

**This**  
**HOFFMAN IRREVOCABLE TRUST**  
**prepared for**  
**ROBERT J. HOFFMAN, JR.**  
**and**  
**KATHRYN A. HOFFMAN**

**Bonfrisco Law Firm**  
**1522 Route 38**  
**Cherry Hill, NJ 08002**  
**(856) 663-3800 FAX (856) 663-3801**  
**[www.bonfriscolaw.com](http://www.bonfriscolaw.com)**

**© 2019 Michael D. Bonfrisco, Esquire**  
**All Rights Reserved**

# HOFFMAN IRREVOCABLE TRUST

## Table of Contents

Article One	Creation of Our Trust.....	1-1
Article Two	Trust Property .....	2-1
Article Three	Trustees. ....	3-1
Article Four	Distributions During Our Lifetime .....	4-1
Article Five	Distributions to Beneficiaries .....	5-1
Article Six	Lack of Designated Beneficiaries .....	6-1
Article Seven	Trustee Provisions.....	7-1
Article Eight	Powers of Our Trustees.....	8-1
Article Nine	Other Trust Provisions. ....	9-1

# **HOFFMAN IRREVOCABLE TRUST**

## **Article One - Creation of Our Trust**

### **Section 1. Parties**

Our Trust Agreement, dated May 09, 2019, is made between ROBERT J. HOFFMAN, JR., and KATHRYN A. HOFFMAN, (collectively referred to as "Trustors"), and the Initial Trustee as appointed under Section 4 of Article Three.

### **Section 2. Trust Name**

Our Trust may be referred to as the:

HOFFMAN IRREVOCABLE TRUST, dated May 09, 2019.

The formal name of our Trust and the designation to be used for the transfer of title to the name of our Trust is:

BRIAN J. HOFFMAN, Trustee, or his successors in trust, under the HOFFMAN IRREVOCABLE TRUST, dated May 09, 2019.

### **Section 3. Trust is Irrevocable**

Our Trust is irrevocable. Except as expressly herein provided to the contrary, neither we nor any other person shall have any right or power to alter, amend, or in any manner whatsoever modify any of the provisions hereof.

### **Section 4. Grantor Trust Status**

For income tax purposes, our Trust is a grantor trust under the provisions of Sections 677(a) of the Code. Either ROBERT J. HOFFMAN, JR.'s Social Security Number, 149-32-7661, or KATHRYN A. HOFFMAN's Social Security Number, 519-52-0105, may be used as the tax identification number for our Trust.

### **Section 5. Family Members**

All references to "children" are to (i) all of the children so identified in this Section 5 (subject to the exclusion of any child under subsequent provisions of this Section 5), (ii) any children conceived by the two of us but not yet born at the time of the execution of our Trust, and (iii) any children conceived or adopted by the two of us subsequent to the execution of our Trust and prior to the death of the first of us.

**a. Our Children**

The names and birth dates of our living joint children are as follows:

<u>Name</u>	<u>Birth Date</u>
BRIAN J. HOFFMAN	April 22, 1972
KRISTINA R. HOFFMAN	March 20, 1975

**b. Separate Children of ROBERT J. HOFFMAN, JR.**

ROBERT J. HOFFMAN, JR. has no separate children.

**c. Separate Children of KATHRYN A. HOFFMAN**

KATHRYN A. HOFFMAN has no separate children.

## **Article Two - Trust Property**

### **Section 1. Initial Trust Property**

We hereby assign, convey, transfer and deliver to our Trustee all property set forth on Schedule A, attached hereto, and made part of our Trust Estate. Our Trustee acknowledges receipt of all assets listed on the attached Schedule and agrees to hold, manage and distribute our Trust Estate under the provisions set forth in our Trust Agreement.

All assets titled in the name of our Trust or in the name of our Trustee, but not listed on Schedule A, shall be considered a part of our Trust Estate as if they had been set forth on the attached Schedule.

### **Section 2. Additional Trust Property**

We, or any other person or entity, may transfer or devise to our Trustee additional assets, real or personal, and may name our Trustee as the beneficiary of life insurance policies, annuities, retirement plans or similar contracts; such assets, policies and proceeds, upon notice and acceptance by our Trustee, shall be a part of our Trust Estate and subject to all the terms of our Trust Agreement.

### **Section 3. Acceptance of Trust Property**

All property transferred to our Trust, and accepted by our Trustee, shall be held, administered and distributed according to the terms of our Trust Agreement.

## **Article Three - Trustees**

### **Section 1. Definition**

All uses of the word "Trustee" in our Trust Agreement shall be deemed a reference to the person or entity then serving as Trustee and shall include alternate or Successor Trustees or Co-Trustees (if multiple trustees are serving), unless the context requires otherwise.

### **Section 2. Trustee's Resignation**

Any Trustee may resign at any time without court approval by giving written notice to our next Successor Trustee, or if there is no next Successor Trustee, to the beneficiaries then entitled to receive income or principal distributions under our Trust Agreement or their respective Personal Representatives, or if any of such beneficiaries are then minors, to the persons having the care or custody of any such minor, other than either of us. Such resignation shall be effective upon the appointment of a Successor Trustee.

### **Section 3. Trustee's Removal**

Any Trustee may be removed under our Trust Agreement as follows:

#### **a. By Trustors**

We may remove and replace any Trustee with another Trustee, provided such replacement Trustee is a corporate Trustee that is not related or subordinate to us within the meaning of Code Section 672(c).

#### **b. Removal by Other than Trustors**

After the death or incapacity of the Surviving Trustor, a majority in interest of the beneficiaries then entitled to receive income or principal distributions from a separate trust, or their respective Legal Representatives, shall have the discretion and power to remove any serving Trustee of such separate trust at any time for cause, as defined under Section 15. of Article Nine. The serving Trustee who is being removed for cause may accept such removal, or may, within thirty days of receiving written notice of removal, petition a court of competent jurisdiction for a determination as to whether sufficient cause exists for such Trustee's removal and shall continue to serve until otherwise ordered by such court.

A majority in interest of the then living income beneficiaries of any trust hereunder (in the case of a minor beneficiary, the legal guardian or natural parent of the minor beneficiary) shall have the right to remove any corporate trustee of such trust by a written instrument duly acknowledged and delivered to such corporation. Concurrent with the exercise of this right, the income beneficiaries

(in the case of a minor beneficiary, the legal guardian or natural parent of the minor beneficiary) shall appoint a corporate Successor Trustee by a written instrument duly acknowledged and delivered to the corporation appointed Successor Trustee; provided, however that such corporation must be a trust company or bank possessing trust powers organized under the laws of the United States of America or one of the states thereof and it must have under its management a minimum of One Hundred Million Dollars in trust assets. Upon receipt by the removed corporation of the written notice of acceptance of appointment by the successor corporation, the removed corporation shall forthwith surrender and deliver to the corporate Successor Trustee all of the assets in the trust estate, and the trusteeship of the removed corporation shall terminate.

**c. Notice to Removed Trustee**

Unless a serving Trustee has petitioned, or will petition within thirty days, a court as provided in the paragraphs above, written notice of removal under our Trust Agreement shall be effective immediately when signed by the person or persons authorized to make the removal and delivered to our Trustee personally, or within three business days after mailing by certified mail, return receipt requested. The written notice removing a Trustee shall identify the Successor Trustee appointed pursuant to the other provisions of this Article.

**d. Transfer of Trust Property**

Unless petitioning the court as provided above, our Trustee so removed shall promptly transfer and deliver to the Successor Trustee all property of our Trust under the removed Trustee's possession and control.

**Section 4. Appointment of Trustees**

Our Initial Trustees shall be BRIAN J. HOFFMAN. If for any reason BRIAN J. HOFFMAN were unwilling or unable to serve as Trustee, then KRISTINA R. HOFFMAN shall serve as Trustee. If for any reason all of the above named Successor Trustees are unwilling or unable to serve, then a Successor Trustee shall be appointed as provided under Section 5 of this Article.

**Section 5. No Designated and Qualified Successor Trustee**

If at any time there is no Trustee acting under our Trust Agreement and there is no person or entity designated and qualified as a Successor Trustee, a majority in interest of the beneficiaries then eligible to receive distributions of income or principal under our Trust Agreement, or their Legal Representatives, shall appoint a Successor Trustee. If any trust existing under our Trust Agreement lacks a Trustee and no successor is appointed pursuant to this Article, the vacancy shall be filled by a court of competent jurisdiction. However, neither of us may serve as a Trustee of our Trust.

## **Section 6. Rights, Responsibilities and Duties of Successor Trustees**

Other than amending or revoking our Trust, or appointing or removing a Trustee, a Successor Trustee shall have the same rights, powers, duties, discretion and immunities as if named as an Initial Trustee under our Trust Agreement. No Successor Trustee shall be personally liable for any act, or failure to act, of any predecessor Trustee or shall have any duty to examine the records of any predecessor Trustee. A Successor Trustee may accept the account rendered and the property delivered by, or on behalf of, a predecessor Trustee as a full and complete discharge of the duties of the predecessor Trustee without incurring any responsibility or liability for doing so.

## **Section 7. Co-Trustee's Responsibility for Acts of Other Co-Trustees**

No Co-Trustee shall be responsible for the act, omission or default of any other Co-Trustee without actual knowledge thereof.

## **Section 8. Trust Protector Provisions**

The function of the Trust Protector is to protect the financial resources controlled and governed by our Trust and the interests of the beneficiaries.

