

# Living Trust Agreement of

## State of the

This Living Trust Agreement (hereinafter referred to as the "Agreement") is entered into by and between \_\_\_\_\_ (the "Grantor"), residing at \_\_\_\_\_, and \_\_\_\_\_ (the "Trustee"), residing at \_\_\_\_\_.

In consideration of the mutual covenants and promises set forth in this Agreement, the Grantor and the Trustee agree to the following:

## Article I. DESIGNATION OF TRUST

1. The trust established pursuant to this Agreement shall be identified and referred to as the "Living Trust of \_\_\_\_\_." The assets, property, and transactions associated with this Trust may be held, managed, and conducted under the name of the Trustee and, where otherwise authorized within this Agreement, may also be held in the name of a designated nominee.

## Article II. STATEMENT OF PURPOSE

2. The fundamental purpose of this Agreement is to establish a revocable living trust that shall receive, hold, and administer assets for the benefit and welfare of the Grantor throughout the Grantor's natural lifetime. Upon the occurrence of the Grantor's death, this Trust shall continue to manage, administer, and ultimately distribute the Trust assets in accordance with the provisions set forth herein.

## Article III. TRUST FUNDING AND PROPERTY TRANSFER

3. The Grantor has hereby transferred, assigned, conveyed, and delivered and/or shall subsequently transfer, assign, convey, and deliver to the Trustee those items of property specifically described and enumerated in Schedule A, which is attached hereto, and incorporated by reference as an integral component of this Agreement. Such property, together with any and all additional property that may hereafter be assigned, conveyed, or delivered to the Trustee by the Grantor or by any other person as provided herein, shall constitute the corpus of the trust estate and shall be held by the Trustee in trust for the uses, purposes, and subject to the terms and conditions hereinafter established.

4. The Grantor, or any third party, with the express consent of the Trustee, may at any time or from time to time deed, grant, devise, bequeath, gift, or otherwise cause additional property of any kind to be transferred to and administered as part of the trust estate created under this Agreement. Any such transfer may be evidenced by the written receipt of the Trustee, and each such receipt shall serve as conclusive evidence of the Trustee's consent to accept such transfer.

#### **Article IV. ADMINISTRATION OF TRUST ASSETS**

5. The Trustee shall manage, administer, invest, and distribute the Trust assets for the benefit of the Grantor and the Grantor's designated successors in interest in strict accordance with the terms, conditions, and provisions of this Agreement.

#### **Article V. SUCCESSOR TRUSTEE PROVISIONS**

6. In the event that the Grantor serves as the initial Trustee, the Grantor reserves the right to designate and appoint a successor Trustee. Such appointment shall become effective immediately or upon the occurrence of any specified contingency, by executing such designation in writing. The designated successor shall assume the role of Trustee upon written acceptance of the terms and conditions contained in this Agreement.
7. In the event that any Trustee becomes unable or unwilling to serve in such capacity,  
is hereby designated as the successor Trustee, who shall serve without the requirement of posting any bond.
8. Any serving Trustee may voluntarily resign from the position by providing written notice to those beneficiaries who are currently receiving income distributions under the provisions of this Agreement. Such resignation shall become effective on the date specified in the notice, provided that such date is no earlier than thirty calendar days following the delivery of the written resignation, unless an earlier effective date is mutually agreed upon by the income beneficiaries.
9. In the event that a Trustee resigns or is for any reason unwilling or unable to continue serving as Trustee, and if the successor Trustee previously designated by the Grantor fails or ceases to serve as Trustee, then the adult beneficiaries who are currently receiving income distributions, together with the adult beneficiaries who would receive principal distributions if the Trust were to terminate at that time, may, by majority written action, appoint a successor Trustee. If agreement among a majority of such beneficiaries cannot be successfully obtained within sixty calendar days, a successor Trustee shall be appointed by the court having general jurisdiction over the administration of trusts. Any

successor Trustee so appointed shall possess all rights conferred upon the original Trustee and shall be bound by all provisions of this Trust Agreement.

10. The Trustee shall provide a complete and accurate accounting to the Beneficiary or Beneficiaries at a minimum on an annual basis, or more frequently as circumstances may require.
11. No Trustee, whether original or successor, shall be required to furnish any bond or other security for the faithful performance of duties.

