full discharge to the Trustee.

16. To acquire by purchase or otherwise, life insurance contracts of any kind or nature on the life of either Donor or anyone in whom the Trust, or any of the beneficiaries, have an insurable interest, and may pay all premiums or charges incurred in connection therewith.

17. The Trustee shall have the right and power to exercise all the rights, powers, and exemptions set forth in this Item even if the Trustee, the Donors, any beneficiary, or any relative of any of said persons has any interest in its individual capacity or as a fiduciary in any property in which the Trust invests. However, in the case of any transaction with any of said persons, all sales to or purchases from them shall be at the fair market value of the property sold or purchased, and all loans or advances shall be upon an adequate and fair rate of interest.

18. To generally do, perform and execute any other act, deed, matter, or thing whatsoever, which ought to be done, executed or performed, or which in the discretion of the Trustee ought to be done, executed or performed, in and about the premises, as fully and effectually as the Donors could do himself/herself.

19. The Trustee may do anything which it is empowered to do under this Trust without any order of any Court, or any notice to anyone, or any advertisement of any kind, at private or public transaction.

20. All the powers and privileges enumerated in this Item shall be exercised for the sole benefit of the Trust.

21. No power, option, benefit, right or authority of the Trustee shall be exhausted by the use thereof, but each such power, benefit, option, right or authority may be continuously exercised during the term of this Trust.

22. All the powers and privileges enumerated in this Item shall be cumulative and in addition to the powers and privileges granted to Trustees by the laws of the State of [Name of State].

B. No Bond. No bond or other security shall ever be required of a Trustee serving hereunder to secure the faithful performance of duties in such capacity.

C. Name of Trust. The Trustee shall have the right from time to time to change the name of this Trust.

D. Accounting. The Trustee shall keep or cause to be kept under its supervision and control, a complete and permanent record of all transactions, receipts and disbursements made for or on account of the Trust. The Trustee shall prepare an account and report annually, and shall, upon request in writing, deliver or send by registered mail, a copy such to the beneficiaries of legal age and/or the natural or legal guardian of the property or person of any beneficiary who is a minor at such time.

COMMENT 9: Paragraph D of this Item may vary depending on state law.

E. Delegation of Authority. Any Trustee may give to his or her Co-Trustee(s) power of attorney to act for or to sign the name of such Trustee to any paper and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or signed in person by the Trustee giving such power. Any such power of attorney may be general or may be limited to certain acts or instruments or contain conditions or restrictions and may be changed or revoked at any time by the Trustee who gave such power, giving notice of its change or revocation to his or her Co-Trustee. Furthermore, the Trustee may agree in writing, from time to time, with any financial institution, transfer agent, etc., as to the manner in which deposits or withdrawals from any account may be carried on, including, if the Trustee sees fit, the doing of all or any of said acts on behalf of the Trustee by any one or more of said Trustees, either acting alone or in such manner as the Trustees may specify.

F. Purchase/Loan. Upon the death of either Donor, the Trustee may, at its discretion, purchase assets from either of their estates at a fair value or lend money to either of their estates at an

adequate rate of interest and with adequate security. The propriety of the purchase and/or loan, the value of such assets purchased, and the determination of fair value shall be solely within the discretion of the Trustee. The Trustee shall not be liable as a result of any such purchase or loan, whether or not such assets constitute investments which may be legally made by Trustees and whether or not the Trustee and the personal representative of such estates are the same person.

G. Diversification. Donors specifically authorize the Trustee to retain in the same form as received any property deposited hereunder. Such property need not be sold merely for purposes of diversification or because the Trustee may deem such property somewhat speculative. This paragraph shall not prevent the Trustee from selling any such property if, in the opinion of the Trustee, such property should be sold.

H. Indemnification. The Trust shall indemnify and hold harmless each Trustee who is a party, plaintiff or defendant, or who is threatened to be made a party by anyone in connection with any action taken by the Trustee in its capacity as Trustee. Such indemnification shall extend to expenses (including attorney's fees), judgments, fines, and amounts paid in any settlement actually and reasonably incurred by the Trustee so long as the Trustee acted in a manner it believed to be in or not opposed to the best interest of the Trust or any beneficiary and, with respect to any criminal action or proceeding had no reasonable cause to believe his conduct was unlawful. Nevertheless, no indemnification shall be made in connection with any claim as to which the Trustee is adjudged liable for gross negligence or misconduct in the performance of its duty unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, the Trustee is fairly and reasonably entitled to indemnity for such expenses.