### **a. Appointment of Trust Protectors**

The following Trust Protector is appointed:

MICHAEL D. BONFRISCO, ESQUIRE

### **b. No Named Trust Protector Willing or Able to Act**

In the event there are no named Trust Protectors willing or able to act, then the last named individual to act as Trust Protector shall have the right to designate by written instrument a Successor Trust Protector who is qualified, as defined in Paragraph c hereunder. In the event the last named Trust Protector to act fails to appoint a Successor Trust Protector, the first Successor Trustee who is independent within the meaning set forth in Code Section 672(c) shall act as Trust Protector, or if no such individual is available, a majority of the Successor Trustees designated under Section 4 of this Article shall have the right to designate by written instrument a Trust Protector who is qualified, as defined in Paragraph c hereunder.

### **c. Qualifications of Trust Protector**

A candidate for service as Trust Protector must be independent and may not be related to, or be subordinate to, any member of our family or the family of any direct or indirect beneficiary. Any person or corporation who provides professional services to any one or more members of our family is not per se a



prohibited person if compensation for services rendered constitutes, excluding compensation for service as Trust Protector, two percent or less of his, her or its income during any calendar year.

**d. Trust Protector May Not Serve as Trustee**

Except for the special fiduciary authority given to a Trust Protector, a Trust Protector, including any Successor Trust Protector, may not serve as a Trustee. This is in keeping with our intent and purpose that the Trust Protector's only interest will be to protect the financial resources governed by our Trust Agreement and the beneficiaries thereto. It is further provided and required that the Trust Protector may never have any personal financial interest in any property of our Trust or in the outcome of any transaction or any business by or for our Trust other than the payment of a fair and reasonable compensation for his, her or its services as the Trust Protector. The responsibilities of the Trust Protector shall be limited to the exercise of the power, duty, or discretionary authority as provided throughout our Trust Agreement. Said Trust Protector shall not be concerned with, nor shall have, any authority with respect to any other aspects of administration of our Trust Estate.

**e. Special Fiduciary Authority of Trust Protector**

In addition to the authority specifically given to the Trust Protector under various provisions throughout our Trust Agreement, the Trust Protector will have the authority to perform any one or more of the following functions to the extent that the discretionary authority of our Trustee to perform a function might constitute an act of self-dealing or might jeopardize the tax status of our Trust.

**1. Valuation**

The value of certain property of our Trust may not be readily ascertainable, for example, real estate and securities held in a closely held corporation, partnership, limited liability company or other investment or business organization. Marketable securities shall be included in this category if and to the extent that market quotations are not readily available for trades of the security in an established securities market. Whenever our Trustee's right to determine the value of this kind of property may be self-serving or may produce a possible conflict of interest or adverse taxation issues, the Trust Protector is to value the property of our Trust.

**2. Voting Rights**

Whenever our Trustee's right to vote an equity interest in a corporation, partnership, Limited Liability Company, investment trust or business trust or other entity may be interpreted as self-

serving or may produce a possible conflict of interest or adverse taxation issues, the Trust Protector will have the right to vote the equity interest. Voting rights will include decision-making authority with regard to the sale, exchange, or liquidation of any equity interest in a closely held corporation, partnership, Limited Liability Company, investment trust or business trust or other entity.

### **3. Life Insurance Policies**

Whenever our Trustee's rights as to the control and maintenance of a life insurance policy or any interest in a life insurance policy could result in the inclusion of the proceeds of the policy in the estate of the insured for tax purposes, decision making with regard to a life insurance policy or interest in a policy is to be made by the Trust Protector.

### **4. Discretionary Distributions of Trust Income and Principal**

To the extent our Trustee has the discretionary authority to make distributions of income or principal to or among beneficiaries or to retain all or any part of the income, and to the extent this discretionary authority may result in, or appear to be, a conflict of interest or an opportunity for self-dealing or may produce adverse tax consequences, the Trust Protector is to make all decisions with regard to the discretionary distributions of income and principal and the retention of income.

### **5. Gifting Powers**

To the extent our Trustee has the authority to make gifts of income or principal to such Trustee and to the extent this authority to gift may result in, or appear to be, a conflict of interest or an opportunity for self-dealing or may produce adverse tax consequences, the Trust Protector is to make all decisions with regard to any gifts made to such Trustee.

### **6. Property Located In Another Jurisdiction**

The Trust Protector may appoint an Ancillary Trustee to control and administer property located in another jurisdiction.

**f. Amendment Powers**

**1. Changes in Law or Beneficiary Circumstances**

The Trust Protector may, from time to time, amend our Trust Agreement, including any sub-trust created hereunder, to address changes in federal or state law, or other circumstances which may affect our Trust and its beneficiaries or to delete provisions rendered obsolete due to changes in law or beneficiary circumstances. In exercising such power, the Trust Protector shall consider the overall best interest of the present and future beneficiaries and shall be guided by what the Trust Protector believes, in his or her discretion, would have been our intent in light of such changed circumstances.

**2. Repeal of Federal Death Taxes**

In the event of the repeal of the federal estate tax and generation-skipping transfer tax (as currently set forth in Chapters 11 and 13 of the Code) after the death or disability of both of us, the Trust Protector may terminate our Trust Agreement, or any sub-trust created hereunder, by distributing the trust principal to our living descendants in whatever proportion the Trust Protector deems appropriate. In exercising such power, the Trust Protector shall, in addition to the factors set forth in the preceding paragraph, consider the following:

- A. The enactment of any federal income, capital gains or other tax which would impact adversely on, or offset, the tax benefits of any proposed trust or sub-trust termination;
- B. The benefits afforded to the beneficiaries by the continuation of our Trust, such as protection against the claims of judgment creditors, divorcing spouses, and insulation from the reach of governmental agencies; and
- C. The likelihood of re-enactment of a federal estate, gift, or generation-skipping transfer tax or comparable tax which would subject our Trust Estate to the imposition of such tax or taxes in the hands of, or upon lifetime

or testamentary transfers by, the beneficiaries to whom our Trust Estate would have been distributed upon termination.

**g. Consultation**

Our Trustee is authorized to consult with the Trust Protector as to any matter relating to the investment of assets, discretionary distributions and the use of principal, tax matters, dealings with the beneficiaries, and any other matter relating to the administration of our Trust in keeping with the objectives and purpose of this Trust Agreement. Our Trustee will not be liable for any act or omission to act if acting according to the written instructions of, or with the written consent of, the Trust Protector.

**h. Accounting and Transaction Reports**

The Trust Protector will have the authority to receive and review any and all accounting reports, records, tax returns, transaction reports and ownership records concerning our Trust. All records of our Trust must be open for inspection at all reasonable times by the Trust Protector.

**i. Resolution of Disputes**

The Trust Protector may unilaterally resolve any dispute, claim or conflict between beneficiaries, including those who have, or claim to have, a present or future interest in property, between a beneficiary and a trustee, or between trustees. Such resolution shall be binding on all parties to our Trust and shall not be subject to review.

No one may file or instigate a claim in a court of law without first submitting the claim to the Trust Protector for resolution together with detailed supporting information and a detailed supporting memorandum of law. In the event the Trust Protector finds the supporting information or memorandum of law insufficient, the Trust Protector may request such additional information as the Trust Protector reasonably feels necessary to resolve such claim. The Trust Protector may employ, and may act upon the advice of, legal counsel in making a resolution of any issue of fact and law. The Trust Protector may submit the claim or dispute for mediation and/or binding arbitration. Subsequent to his or her review, the Trust Protector may give any claimant the authority to file and maintain an action in a court of law. The granting of such authority by the Trust Protector shall in no way nullify the "No Contest" provision provided under the "Other Trust Provisions" of our Trust. Whenever a dispute, conflict, or claim involves an interpretation or construction of our Trust Agreement, the Trust Protector may file an action in a court of competent jurisdiction for the interpretation and

construction of such Trust Agreement, or the Trust Protector may instruct our Trustee to do so.

**j. Business Judgment**

The Trust Protector is permitted and authorized to exercise "Business Judgment" in the course of service in the capacity of Trust Protector. The Trust Protector will not be liable for any act or omission to act unless it is conclusively established that the act or omission to act was motivated by an actual intent to harm our Trust or a beneficiary of our Trust or is an act of self-dealing for personal pecuniary benefit. Our Trust will pay or reimburse the costs of defending and/or settling any claim made against the Trust Protector unless it is conclusively established that the Trust Protector's conduct was motivated by an actual intent to harm our Trust or a beneficiary of our Trust. All provisions of our Trust Agreement that limit the liability of our Trustee will likewise apply in limiting the liability of the Trust Protector.

**k. Authority of Successor Trust Protector**

A Successor Trust Protector will have all of the authority and duties of the Trust Protector by original appointment, but will not be responsible for the acts, or omissions to act, of his, her, or its predecessor.

**l. Compensation**

A Trust Protector may receive reasonable compensation as an expense of administration. The Trust Protector is entitled to reasonable reimbursement for expenses and costs incurred on behalf of our Trust. Payment of compensation shall be from the funds of our Trust.

**m. Bond**

Unless otherwise required in written articles of appointment, the Trust Protector will serve without the requirement of bond or other security.

## **Article Four - Distributions During Our Lifetime**

### **Section 1. Rights of Trustors to Income**

#### **a. Payment of Income to Trustors**

We shall have no right to income from our Trust. Unless distributed as provided below, the income shall be accumulated and added to the principal of our trust.

#### **b. No Payments to Government Entities**

Our Trustee shall not distribute any income or principal to any governmental entity as reimbursement for or in substitution of any public assistance benefit that any federal, state, county or other governmental agency has provided or would provide to the Trustors in the absence of a distribution of income from our Trust.