## **Article VI. DISTRIBUTIONS DURING GRANTOR'S LIFETIME**

12. Throughout the Grantor's lifetime, the Trustee shall distribute all net income generated by this Trust, together with such amounts from principal as the Grantor may request, to or for the benefit of the Grantor or to such other person or persons as the Grantor may designate.
13. Such distributions shall be made at a minimum on an annual basis.
14. The Grantor reserves the right to modify the amount or frequency of distributions at any time by providing written notice to the Trustee.
15. Any income that remains undistributed at the time of the Grantor's death shall be added to the principal of the Trust at the discretion of the Trustee.
16. During any period in which the Grantor experiences a "disability" as defined herein, the Trustee may distribute to or for the benefit of the Grantor such amounts of income and principal as the Trustee, in the exercise of sole and absolute discretion, reasonably believes to be necessary for: (1) the Grantor's support, comfort, and general welfare; (2) the maintenance of the Grantor's accustomed standard of living; or (3) any other purpose that the Trustee believes to be in the best interest of the Grantor.
17. In circumstances involving illness or other disability of the Grantor, the Trustee may, in lieu of making direct payments to the Grantor, use and apply for the Grantor's benefit such amounts of income and principal of the Trust estate as may be necessary for the proper care, comfort, medical treatment, maintenance, and support of the Grantor. The Trustee, in the exercise of discretion, may alternatively pay over to any relative or legal guardian of the Grantor all or any portion of such income or principal for any of the aforementioned purposes.
18. For the purposes of this Trust Agreement, "disability" shall be defined as a legal disability or the inability to provide prompt and intelligent consideration to financial matters by

reason of illness, mental incapacity, or physical disability. The determination of whether the Grantor has a disability under this definition shall be made by the Grantor's most recent attending physician. The Trustee shall be entitled to rely upon written notice of such medical determination.

## **Article VII. TRUST DISTRIBUTION UPON GRANTOR'S DEATH**

- 19.** To be eligible to receive any specific distribution under this Trust, a beneficiary must survive the Grantor by a minimum period of thirty (30) days. Any items that fail to pass through a specific gift designated by the Grantor shall revert to the residue of the Grantor's Trust. All property distributed under this Agreement remains subject to any encumbrances, liens, or security interests attached to such property.
- 20.** The Grantor hereby designates the following specific distributions:
- 21.** To be eligible to receive any property or gifts under this Agreement, a beneficiary must survive the Grantor by a minimum period of thirty (30) days. Beneficiaries of the Grantor's Trust residue shall share in all of the Grantor's property and assets that have not been distributed via specific gifts or are otherwise required for the satisfaction of debts owed, including but not limited to burial or funeral expenses, expenses associated with trust administration, payment of applicable taxes, or any other expenses associated with the administration of the Grantor's Trust. The residue of the Grantor's Trust is to be distributed among the beneficiaries designated herein, with each beneficiary receiving their proportionate share of the residue of the Grantor's entire estate. All property distributed under this Agreement remains subject to any encumbrances, liens, or security interests attached to such property.
- 22.** The Trustee shall distribute the residue of the Grantor's Trust in the following manner (hereinafter referred to as "Share Allocations"):

The residue of the Grantor's Trust shall be distributed to all of the Grantor's currently living or future children who are alive at the time of the Grantor's death, in equal shares. If a child of the Grantor does not survive the Grantor, such deceased child's share shall be distributed in equal shares to the children of such deceased child who survive the Grantor, by right of representation. If a child of the Grantor does not survive the Grantor and has no children who survive the Grantor, such deceased child's share shall be distributed in equal shares to the Grantor's other surviving children, if any, or to their respective children by right of representation.

If no children of the Grantor survive the Grantor, and if none of the Grantor's deceased children are survived by any children, the residue of the Grantor's estate shall be distributed to the following alternate beneficiary:

If no above-named beneficiaries survive the Grantor, the residue of the Grantor's Trust shall be distributed to the Grantor's heirs-at-law. Their identities and respective shares are to be determined by the intestacy laws of the applicable state jurisdiction.