I. Majority Vote. When three or more Co-Trustees are serving hereunder, such Trustees shall exercise any power or discretion vested in the Trustees by majority vote, and a dissenting Trustee shall not be liable for the consequences of any act in which that Trustee joins at the direction of the majority if the dissenting Trustee expresses dissent in writing to the other Trustees at or before the time of joinder in such act.

ITEM IX DEFINITIONS

A. Trust Fund, Trust Property, Trust Estate, Trust. The term "Trust Fund," "Trust Property," "Trust Estate," or "Trust" means, unless otherwise provided, all property and assets of whatever kind or character held by the Trustee.

B. Lineal Descendant. The term "lineal descendant" shall include an unborn but conceived child who is born within the period of gestation from the date of the death of the deceased parent, and shall include any adopted child or children. The term "issue" shall have them same meaning as lineal descendant.

C. Donor. The term “Donor” or “Donors” shall include the present as well as any future Donor to this Trust for the purpose of determining those persons who may make gifts to this Trust; however, in all respects, reference to “Donors” in this Trust shall mean only the original Donors.

D. Income. The term “income” shall mean all proceeds, profits, revenues and receipts which the Trustee receives from any investment of the principal and/or any business or enterprise which may be operated by the Trustee except: (1) Liquidating and stock dividends, (but including all other dividends, ordinary as well as extraordinary); and (2) Subscription rights issued in connection with any securities forming part of the Trust principal and any securities purchased upon the exercise thereof. The Trustees may determine whether capital gains or losses (determined as provided for by the Internal Revenue Code), shall constitute and be added to principal (or in case of capital losses, deducted from principal) or whether such capital gains or losses shall be added to or deducted from income, all as may be fair and equitable under the circumstances and consistent with sound accounting practice.

The term “net income” shall mean the income of the Trust after deducting: (1) all reasonable and proper reserves, deductions, expenses and charges necessary or incidental to the administration of the Trust or any property or interest in any property of the Trust, or to the operation of any business or enterprise which may be operated by the Trustees, and (2) all taxes assessed against any part of the Trust property of the Trustees.

Except as otherwise provided, or except as required by law, the determination of income and net income shall be in accordance with standard and sound accounting practice.

E. Corpus, Principal. The terms “corpus” and “principal” shall mean the property conveyed by the Donors as a gift upon the creation of this Trust, any addition thereto, and any accumulated net income not distributed during any taxable year of the Trust.

F. Trustee. The term “Trustee,” “Trustee(s),” or “Trustees” wherever used in this instrument shall be deemed to mean the Trustee or Trustees then holding office.

G. Number/Gender. The singular shall include the plural and the plural shall include the singular; the male shall include the female gender and the female gender shall include the male gender, all as the context and meaning of this Trust may require.

ITEM X
RULE AGAINST PERPETUITIES

Anything in this Trust Agreement to the contrary notwithstanding, all property of every Trust created by this Trust Agreement shall vest in and be distributed to the persons then entitled to the income from such property at the expiration of 21 years after the death of the last surviving beneficiary under this Trust Agreement who was in life at the time of the creation of this Trust, unless

sooner vested as herein provided. The purpose of this provision is to prevent any possible violation of the rule against perpetuities and this provision should be so construed. If the persons to receive the income from any property, or the amount of such income to be received by each person are to be determined in the discretion of the Trustee, then the Trustee shall distribute such property among each of the persons to whom the Trustee is authorized to distribute income and in such portions as the Trustee, in its discretion, shall determine.

COMMENT 10: *This Item can be deleted in states that have abolished the rule against perpetuities.*

SAMPLE DOCUMENT

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness

[Name of Donor], Donor

Witness

Witness

[Name of Donor], Donor

Witness

Subscribed and sworn to before me by _____ and _____, the Donors, and
by _____ and _____, the Witnesses, this ____ day of _____, 20____.

(Seal)
Notary Public, State of _____.
My Commission _____.

Signed, sealed and delivered
in the presence of:

Witness

[Name of Trustee], Trustee

Witness

Subscribed and sworn to before me by _____, the Trustee, and by _____ and
_____, the Witnesses, this ____ day of _____, 20____.

(Seal)
Notary Public, State of _____.
My Commission _____.

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SCHEDULE A

Ten dollars (\$10.00) delivered herewith by Donors to Trustee, receipt of which is hereby acknowledged by Trustee.

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