#### **c. Residential Real Estate**

The Trustee is authorized to accept in Trust any premises (including a cooperative apartment) that we may occupy as our residence. We shall have the right to occupy any such premises for residential purposes. We shall not be required to pay rent for such property but shall be responsible for and required to pay all of the expenses of the maintenance of the property, including mortgage payments, if any, taxes, insurance, utilities and normal costs of maintenance and upkeep of the property for so long as the Trust owns said premises. Any purchaser of real property (including a cooperative apartment) owned by this Trust shall be entitled to rely upon the authority of the Trustee to see such real property, to be invested and reinvested by the Trustee as part of the Trust Estate.

The Trustees are further authorized and empowered to sell any such residential property and to purchase other suitable residential property, whether a house, cooperative apartment, condominium apartment or otherwise, for equivalent use by us and this provision shall not be limited by the repeated exercise thereof. In all matters regarding continued use of such residential property, it is my intention that the Trustees shall give great weight to our wishes and needs. If Trustees elect to retain ownership of said residence due to our desire to remain therein, then the Trustees shall not be held responsible for any decreases in value of said property, whether by ordinary depreciation, change in neighborhood conditions, loss, destructions, waste, damage or injury from whatever cause. Furthermore, if the Trustee maintains ownership of the residence, they shall not be responsible for failure to diversify the portfolio of trust assets.

**d. Real Property Exemptions**

It is the intent herein that the residential real estate held by this trust and used by us as our primary residence shall be entitled to the appropriate exemptions as if held by us in our name alone, including but not limited to the Homestead Benefit (Rebate), Property Tax Reimbursement Program (Senior Freeze), annual property tax deduction for senior citizens or disabled persons, annual deduction for Veterans, and property tax exemption for disabled veterans. If, because of any provision in this trust or the lack of certain provisions, the assessor's office refuses to grant to continue such exemptions, the Trust Protector is empowered to amend this trust to add or delete provisions as necessary so as to qualify the residential real estate for the appropriate exemptions. In no event however shall this power permit the Trust Protector to amend the trust to permit principal to be paid to me, my creditors, my estate or the creditors of my estate, or to make such other amendments that would make the principal of this trust an available resource if I was receiving, or applied to receive Government Benefits.

**e. Limitation on Payment of Trust Principal to or for Trustor**

Notwithstanding anything that may be contained herein to the contrary, no Trust principal may be paid to or for our benefit, our creditors, either of our estate, or the creditors of either of our estate, whether directly or indirectly. In no event may the principal of this Trust be paid to or applied for the benefit of a governmental agency or department. The provisions of any New Jersey statute, rule, or regulation, either now or hereafter enforced, purporting to give to any court or other person or agency any power to make an allowance for, or compel the distribution of either principal or income of an estate or of any trust to any beneficiary otherwise than as expressly set forth herein, shall not apply to this trust or any trust estate created by this instrument, and any such power or powers shall not be exercised with respect to this trust (irrespective of any consent thereto by any beneficiary).

**f. Unitrust Election Prohibited**

The Trustee shall not have the power, nor shall any beneficiary herein have the power, to elect the unitrust provision under any New Jersey statute, rule, or regulation nor shall that provision be applicable to the trust.

**Section 2. Rights of Designated Beneficiaries to Income and Principal**

At any time or times during our lives, our Trustee may pay to, or apply for the benefit of, any one or more of our Children so much of the income and principal of our Trust as our Trustee, in our Trustee's discretion, deems proper. Any discretionary distributions to the then acting Trustee may only be made by the unanimous written approval of the other then serving Trustee(s) who is not the beneficiary of the distribution, and any distribution to a descendant of a Trustee, if said descendant should become a permissible principal beneficiary, may only be made by the unanimous written approval of the other then serving Trustee(s) who is not the parent or

grandparent of said descendant. If there is no Co-Trustee with power to make such discretionary distributions of principal, then same shall be made by the Trust Protector as provided in Section 8 of Article Three of this Trust. The Trustees are authorized to make said distributions from principal even if said distributions reduce, diminish, or terminate the income available to me.

**a. Trustors' Lifetime Limited Power of Appointment**

We retain the right, by written instrument filed with our Trustee prior to the death of the Surviving Trustor, to add to or delete from the beneficiaries designated to receive discretionary distributions of income and principal from our Trustee, provided, however, under no circumstances may we designate ourselves as a beneficiary to receive such discretionary distributions of income and principal. This power of appointment shall be exercisable by us alone and in all events.

**Section 3. Administration on Death of Survivor of Trustor and Spouse**

Upon the death of the Surviving Trustor, all undistributed trust assets, including any accrued and undistributed net income, shall be held, administered and distributed pursuant to the Articles that follow.



## **Article Five - Distributions to Beneficiaries**

### **Section 1. Division of Trust Estate Into Shares**

Upon the death of the Surviving Trustor, our Trustee shall divide the Trust Estate into separate and equal shares (and for purposes of determining such division and subsequent distributions shall take into account the exclusion of any descendant as may be directed in Article One) as follows:

**a. One Share for Each Living Child**

Our Trustee shall create one share for each of our respective children then living.

**b. One Share for Each Deceased Child Leaving Descendants**

Our Trustee shall create one share for each of our respective deceased children who have then living descendants, to be further subdivided, per stirpes.

### **Section 2. Distribution to Living Children**

Our Trustee shall promptly distribute the share set aside for each of our respective living children outright and free of trust. In the event of the death of a child subsequent to our death but before distributions to such child's share, such child's share shall terminate and our Trustee shall distribute and deliver the remaining balance of said share in accordance with the provisions of Section 3. If our child has no descendants then living, such child's share shall terminate and our Trustee shall distribute and deliver, outright and free of trust, the remaining balance of such share to our descendants, per stirpes. If we have no descendants then living, such child's share shall be distributed as provided under Article Six of our Trust Agreement.

### **Section 3. Distribution to Descendants**

Our Trustee shall promptly distribute the share set aside for the descendants of our deceased children, per stirpes, outright and free of trust. In the event of the death of a descendant subsequent to the creation of said descendant's share but before its complete distribution of such descendant's share, such descendant's share shall terminate and our Trustee shall distribute such descendant's share, outright and free of trust, to his or her then living descendants, per stirpes. If said descendants has no descendants then living our Trustee shall distribute such descendants share, outright and free of trust, to our then living descendants, per stirpes. If we have no descendants then living, such descendant's share shall be distributed as provided under Article Six of our Trust Agreement.

## **Article Six - Lack of Designated Beneficiaries**

### **Section 1. Remainder by Intestate Succession**

If at any time there is no Beneficiary entitled to receive all or any part of our Trust Estate under the preceding Articles, all of the remaining portion of our Trust Estate shall then be distributed, outright and free of trust, to those persons who would be our heirs at law had we died intestate owning our Trust Estate.

## **Article Seven - Trustee Provisions**

### **Section 1. Co-Trustee Voting Provisions**

#### **a. Specific Co-Trustee May Act Independently**

Notwithstanding any other provisions of our Trust Agreement, if any of the following is serving as a Co-Trustee of any Trust under our Trust Agreement, such Co-Trustee may make decisions and bind our Trust Agreement in the exercise of all powers and discretion granted to our Trustees without the consent of any other Trustee:

BRIAN J. HOFFMAN

#### **b. Unanimous Vote for Two Trustees**

Other than as provided in Section 1.a of this Article, if only two Trustees are serving, they shall act unanimously in the exercise of all powers and discretion granted to them under our Trust Agreement.

#### **c. Majority Vote for More Than Two Trustees**

Other than as provided in Section 1.a of this Article, if more than two Trustees are serving under our Trust Agreement, they shall act by majority vote and any exercise of a power or discretion by a majority of the Trustees shall have the same effect as an exercise by all of them.

#### **d. Trust Protector Resolves Disputes**

Other than as provided in Section 1.a of this Article, if the Trustees are not able to reach an agreement on any decision as set forth in this Section, they shall consult with the Trust Protector as provided under Section 8 of Article Three of our Trust Agreement.

### **Section 2. Delegation of Trustee Powers and Discretion**

Notwithstanding any other provision of our Trust Agreement, any one or more of the Co-Trustees serving under our Trust Agreement may, from time to time, delegate to another Co-Trustee or Co-Trustees any or all of such Co-Trustee's powers and discretion by an instrument in writing delivered to the other Co-Trustees and may revoke such designation at will in the same manner; provided, however, the foregoing shall not apply to a "Trust Protector" appointed under Section 8 of Article Three. For example, a Co-Trustee may authorize withdrawals of trust funds from any savings and/or checking account upon the signature of one of the others serving as Co-Trustee. Also, a Co-Trustee may authorize the opening and maintaining of bank accounts or safe deposit boxes, in the name of the Co-Trustee with any bank, trust company or savings and loan association authorized and doing business in any state

of the United States of America, and may authorize such bank, trust company or savings and loan association to make distributions to or for the benefit of the beneficiaries hereunder. Additionally, if a corporation, bank or trust company and an individual serve as Co-Trustees, the individual Co-Trustee shall not be obligated (but may so act if he or she wishes) to sign or countersign checks for disbursements of trust funds held by the corporation, bank or trust company. The delegating Co-Trustee shall incur no liability to any beneficiary of any trust created hereunder with respect to the administration of such trust during the period of any such delegation.

### **Section 3. No Trustee Bond Required**

No Trustee specifically named under our Trust Agreement shall be required to post any bond for the faithful performance of such Trustee's responsibilities.