## **Article VIII. GENERAL TRUST PROVISIONS**

- 23.** The expression "the Grantor's Trustee" as used throughout this Trust Agreement shall include both the singular and plural forms, as well as the masculine, feminine, or neutral gender, as appropriate and required by context.
- 24.** To effectuate the terms of the Grantor's Trust, the Trustee is hereby granted the following powers, to be exercised in the Trustee's well-considered discretion at any time in the management of any trust created hereunder:
- (a)** To receive, hold, maintain, administer, collect, invest, and reinvest the trust assets, and to collect and apply the income, profits, and principal of the Trust in accordance with the terms of this Agreement;
  - (b)** To receive additional assets from other sources, including but not limited to assets received under the Last Will and Testament of the Grantor or any other individual;
  - (c)** To make such expenditures as may be necessary to carry out the intent and purpose of the trust.
  - (d)** Subject to any contrary direction from the Grantor, to sell, call in, and convert into money any trust property, including real property, that the Trustee, in the exercise of best judgment, deems advisable;
  - (e)** Subject to any contrary direction from the Grantor, to mortgage trust property where the Trustee considers it prudent and advisable to do so;
  - (f)** Subject to any contrary direction from the Grantor, to borrow money when the Trustee considers it advisable to do so;
  - (g)** Subject to any contrary direction from the Grantor, to lend money to any trust beneficiary if the Trustee considers it to be in the beneficiary's best interest to do so;
  - (h)** To make expenditures for the purpose of improving, repairing, or maintaining any property held in trust;

- (i)** To exercise all rights, options, and privileges of an owner with respect to any securities held in trust;
  - (j)** To lease trust property, including real estate, without limitation as to term;
  - (k)** To make investments the Trustee considers prudent and advisable, without being limited to those investments authorized by law for trustees;
  - (l)** To receive additional property from any source and in any form of ownership.
  - (m)** To employ any third party or parties to conduct any business or perform any actions related to the trust, including the receipt and payment of money, without being liable for any loss thereby incurred;
  - (n)** To settle, waive, or pursue any claims at any time due to or by the trust, to the extent that the Trustee considers this to be in the best interests of the trust beneficiary, and to make agreements with any third party or parties or corporation in respect thereof, which agreements shall be binding upon such beneficiary;
  - (o)** To pay himself or herself reasonable compensation from the trust assets for the labor of managing the trust; and
  - (p)** To employ and rely upon advice and counsel given by any attorney, accountant, investment advisor, money manager, or other qualified professional to assist the Trustee in the administration of this trust, and to compensate such professionals from the trust assets.
- 25.** The powers granted to the Trustee herein are in addition to any powers and elective rights granted to the Trustee by state or federal law or statute, or by any other provisions of this Agreement, and may be exercised as often as required without approval by any court.
- 26.** Subject to the terms of this Agreement, the Trustee shall not be held liable for any loss to the estate or to any beneficiary resulting from the Trustee's good-faith efforts to manage the Trust and exercise any discretion granted herein.
- 27.** This Trust shall be administered as independently of court supervision as possible under the laws of the applicable state jurisdiction, which shall have jurisdiction over the Trust.
- 28.** If any provision of this Trust is held invalid or unenforceable, such invalidity shall not affect any other provisions that can be given effect without the invalid provision.

## **Article IX. INVESTMENT DIRECTION RIGHTS**

29. At any time that the Trust holds investments, and provided that the Grantor does not have a disability as defined herein, the Grantor reserves the right to direct any Trustee to purchase, sell, retain, or otherwise manage any Trust investment.

## **Article X. REVOCATION AND AMENDMENT**

30. During the Grantor's lifetime, the Grantor reserves the absolute right to revoke or amend this Agreement at any time by delivering to the Trustee an appropriate written instrument of revocation or amendment, duly signed by the Grantor.
31. If the Trustee provides written consent, the power of revocation (but not the power of amendment) may be exercised by a duly appointed and acting attorney-in-fact for the Grantor for the purpose of withdrawing assets from the Trust.

## **Article XI. GOVERNING LAW**

32. This Agreement shall be construed, interpreted, and administered in accordance with the laws of the State of \_\_\_\_\_.

## **Article XII. RULE AGAINST PERPETUITIES**

33. Notwithstanding any other provision of this Agreement to the contrary, the trust created by this Agreement shall terminate no later than twenty-one (21) years after the death of the last surviving beneficiary of this Agreement who is living at the time of the Grantor's death. At the end of such period, distribution of all principal and all accrued, accumulated, and undistributed income shall be made to the persons then entitled to such distributions, in the manner and proportions herein stated, free of trust.