### **Section 4. Compensation of Trustee**

Our Trustee shall be entitled to reasonable compensation for services rendered. Such compensation is payable without the need of a court order. In calculating the amount of compensation, customary charges for similar services, in the same geographic area, for the same time period shall be used as guidelines. Any corporate fiduciary shall be entitled to receive compensation for its services in accordance with its published fee schedule in effect from time to time and any trustee who is normally compensated on an hourly basis shall be so compensated.

Our Trustee shall also be entitled to reimbursement for reasonable costs and expenses incurred during the exercise of our Trustee's duties under our Trust Agreement.

### **Section 5. Change in Corporate Trustee**

Any corporate successor to the trust business of any corporate trustee named under our Trust Agreement, or acting hereunder, shall succeed to the capacity of its predecessor without reconveyance or transfer of trust property.

### **Section 6. Notice to Trustee**

Until our Trustee receives written notice of any death or other event which triggers the right to payments from any trust or trust shares created under our Trust Agreement, our Trustee shall incur no liability for distributions made in good faith to persons whose interests may have been affected by such event.

### **Section 7. Duty to Account**

Our Trustee shall render accounts, upon request, to the income beneficiaries under our Trust Agreement at least annually, at the termination of a trust created hereunder and upon a change in the Trustees in the manner required by law.

## **Section 8. No Court Supervision**

No trust or trust share created under our Trust Agreement shall require the active supervision of any state or federal court.

## **Article Eight - Powers of Our Trustees**

### **Section 1. Powers**

In addition to any power hereinafter specifically granted to our Trustee, it is our intention that our Trustee has all powers granted to a trustee under state law, as well as those powers respecting property in our Trust Estate that an absolute owner of such property would have. In accordance with such intention, any power our Trustee needs to administer our Trust Estate, which is not hereinafter listed, shall be considered as provided for herein. All powers shall be exercised only in a fiduciary capacity, and such powers may be exercised without the approval or supervision of any court. It is also our intention that the investment of Trust assets shall be governed by the Uniform Prudent Investor Act, as enacted under the statutes that govern our Trust. If the Uniform Prudent Investor Act has not been enacted by the state whose law governs this document, then the Uniform Prudent Investor Act itself shall apply.

#### **a. Retention of Property**

Our Trustee shall have the power to retain any ownership interest, partial or complete, in real property, farming and other family business enterprises, as well as other illiquid investments, such as restricted securities transferred, devised or bequeathed to our Trustee, regardless of any lack of diversification, risk, or non-productivity and regardless of whether or not such property is of a character authorized by state law for the investment of trust funds. Our Trustee shall have the power to continue the operation of any such property or business enterprises at the risk of our Trust Estate as long as our Trustee believes that the retention of such property is in furtherance of our goals in creating our Trust and is in the best interest of our beneficiaries. Our Trustee shall diversify the balance of our Trust Estate in accordance with the Uniform Prudent Investor Act, as enacted under the statutes that govern our Trust.

#### **b. Additions**

Our Trustee shall have the power to receive additions to the assets of the various trusts created under our Trust Agreement from any source.

#### **c. Business Participation**

Our Trustee shall have, notwithstanding any overall effect on the fair market value of the property held in any trust or trust share, the power to form, terminate, continue or participate in the operation of any business enterprise including a corporation, a sole proprietorship, a general or limited partnership (as a general or limited partner) or a limited liability company (as a managing or non-managing member) and to effect any form of incorporation, dissolution, liquidation or reorganization, including, but not limited to, the recapitalization and reallocation of classes of shares or other changes in the form of the business enterprise or to lend money or make a capital contribution to any such business enterprise.

**d. Banking Powers**

Our Trustee shall have the following additional powers regarding financial transactions:

**1. Existing Accounts**

Our Trustee may continue, modify, and terminate an account or other prior banking arrangement.

**2. New Accounts**

Our Trustee may establish any type of account (including, but not limited to, checking, savings, and certificates of deposit) or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, industrial loan company, brokerage firm, or other financial institution.

**3. Establishing, Entering and Closing Safe Deposit Boxes**

Our Trustee may open a new safe deposit box or space in a bank vault, access an existing safe deposit box or vault space containing trust property and withdraw or add to its contents, or close a safe deposit box or space in a bank vault.

**4. Contracting Services**

Our Trustee may contract to procure other services that our Trustee considers appropriate which are offered by banks or other financial institutions.

**5. Checks, Drafts, and Negotiable Paper; Withdrawals**

Our Trustee may make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or non-negotiable paper of ours, or payable to us or to our order, and deposit or receive the cash or other proceeds of those transactions. Furthermore, our Trustee may withdraw by check, order, or otherwise our money or property deposited with or left in the custody of a financial institution.

**6. Receiving Negotiable or Non-Negotiable Instruments**

Our Trustee may receive for us and act upon a sight draft, warehouse receipt, or other negotiable or non-negotiable instrument.

## **7. Letters of Credit, Credit Cards, and Travelers Checks**

Our Trustee may apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit as our Trustee finds necessary for the proper maintenance of trust property and financial needs.

## **8. Extensions to Pay**

Our Trustee may consent to extend the time of payment, due to or from us, with respect to any financial transaction with a bank or other financial institution.

### **e. Make Investments**

Our Trustee shall have the power to invest in any type of investment that plays an appropriate role in achieving the investment goals as set forth in our Trust Agreement, which investment shall be considered as part of the total portfolio. No category or type of investment shall be prohibited. We specifically do not wish to limit the universe of trust investments in any way other than is dictated by our Trustee's exercise of reasonable care, skill and caution. In connection with our Trustee's investment and management decisions with respect to our Trust, our Trustee is specifically entitled to take into account general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies, the role that each investment or course of action may play within the overall trust portfolio that may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property; the expected total return from income and the appreciation of capital, and the asset's special relationship or special value, if any, to the purposes of our Trust or to one or more of the beneficiaries. Our Trustee shall not be limited to any one investment strategy or theory, including modern portfolio theory, the efficient markets theory or otherwise, but should be free to consider any appropriate investment strategy or theory under all circumstances.

Our Trustee may delegate investment and management functions that a prudent person of comparable skills would properly delegate under the circumstances. Should our Trustee delegate such function, our Trustee shall exercise reasonable care, skill and caution in selecting an Investment Advisor and shall establish, in writing, the scope and terms of the delegation consistent with the purposes and terms of our Trust. Such writing shall cover the terms of the Investment Advisor's duties and describe the Trust assets to be managed by the Investment Advisor.

Notwithstanding the general powers of our Trustee, the following provisions shall apply to each trust from time to time held hereunder which is being managed by an Investment Advisor (subject to any limitations or modifications contained in



the written agreement between our Trustee and such Investment Advisor or Advisors):

1. Our Trustee shall follow the directions of the Investment Advisor with respect to the retention, purchase, sale or encumbrance of our Trust assets subject to management by such Investment Advisor and the investment and reinvestment of any funds derived from those assets, and shall have no duty to make or participate in making any decision regarding the same. The sole authority and discretion regarding the management of such assets shall belong to the Investment Advisor.
2. So long as our Trustee follows the direction or advice of the Investment Advisor, our Trustee shall be under no duty to review the assets subject to such Investment Advisor's management or to make any recommendations with respect to the investment or reinvestment thereof or to determine whether any direction or advice received from the Investment Advisor is proper.
3. Our Trustee shall not be accountable for any loss or depreciation in value sustained by reason of any action: (i) taken with the direction or approval of the Investment Advisor, or (ii) not taken by reason of direction, disapproval or inaction by the Investment Advisor pursuant to the preceding provisions of this Section 1.e. In addition, our Trustee may issue proxies to vote all securities included among the assets subject to management by the Investment Advisor, and our Trustee shall not thereafter be liable for the manner in which those securities are voted, for any direct or indirect result of that voting, or for any failure to vote such securities.
4. Except as modified by the provisions of this Section 1.e., the powers and duties of our Trustee with respect to the assets of our Trust Estate managed by an Investment Advisor shall be the same as those with respect to all other assets of our Trust Estate.
5. An Investment Advisor, by written notice to our Trustee, may resign at any time, or may, from time to time, waive any or all such Investment Advisor's rights, powers and duties. By accepting the delegation of the trust asset management function and acting as Investment Advisor, such Advisor submits to the jurisdiction of the courts of this state. An Investment Advisor shall be entitled to

reasonable compensation, and such compensation shall be paid from the assets of our Trust and may be charged, in our Trustee's discretion, to income or principal, or partly to each. Our Trustee shall incur no personal liability for the payment of such fees. The rights and powers herein conferred to an Investment Advisor shall be exercisable only in a fiduciary capacity.

**f. Digital Assets**

In addition to any other powers held, our Trustee shall have the power to open, continue, modify, terminate, access, view, make use of, and give instructions in regards to any financial, social media, or other account or other arrangement on the world wide web (also known as the internet) and/or on any other public or private network, and to access, view, and transfer any or all data owned by or concerning us or our Trust, in any format, including any electronic or digital data, no matter where it may be located, in this state, another state, or another country.

Our Trustee may obtain password and/or login information and have complete access to any electronic account maintained by us or on our behalf, including, without limitation, electronic mail and on-line financial accounts.

**g. Manage Securities**

Our Trustee shall have the power to buy, sell and trade in securities of any nature, including options, futures contracts, short sales, and for such purposes, may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by our Trustee with such brokers as security for loans and advances made to our Trustee. Our Trustee shall have all the rights, powers and privileges of any owner with respect to securities held in trust, including, but not limited to, the power to vote and give proxies and pay assessments or other charges, participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations and, in connection therewith, to deposit securities with and transfer title to any protective or other committee under such terms as our Trustee may deem advisable, and do all other acts which persons of prudence, discretion and intelligence would do or take for their own account.

**h. Allocation of Principal and Income**

Except as otherwise specifically provided in our Trust Agreement, the determination of all matters with respect to what is principal and income of our Trust Estate (including the power of adjustment between principal and income under Section 104 of the Uniform Principal and Income Act of 1997 or similar provision under the law that governs this document), and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the Uniform Principal and Income Act of 1997 as from time to

time enacted by the state statute which governs our Trust Agreement. Any such matter not provided for either in our Trust Agreement or under the Uniform Principal and Income Act of 1997 shall be determined by our Trustee in our Trustee's discretion.

Our Trustee's powers shall be subject to our Trustee's duty to treat income beneficiaries and remainder beneficiaries equitably, except as provided below:

1. A reasonable reserve for the depreciation of all income-producing, depreciable real and personal property, and capital improvements and extraordinary repairs on income-producing property, shall be charged to income from time to time;
2. A reasonable reserve for the depletion of all depletable natural resources, including, but not limited to, oil, gas and mineral, and timber property, shall be charged to income from time to time;
3. Distributions by mutual funds and similar entities of gains from the sale or other disposition of property shall be credited to principal;
4. A reasonable reserve for the amortization of all intangible property having a limited economic life including, but not limited to, patents and copyrights, shall be charged to income from time to time; and
5. All premiums paid and all discounts received in connection with the purchase of any bond or other obligation shall be amortized by making an appropriate charge or credit to income as the case may be; provided, however, our Trustee shall not set aside out of income a reserve for the depreciation, depletion, obsolescence, repair, replacement, improvement or amortization of capital assets (tangible or intangible) contributed to our Trust during our lifetimes or by Will upon the death of one or both of us. Further provided, if our Trust is a partner in a partnership, our Trustee shall be entitled to accept, with respect to such partnership interest, any accounting methods used by the partnership, regardless of whether such methods include depreciation reserves, regardless of the assumptions on which any such reserve may be based, and regardless of whether such accounting methods are inconsistent with those methods used by our Trustee with respect to other property of our Trust Estate.

**i. Sell, Exchange and Repair**

Our Trustee shall have the power to manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair Trust property.

**j. Lease**

Our Trustee shall have the power to lease Trust property for terms within or beyond the terms of the Trust and for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

**k. Permit Beneficiaries to Use or Reside Upon Trust Assets**

Unless in conflict with the provisions of Section 1. e. of Article Nine, our Trustee may permit any beneficiary to reside upon or occupy any real property in our Trust Estate or use any personal property in our Trust Estate, upon such terms, provisions and conditions as our Trustee determines.

**l. Borrow**

Our Trustee shall have the power to borrow money for any trust purpose upon terms and conditions as our Trustee may deem proper and to obligate our Trust Estate for repayment; to encumber our Trust Estate or any of its property by mortgage, deed of trust, pledge or otherwise, using such procedure or procedures to consummate the transaction or transactions as our Trustee may deem advisable. Our Trustee shall have the power to borrow money on behalf of one trust from any other trust provided for under our Trust Agreement, and to obligate the borrowing trust to repay such borrowed money, provided that such loan shall be adequately secured and shall bear interest at current bank rates.

**m. Make Loans**

Our Trustee shall have the power to lend Trust money to the Personal Representative, Executor or Administrator of either Trustor's estate or to any beneficiary under our Trust (excluding the Trustors') or to a trust for the benefit of any such beneficiary, as may be agreed upon between our Trustee and such parties, provided, however, that any such loan shall be adequately secured and shall bear a reasonable rate of interest. Our Trustee shall also have the power to loan or advance our Trustee's own funds to our Trust for any Trust purpose, with interest at current rates, and to receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of our Trust.

**n. Purchase Assets from Trustor's Estate**

Our Trustee may use Trust funds to purchase any securities or other property tendered to it by the Personal Representative or Executor of either of our estates

or any Trustee of any trust established by us, at any time and from time to time at the then market value of such property. If there is any question as to the market value of such property, such value shall be determined by the Trust Protector, as provided for under Section 8 of Article Three of our Trust Agreement.

**o. Deal With Other Trusts**

Our Trustee may advance cash or other assets to any other trust or estate of which our Trust is a beneficiary in an amount equal to all or any portion of any expense, debt and other charges, and estate, inheritance, succession, transfer and other death taxes which are attributable to our Trust's share of such other trust or estate.

**p. Insure**

Our Trustee shall have the power to carry, at the expense of our Trust, insurance of such kinds and in such amounts as our Trustee deems advisable to protect our Trust Estate and our Trustee against any hazard.

**q. Agents**

Our Trustee shall have the power to employ managers, agents, attorneys, accountants, auditors, depositories and proxies, with or without discretionary powers, and to rely on the advice given by such advisors.

**r. Litigation**

Subject to the provisions of Section 8 of Article Three, our Trustee shall have the power to commence or defend, at the expense of our Trust, such litigation with respect to our Trust or any property of our Trust as our Trustee may deem advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of our Trust.

**s. Accept Gifts**

Our Trustee shall be authorized to accept gifts from any individual who desires to contribute to the principal of the respective trusts created hereunder. Such acceptance of any additional gift shall be in the discretion of our Trustee.

**t. Payment of Expenses**

Our Trustee shall have the power to pay any taxes, assessments, reasonable compensation of our Trustee and other expenses incurred in the collection, management, care, protection and conservation of our Trust Estate.

**u. Corporate Fiduciary**

If any stock of a corporate entity that is our Trustee, or of any affiliate or successor of such Trustee, shall be included in the assets of our Trust, our Trustee

shall have full authority, in our Trustee's discretion, and notwithstanding any regulation or rule of law to the contrary, to retain the stock and any increases resulting from stock dividends and stock splits and from the exercise of purchase rights and the purchase of fractional shares needed to round out fractional share holdings that may arise concerning the stock. Our Trustee shall vote such stock either directly or by proxy. However, to the extent our Trustee is prohibited by law from voting such stock, our Trustee shall vote in accordance with the written instructions of the Trust Protector appointed under Section 8 of Article Three.

**v. Investment Transactions**

With regard to record keeping for investment transactions, our Trustee need not provide copies of confirmations or similar notifications each time a trade or investment transaction occurs, but investment transactions shall be set forth in our Trustee's periodic accounting.

**w. Farm or Ranch Property**

With respect to farm or ranch property, our Trustee shall have all necessary powers to participate in and operate any farming (including tree farming) or ranch operation, personally or with hired labor, tenants or sharecroppers; to lease any farm for cash or a share of crops under a lease that permits or precludes the material participation of our Trustee to fertilize and improve the soil; to employ conservation practices; to participate in government programs; and to perform any other acts deemed by our Trustee as necessary or desirable to operate the property. In making a decision whether to materially participate in farming or ranch operations, our Trustee shall consider whether an election should be made or has been made under Sections 2032A of the Code to qualify for special farm-use valuation or the qualified family owned business interest deduction, or both.

**x. Power to Divide or Combine Trusts**

Our Trustee shall have the power to divide a single trust or share thereof into separate divisions, each to be administered in accordance with the terms and conditions of the single trust from which they were created (or in accordance with such terms and conditions as they may be affected by our Trustee's power to comply with "S" Corporation requirements) when our Trustee, in our Trustee's discretion, determines that division is desirable or advisable in view of tax considerations, including considerations related to income tax, gift tax, inheritance tax or generation-skipping transfer tax or other objectives of the trusts and their beneficiaries.

Our Trustee shall not be required to make a physical segregation or division of the various trust subdivisions created under our Trust Agreement except as segregation or division may be required by reason of the termination and distribution of any of the trust subdivisions, but our Trustee shall keep separate accounts and records for different undivided interests.

Our Trustee, in our Trustee's discretion, shall have the further power to combine two or more trusts or trust subdivisions having substantially the same terms into a single trust for purposes of administration when tax or other factors indicate that such combination would be desirable or advisable. In deciding whether to combine trusts or trust subdivisions, our Trustee shall consider the generation-skipping "inclusion ratio" of the trusts or trust subdivisions to be combined. Trusts or trust subdivisions having the same inclusion ratios may be combined. Trusts or trust subdivisions having different inclusion ratios should generally not be combined unless their inclusion ratios are maintained unchanged through substantially separate and independent shares of different beneficiaries within the meaning of Section 2654(b) of the Code and the applicable regulations thereunder. Specifically, unless there is a Personal Representative, our Trustee has the authority to allocate any portion of our exemptions under Section 2631(a) of the Code to property as to which we are both the respective Transferors, including any property transferred by either of us during our lifetime as to which we did not make an allocation prior to our death. Our Trustee also has the authority to make the special election under Section 2652(a)(3) of the Code. If Sections 2631(a) or 2652(a)(3) of the Code are not interpreted to allow a Trustee to exercise such election, then a Personal Representative shall be appointed and is authorized to allocate our exemption and to exercise the said special election.

**y. Termination of Small Trust**

If at any time after our death the costs of administration of our Trust (or any share thereof) are of such an amount in relation to the then principal and undistributed income of our Trust (or any share thereof) that our Trustee, in our Trustee's discretion, determines that our purposes in establishing our Trust (or any share thereof) would no longer be served, and if our Trustee deems it advisable to distribute the then principal and undistributed income of our Trust (or any share thereof) to the then living beneficiary or beneficiaries and thereby cause the termination of such trust or share, our Trustee (other than either of us and any then current beneficiary of our Trust) may do so without responsibility on the part of our Trustee. If no such Trustee is then serving, the Trust Protector appointed under Section 8 of Article Three shall serve for the purpose of determining the advisability of termination and administering the termination process.