## **Article XIII. MISCELLANEOUS PROVISIONS**

34. The headings and titles of the various articles and sections of this Trust are inserted for reference purposes only and shall not be considered as forming a part of this Trust in interpreting its provisions. All words used in this Trust in any gender shall extend to and include all genders, and any words in the singular form shall include the plural and vice versa. Any pronouns shall be taken to refer to the person or persons intended, regardless of gender or number.
35. For purposes of determining appropriate distributions under this Trust, no person or organization shall be deemed to have survived the Grantor unless such person or entity

is also surviving or in existence on the thirtieth (30th) day following the date of the Grantor's death.

- 36.** No fiduciary who is a natural person shall, in the absence of fraudulent conduct or bad faith, be held individually liable to any beneficiary of the Grantor's trust estate. The Grantor's trust estate shall indemnify any such natural person from any and all claims or expenses in connection with or arising out of that fiduciary's good faith actions or omissions, except for such actions or omissions which constitute fraudulent conduct or bad faith. No successor trustee shall be obligated to inquire into or be in any way accountable for the previous administration of the trust property.
- 37.** The name of the Grantor's child is: .
- 38.** The term "child" or "children" as used in this Agreement includes the above-listed child and any children born to the Grantor or legally adopted by the Grantor after the execution of this Agreement.
- 39.** If the value of the Trust is insufficient to fulfill all of the bequests described in this Agreement, the Trustee shall decrease each bequest by a proportionate amount according to the Trustee's discretion and best judgment.
- 40.** If any beneficiary named in this Agreement contests in any court any of the provisions of this Trust, then each and all such contesting persons shall not be entitled to any devises, legacies, bequests, or benefits under this Trust, and such person's interest or share in the trust estate shall be disposed of as if that contesting beneficiary had not survived the Grantor.



## **SIGNATURES**

### **GRANTOR'S SIGNATURE**

IN WITNESS WHEREOF, I have affixed my signature on this       day of       ,       , in the City of       , State of       , declaring and publishing this instrument as my Living Trust in the presence of the undersigned witnesses, who witnessed and subscribed this, my Living Trust, at my request and in my presence. I attest that I have signed this instrument willingly (or willingly directed another to sign on my behalf), that I execute it as my free and voluntary act for the purposes expressed in the Living Trust, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Grantor Signature:

Grantor Full Legal Name:

### **TRUSTEE'S SIGNATURE**

IN WITNESS WHEREOF, I have affixed my signature on this       day of       ,       , in the City of       , State of       , acknowledging and accepting my appointment as the Trustee of this Living Trust in the presence of the undersigned witnesses who witnessed and subscribed this Living Trust at the Grantor's request and in the Grantor's presence. I attest that I have signed this instrument willingly (or willingly directed another to sign on my behalf), that I execute it as my free and voluntary act for the purposes expressed in the Living Trust, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Trustee Signature:

Trustee Full Legal Name:

## **WITNESS ATTESTATION**

SIGNED AND DECLARED by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to be their Living Trust, in our presence, in the City of \_\_\_\_\_, State of \_\_\_\_\_, who at their request, in their presence and in the presence of each other, all being present at the same time, have signed our names as witnesses. We do hereby attest that the Grantor signs this instrument willingly (or willingly directs another to sign for the Grantor), and that each of us, in the presence and hearing of the Grantor, hereby signs this Living Trust as witness to the Grantor's signing, and that to the best of our knowledge the Grantor is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

### **Witness #1:**

Signature:

Full Legal Name:

Street Address:

City, State:

### **Witness #2:**

Signature:

Full Legal Name:

Street Address:

City, State:

### **Witness #3:**

Signature:

Full Legal Name:

Street Address:

City, State:

## NOTARIZATION

STATE OF

COUNTY OF

Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_, the Grantor, and  
subscribed and sworn to before me by \_\_\_\_\_, and \_\_\_\_\_,  
witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

Notary Signature:

Notary Full Legal Name:

Commission Expiration Date:

Official Capacity of Officer:

## SCHEDULE A - LIST OF TRUST ASSETS

The Grantor has transferred, assigned, conveyed, and delivered to the Trustee the following assets to be held, managed, and distributed under the terms of this Living Trust as described above:

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