**z. Power to Change Situs**

Our Trustee shall have the power, exercisable by written instrument signed and acknowledged by our Trustee, to change the situs of any trust or trust share held by our Trustee; and, in conjunction with any such change and without any need to obtain the approval of any court, to elect that such trust or trust share shall be subject to the jurisdiction of the new situs. In addition, our Trustee may move the assets of such trust or trust share to the location of the new situs.

**aa. Release of Trustee Powers**

Each Trustee who determines it to be in the best interest of any beneficiary may, at any time, by instrument executed with all the formalities of a deed and delivered personally or sent by certified mail to another then acting Trustee, if any, or to some beneficiary of the affected trust or trusts, release and relinquish or disclaim upon any terms, either in whole or in part, temporarily or permanently, revocably or irrevocably, with or without binding successors, any one or more of the powers, rights, authorities, and discretions conferred upon such Trustee by any provision or provisions of our Trust Agreement or generally pursuant to law, which release and relinquishment or disclaimer shall be binding on all affected beneficiaries. If the release and relinquishment or disclaimer of a power, right, authority, or discretion is made by less than all of our Trustees upon whom it is conferred, such power, right, authority, or discretion shall continue to be exercisable in full by our Trustee or Trustees (other than any Successor Trustees on whom it is, by its terms, binding) who have not thus released and relinquished or disclaimed it.

**bb. Pay Death and Generation-Skipping Transfer Taxes of Beneficiaries**

Upon the death of any beneficiary other than us, any estate, inheritance, succession, or other death taxes (including any generation-skipping transfer taxes), duties, charges, or assessments, together with interest, penalties, costs, Trustee's compensation and attorneys' fees, which shall become due by reason of our Trust Estate or any interest therein being includible for such tax purposes, may be paid by our Trustee from our Trust Estate (other than the Trustors') unless other adequate provision shall have been made therefor. Any such payments shall be charged to the principal of the share of our Trust Estate or the separate trust so included. If our Trustee considers that any distribution from a trust hereunder, other than pursuant to a power to withdraw or appoint, is a taxable distribution subject to a generation-skipping transfer tax payable by the distributee, our Trustee shall augment the distribution by an amount which our Trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates. If our Trustee considers that any termination of any interest in or power over trust property hereunder is a taxable termination subject to a generation-skipping transfer tax, our Trustee shall pay the tax from the trust property to which the tax relates, without any adjustment of the relative interests of the beneficiaries. If the tax is imposed in part by reason of trust property hereunder and in part by reason of other property, our Trustee shall pay that portion thereof which the value of the trust property bears to the total property taxed, taking into consideration deductions, exemptions and other factors which our Trustee deems pertinent. Our Trustee may make any such payments directly, or to a Legal Representative or other fiduciary, and our Trustee may rely upon a written statement of such fiduciary as to the amount and propriety of such taxes, interest, penalties and other costs, and shall be under no duty to see to the application of any funds so paid.



**cc. Life Insurance**

Our Trustee shall have the power to obtain, by purchase, gift, conversion, reissue, consolidation or by any other means, and hold as an asset of our Trust, policies of insurance on either or both of our lives or the life of any beneficiary of our Trust. Our Trustee is authorized and empowered to exercise, either before or after our death, all of the rights, options, elections or privileges exercisable in connection with such policies. These rights and options shall include, but not be limited to, incapacity benefits, the right to borrow money with which to pay premiums (or other charges) on any policy owned by our Trust (including any automatic premium loan feature) or for any other trust purpose, the right to elect among settlement options offered by the insurance company that issued such policy, the right to convert such policy to paid-up insurance, extended term insurance or to any different form of insurance, and the right to arrange for the automatic application of dividends in reduction of premium payments (or other charges) with regard to any policy of insurance held in our Trust Estate. Regarding any such policies:

1. We represent that any policies of life insurance currently transferred into our Trust, or that will be transferred to our Trust hereinafter or purchased at our direction, have been selected (or will be selected) solely by our Trustee based on our study and evaluation of (a) the sufficiency of the policy to meet the goals of our Trust, and (b) the current and projected financial strength and viability of the company issuing the policy.
2. Our Trustee has made no representations to us concerning these policies and none of our study and evaluation of the policy or policies has been based on any representation by our Trustee. Furthermore, our Trustee is under no obligation to examine such policies upon receipt or to make subsequent or periodic evaluations of the same.
3. In the event that any beneficiary hereunder shall at any time (1) question the sufficiency of any life insurance policy, (2) determine that available policy elections should be made, or (3) question the continued financial strength or viability of the carrier, it shall be their absolute obligation to inform our Trustee of those facts in writing. Our Trustee shall be indemnified and held harmless for any actions taken or not taken pertaining to any such policies held by our Trust.

Nothing herein shall constitute a power in us to exercise any incidents of ownership over any policy of insurance on either or both of our lives which would cause such policy to be included in either or both of our estates pursuant to Code Section 2042.

## **Article Nine - Other Trust Provisions**

### **Section 1. Special Needs Provisions**

#### **a. Definition of "Special Needs Beneficiary"**

For purposes of our Trust Agreement, the term "Special Needs Beneficiary" refers to a beneficiary who is entitled to receive any form of need-based government or private support or benefit, including, but not limited to, such programs as Medicaid, Supplemental Security Income ("SSI"), In-Home Supportive Services, Medicare and Aid for Dependent Children.

#### **b. Definition of "Special Needs"**

For purposes of our Trust Agreement, the term "Special Needs" refers to supplemental, non-support expenditures from our Trust assets that, pursuant to the other provisions of this Section, our Trustee is authorized to disburse, in our Trustee's sole and absolute discretion. Special Needs, subject to the general supplemental, non-support limitation, include, but are not limited to, medical, dental, diagnostic or therapeutic treatment, or nursing or home care services for which the Special Needs Beneficiary is not receiving government or private benefits, and is not eligible to receive such benefits. Special Needs also includes the differential between any treatment, service or care that the Special Needs Beneficiary is receiving from any government or private source and the level of treatment, service or care our Trustee deems appropriate for the beneficiary. Disbursements for education, travel (including travel by those our Trustee believes the companionship of which will benefit the Special Needs Beneficiary), entertainment devices or events and electronic devices are also to be considered Special Needs.

#### **c. Overall Limitation on Distribution**

It is our intention that distributions from our Trust Estate supplement, but not supplant, impair or diminish, any forms of government or private support or benefit which a beneficiary of our Trust is then receiving or becomes eligible to receive. For purposes of this Section, the term "support" refers to food, clothing or shelter. The terms of our Trust Agreement shall be read and interpreted to prevent any action by our Trustee which would supplant, impair, diminish or otherwise interfere with, limit or reduce the Special Needs Beneficiary's receipt of, or eligibility for, any form of government or private benefits. Any power of distribution (whether or not exercised), granted to our Trustee pursuant to the terms of our Trust Agreement that would result in the loss, diminishment or ineligibility for government or private benefits is hereby revoked; and, only such

powers as will not result in ineligibility for such benefits, or loss, diminishment or impairment, thereof, shall remain exercisable by our Trustee.

**d. Discretionary Distribution of Accumulated Income and Principal**

Our Trustee may pay for the benefit of a Special Needs Beneficiary such accumulated income and principal of such beneficiary's share, up to the whole thereof, as our Trustee in his or her discretion, shall determine from time to time for the Special Needs of the Special Needs Beneficiary. Our Trustee, in exercising discretion under this paragraph, shall consider all income or resources available to the Special Needs Beneficiary. The Special Needs Beneficiary has no rights to any distributions under our Trust.

**e. Treatment of Any Residence Held by Trust**

Notwithstanding the provisions of Section 1.k. of Article Eight, our Trustee may charge the Special Needs Beneficiary rent on any residence owned, in whole or in part, by the Special Needs Beneficiary's share. Our Trustee must charge rent if the failure to do so would impair, diminish, or cause ineligibility for, any government or private benefits.

**f. Rights of Creditors and Others**

Our Trust assets are not intended to be used for the support of the Special Needs Beneficiary, but are only intended to supplement resources, income or government or private assistance available to the Special Needs Beneficiary. No part of our Trust Estate, neither principal nor income, shall be subject to anticipation or assignment by the Special Needs Beneficiary, nor be subject to attachment by any creditor of the Special Needs Beneficiary, governmental agencies or any other individual or entity; including any who may have provided goods or services to the Special Needs Beneficiary.

**g. Power to Terminate Beneficiary's Share of Trust**

If our Trustee determines that the existence of our Trust renders the Special Needs Beneficiary ineligible for governmental or private benefits that, in the discretion of our Trustee, substantially outweigh the benefits our Trust can bestow upon such beneficiary, or our Trustee determines that, notwithstanding the spendthrift provisions of our Trust, a substantial portion or all of the principal and accumulated income of the Special Needs Beneficiary's share is subject to invasion, garnishment, attachment, execution or other similar action by a creditor or a government agency, our Trustee may terminate such share and distribute the principal and accrued income in accordance with the paragraph that follows. Furthermore, in the event a court of competent jurisdiction determines the provisions of this Section are contrary to law or public policy, then subject to any right of appeal, the Special Needs Beneficiary's share of our Trust shall be

deemed unavailable for purposes of qualifying for or maintaining any public or private support benefits or services, regardless of whether the beneficiary is actually entitled to such benefits or services, and if this is not sufficient to cure any deficiency then the Special Needs Beneficiary's share shall be deemed to have failed and our Trustee shall distribute the principal and accrued income of such share in accordance with the paragraph that follows.

**h. Payment and Distributions on Termination of Discretionary Trust**

In the event a share for a Special Needs Beneficiary is terminated subject to the paragraph immediately above, our Trustee shall distribute the remaining principal and accrued income of such share to the Special Needs Beneficiary's siblings, per stirpes. If the Special Needs Beneficiary has no then living siblings but has living descendants who are of the age of majority, our Trustee shall distribute the remaining principal and accrued income of such share to such descendants of the Special Needs Beneficiary, per stirpes. If the Special Needs Beneficiary has no living descendants who are of the age of majority, our Trustee shall distribute the remaining principal and accrued income of such beneficiary's share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the Special Needs Beneficiary's share of our Trust as provided in the paragraph that follows. It is our hope, wish and desire that any beneficiary under this paragraph will use any distribution received hereunder to provide for the supplemental needs, as defined above, of the Special Needs Beneficiary.

**i. Payment and Distributions on Death of Beneficiary**

Unless terminated under the paragraphs immediately above, or by the exhaustion of the corpus, the Special Needs Beneficiary's share of our Trust shall terminate upon such beneficiary's death. Our Trustee may pay the expenses of such beneficiary's last illness and funeral, and all administrative expenses relating to such beneficiary's share, including reasonable attorney's and accountant's fees, if, in our Trustee's discretion, other satisfactory provisions have not been made for the payment of such expenses. Our Trustee shall divide and distribute, free of trust, the balance of the Special Needs Beneficiary's share into as many shares of equal value as there are then surviving children of the beneficiary, if any, plus one share for each deceased child of such beneficiary leaving descendants then surviving, each of said descendant's interests to be determined per stirpes. Should there be no children or descendants of the beneficiary then surviving, our Trustee shall divide and distribute, free of trust, the balance of the beneficiary's share into as many shares of equal value as we have then surviving children, if any, plus one share for each of our deceased children leaving descendants then surviving, each of said descendant's interests to be determined per stirpes. Should we have no children or descendants then surviving, the Special Needs Beneficiary's share

shall terminate and our Trustee shall distribute the balance of the beneficiary's share according to the provisions of Article Six of our Trust.

## **Section 2. "S" Corporation Stock**

Notwithstanding any other provisions of our Trust Agreement, our Trustee shall not allocate any Subchapter "S" Corporation Stock (as defined by Section 1361 et. seq. of the Code) held in our Trust Estate at the death of the first Trustor, to the extent possible, to any trust or trust share created under our Trust Agreement which would have the effect of causing the "S" Corporation status to be terminated because the trust or the trust share was not a qualified Subchapter "S" shareholder, or was not a Qualified Subchapter "S" Corporation Trust ("QSST"), as defined at Section 1361 of the Code, as amended. In furtherance of the above, it is our intention that our Trustee shall have the right, in our Trustee's sole discretion (but keeping in mind our dispositive wishes as set forth elsewhere in our Trust Agreement), to bifurcate any and all trusts created hereunder, at any time or from time to time after the death of one or both of us, to create trusts which hold "S" Corporation stock and shall at all times be classified as QSSTs within the meaning of Section 1361 of the Code and the corresponding provisions of state law. The above provisions may be limited as set forth in Section 8 of Article Three of our Trust Agreement.

To that end, all such QSSTs shall be subject to the following rules:

- a. During the life of the current income beneficiary there shall be only one (1) income beneficiary of a QSST;
- b. Any principal distributed during the life of the current income beneficiary may be distributed only to such beneficiary;
- c. The income interest of the current income beneficiary in the QSST shall terminate on the earlier of such beneficiary's death or the termination of the QSST;
- d. Upon termination of the QSST during the life of the current income beneficiary, the QSST shall distribute all of its assets to such beneficiary; and
- e. All of the income (within the meaning of Section 643 (b) of the Code) shall be distributed (or shall be required to be distributed) currently to one (1) individual who is a citizen or resident of the United States.

Our Trustee, in his or her discretion, may, in the alternative, attempt to exchange, sell, or convey such stock to such persons or entities who would not cause the "S" Corporation election to be revoked or terminated for any reason attributable to that person's or entity's ownership of such stock and the proceeds or property received from such exchange, sale, or conveyance shall then be applied in accordance with the provisions of our Trust Agreement. It is further provided that notwithstanding this paragraph, our Trustee shall hold, administer, and dispose of any and all of

our Trust Estate such that the continuation of the "S" Corporation election shall be of secondary consideration in deference to our primary intent that the total value of our Trust Estate distributed under the terms of our Trust Agreement be maximized to the extent possible, considering all income tax, estate tax, and any other taxes or expenses that could potentially diminish the value of such Trust Estate.

### **Section 3. The Rule Against Perpetuities**

Notwithstanding any other provision of our Trust Agreement, unless sooner terminated or vested in accordance with other provisions of our Trust Agreement, all interests in the Trust Estate not otherwise vested, including, but not limited to, all trusts and powers of appointment created hereunder, shall terminate: (i) one day prior to twenty-one years after the death of the last survivor of the group composed of: 1) those beneficiaries described herein, 2) each Trustor's descendants living on the date our Trust was executed, and 3) us, or (ii) if longer, the maximum period or term as may be authorized under the laws of the state identified in the Governing State Law Section of this Article or such other jurisdiction whose laws are applicable to our Trust. At that time, distribution of all principal and all accrued, accumulated, and undistributed income of such contributive share shall be made to the persons (or their representatives as authorized herein) then entitled to distributions of income or principal and in the manner and proportions herein stated, irrespective of their then attained ages.

### **Section 4. Spendthrift Protection**

To the fullest extent permissible by law, no interest in the principal or income of any trust created hereunder shall be anticipated, assigned, encumbered or subject to any creditor's claim or to legal process prior to its actual receipt by the beneficiary. Notwithstanding any provision herein to the contrary, this Section shall not apply to Qualified Disclaimers (as defined in Section 2518 of the Code) made by any beneficiary as to his or her interest in our Trust Agreement. Except as herein otherwise expressly provided, all income or principal to be paid to any beneficiary shall be paid by our Trustee directly and only to such beneficiary, to the personal representative or guardian of such beneficiary, or, where authorized, applied for the benefit of such beneficiary. If any creditor or other claimant attempts, by any means, to subject to the satisfaction of the claim of such creditor or claimant the interest of any beneficiary to receive income or periodic payments from principal or income, or both, then notwithstanding any other provisions herein, and in the absolute discretion of our Trustee, our Trustee may suspend such beneficiary's payments from our Trust. All income determined by our Trustee to be in excess of the amount thus necessary shall be accumulated and added to the trust principal.

### **Section 5. Incapacity and Competency**

A person shall be considered incapacitated in the event such person has been determined to be so by a court of competent jurisdiction; has been certified by two licensed physicians to be unable to properly handle his or her own affairs by reason of physical illness or mental illness; is unavailable for a period of not less than six months when his or her whereabouts are unknown and it is not known whether he or she is dead or alive; or, in the case of a trustee, such trustee is

prevented by state law from exercising a power or powers granted to such trustee under our Trust Agreement. To the extent a trustee is prevented by state law from exercising a power or powers granted to such trustee under our Trust Agreement, the Successor Trustee shall have the power to exercise such power or powers, provided such power is not a general power of appointment if held by a Successor Trustee. If a Successor Trustee is prevented from exercising a power or powers because such power or powers would constitute a general power of appointment, the Trust Protector appointed under the provisions of Section 8 of Article Three shall exercise such denied power or powers. A person shall be considered to have regained capacity, as applicable, upon such a determination by a court of competent jurisdiction; upon certification by two licensed physicians that the person is able to properly handle his or her own affairs; upon his or her renewed availability; or if any state law proscription as to the exercise of a power or powers is removed. The term "incapacity" is intended to be interchangeable with the terms "disability" and "incompetency." The term "competent" in our Trust Agreement refers to a person who is not incapacitated.

## **Section 6. Income and Principal Payments**

Other than as directed in the Special Needs Provisions of this Article, all payments of income or principal shall be made in such of the following ways as our Trustee determines appropriate:

- a. To each respective beneficiary in person upon his or her personal receipt;
- b. Deposited in any bank to the credit of such beneficiary in any account carried in his or her name or jointly with another or others;
- c. To the parent or legal representative of the beneficiary;
- d. To a Custodian under a Uniform Transfers to Minors Act or Uniform Gifts to Minors Act selected by our Trustee for such period of time under applicable law as our Trustee determines appropriate;
- e. To some near relative, friend or institution having primary responsibility for the care and custody of the beneficiary;
- f. By our Trustee using such payment directly for the benefit of such beneficiary; or
- g. To the Trustee of any revocable trust of which the beneficiary is the Trustor.

## **Section 7. Limit on Trustee's Discretion**

Notwithstanding any other provision in our Trust Agreement, no individual Trustee who is also a beneficiary hereunder ("Trustee-beneficiary") shall have any right, power, duty or discretion concerning our Trust Estate if such right, power, duty or discretion conferred upon such Trustee-beneficiary under our Trust Agreement would constitute a general power of appointment under

Code Section 2041 or 2514 that would cause any assets of our Trust Estate to be included in the estate of such Trustee-beneficiary. Any such right, power, duty or discretion with such effect shall be null and void with respect to such Trustee-beneficiary. No Trustee who is under a legal obligation to any beneficiary of our Trust Agreement or other person shall under any circumstances partake in any decisions relating to any discretionary distributions of income or principal of our Trust Estate that can be used to discharge any such legal obligation of such Trustee.

If, however, such powers may be possessed without violating the restrictions imposed by this Section by either our Trustee jointly with an Independent Trustee, or by an Independent Trustee alone, then the Trust Protector appointed under the provisions of Section 8 of Article Three may possess those powers and authorities without violating this Section. Such Trust Protector shall act jointly with our Trustee whenever the joint possession of a power or authority would not violate the restrictions imposed by this Section. Such Trust Protector shall act alone whenever only sole possession of a power or authority would not violate the restrictions imposed by this Section.

## **Section 8. Disclaimer by Beneficiary**

Any beneficiary under our Trust Agreement shall be entitled to disclaim all or any portion of such beneficiary's interest in our Trust.

## **Section 9. Captions**

The captions of Articles, Sections and Paragraphs used in our Trust Agreement are for convenience of reference only and shall have no significance in the construction or interpretation of our Trust Agreement.

## **Section 10. Severability**

Should any of the provisions of our Trust Agreement be, for any reason, declared invalid, such invalidity shall not affect any of the other provisions of our Trust Agreement, and all invalid provisions shall be wholly disregarded in interpreting our Trust Agreement.

## **Section 11. Statutory References**

Unless the context clearly requires another construction, each statutory reference in our Trust Agreement shall be construed to refer to the statutory section mentioned, related successor sections, and corresponding provisions of any subsequent law, including all amendments.

## **Section 12. Survivorship**

A person (the "Non-Skip Person") shall not be deemed to have been alive on the date of the death of any person upon whose death a transfer is deemed to occur for generation-skipping transfer tax purposes or the date of any distribution from, or any termination of, any interest in



any trust or share under our Trust Agreement for which the date of the Non-Skip Person's death is relevant (the "Transfer Date") if: (I) the Non-Skip Person is actually alive on the Transfer Date; (II) the Non-Skip Person is not actually alive on the date ninety (90) days following the Transfer Date; and (III) the existence of such a condition of survivorship causes another person who would otherwise be assigned to a generation below that of the Non-Skip Person to be assigned to the generation of the Non-Skip Person for generation-skipping transfer tax purposes.

### **Section 13. Gender and Number**

In our Trust Agreement, where appropriate, except where the context otherwise requires, the singular includes the plural and vice versa, and words of any gender shall not be limited to that gender.

### **Section 14. Governing State Law**

Our Trust Agreement and the trusts created under it shall be construed, regulated and governed by and in accordance with the laws of the State of New Jersey.

### **Section 15. Definitions**

The following terms as used in our Trust Agreement are defined as indicated:

#### **a. Business Judgment**

The term "Business Judgment" means that the fiduciary acted on an informed basis, in good faith, and with the honest belief that his or her actions are in the best interest of our Trust and its beneficiaries.

#### **b. Child, Children and Descendants**

The terms "child" or "children" mean lawful blood issue in the first degree of the parent designated; and "descendants" mean the lawful blood issue in any degree, of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent or parents, and such adopted child and his or her issue shall be considered issue of the adopting parent or parents and of anyone who is, by blood or adoption, an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant, in the appropriate degree, of the ancestor designated even though such descendant is born after the death of a parent. Notwithstanding the preceding provisions of this Section, the terms of Article One may exclude certain descendants from being treated as such hereunder by restricting the availability of Trust benefits.

**c. Code**

The term "Code" means the Internal Revenue Code of 1986, as amended from time to time. The terms "Gross Estate," "Taxable Estate," "Marital Deduction," "Disclaimer" and any other terms that, from the context in which they are used, refer to the Code shall have the same meaning as such terms have for the purposes of applying the Code to our Trust Agreement.

**d. Death Taxes**

The term "Death Taxes" means all inheritance, estate, succession and other similar taxes that are payable by any person on account of that person's interest in the estate of the decedent or by reason of the decedent's death, including penalties and interest but excluding any federal or state tax imposed on a generation-skipping transfer, as that term is defined in the federal tax laws, unless that generation-skipping transfer tax is payable directly out of the assets of a trust created by our Trust Agreement.

**e. Education**

The term "education" shall be given broad interpretation and may include but not be limited to:

**1. High School**

Education at public or private elementary, middle, junior high or high schools, including boarding schools.

**2. College**

Undergraduate and graduate study in any and all fields whatsoever, whether of a professional character in colleges or other institutions of higher learning.

**3. Specialized Training**

Specialized formal or informal training in music, the stage, handicrafts, the arts, or vocational or trade schools, whether by private instruction or otherwise.

**4. Other Educational Activities**

Any other activity including foreign or domestic travel that shall tend to develop fully the talents and potentialities of each beneficiary regardless of age.

**f. Family Access Trust**

The term "Family Access Trust" shall mean a trust designed to give the beneficiary liberal access to the income and principal of the trust while preserving the separate property character of an inheritance of a beneficiary, thereby affording the beneficiary a degree of asset protection in the event the beneficiary becomes involved in a legal separation, marital dissolution or divorce proceeding.

**g. Family Sentry Trust**

The term "Family Sentry Trust" shall mean a third party fully discretionary spendthrift trust designed to provide maximum protection from the creditors of the trust beneficiary as well as from divorcing spouses. The trust is known as a Family Sentry Trust because of these asset protection features.

**h. For Cause**

The term "for cause" means and includes any material act or omission to act by a trustee or fiduciary constituting ordinary negligence, gross negligence, self-dealing, or intentional fraud. The term "material" identifies a significant monetary damage to our Trust or to any beneficiary of our Trust as the result of the act or omission to act by a trustee or other fiduciary constituting ordinary negligence, gross negligence, self-dealing or intentional fraud. The term "material" does not include incidental or insignificant monetary damage to our Trust or a trust beneficiary; monetary damages realized by someone who is not a beneficiary of our Trust; nor an intangible loss or damage that cannot be valued under the fair market valuation standards of the tax laws of the United States.

**i. Heirs at Law**

References to someone's "heirs at law" mean individuals who are living at the event when property is directed to be distributed to them. Those individuals' identities and the shares of the distributable property that they each receive shall be determined under the intestacy laws of the State of New Jersey which then govern the distribution of the personal property of a resident dying then, without creditors, owning only the distributable assets.

**j. Investment Trustee**

The Investment Trustee serves in the capacity of a Co-Trustee with regard to a Family Access Trust and Family Sentry Trust established herein. The sole role of the Investment Trustee is to make investment decisions with regard to the sub-trust assets. The Investment Trustee is a fiduciary and is bound by the duties and liabilities of a trustee dealing with investments as more fully described in Section 1 of Article Eight of our Trust.. The Investment Trustee holds none of the daily

administrative and distributive powers over the sub-trust. These powers remain with our Trustee.

**k. Personal Representative**

The term "Personal Representative" means trustee, executor, executrix, administrator, administratrix, conservator, guardian, custodian or any other type of personal representation.

**l. Per Stirpes**

In every case in which a disposition of an interest is to be made to the children, descendants or issue of a person "per stirpes," it is intended that such disposition shall be made in accordance with the principle of representation. This principle, in relation to our Trust Agreement means that whenever property is to be distributed to the issue of a person, such property shall be divided into as many shares as there are, at the time of disposition, then living issue in the nearest degree of kinship to such person and then deceased issue in the same degree who left issue who are then living; each then living issue in the nearest degree receiving one share, and one share for each then deceased issue in the same degree, being further subdivided among his or her issue in the same manner.

**m. Trust Estate**

The term "Trust Estate" means all of the property, real and personal, intangible and tangible, which has been transferred to our Trustee, whether or not listed on any Schedules.

**n. Trustee's Discretion**

The term "discretion" with regard to a Trustee means such Trustee's sole but reasonable judgment. In exercising any discretionary power with respect to our Trust, our Trustee shall, at all times, act in accordance with fiduciary principles and shall act reasonably under the circumstances and not in bad faith or in disregard of the purposes of our Trust.

**o. Trustor**

The term "Trustor" shall be interchangeable with the terms "settlor," "grantor," "donor" or other similar terms.

**p. Unused Generation-skipping Transfer Tax Exemption Amount**

The term "unused generation-skipping transfer tax exemption amount" means the generation-skipping transfer tax exemption provided in Section 2631 of the Code in effect at the time of death of a Trustor, reduced by the aggregate of (i) the

amount, if any, of such exemption allocated by such Trustor or by operation of law to such Trustor's lifetime transfers and (ii) the amount, if any, such Trustor or such Trustor's Personal Representative or Trustee has specifically allocated to property, other than property to which such exemption is directed to be allocated by any applicable provision of our Trust Agreement.

For purposes of our Trust Agreement, if at the time of death of a Trustor such Trustor has made lifetime transfers of property to which an inclusion ratio of greater than zero would be applicable and for which the gift tax return due date has not expired (including extensions) and a return has not yet been filed, it shall be deemed that the generation-skipping transfer tax exemption has been allocated to such transfers to the extent necessary and possible to exempt such transfers from generation-skipping transfer tax.

## **Section 16. No Contest Clause**

Notwithstanding the "Resolution of Disputes" provisions under Section 8 of Article Three of our Trust, if any devisee, legatee, or beneficiary under our Trust, or any amendment thereto, no matter how remote or contingent such beneficiary's interest appears, or any of our legal heirs, or any person claiming under any of them, directly or indirectly, does any of the following, then in that event we specifically disinherit such person or persons, and all such legacies, bequests, devises and interests given to such person or persons under our Trust, or any amendment thereto, or any other Trust document created by us at any time, shall be forfeited and shall be distributed as provided elsewhere herein as though such person or persons had predeceased us without issue:

- a. Unsuccessfully challenges the appointment of any person named as a trustee in our Trust Agreement, or any amendment thereto, or unsuccessfully seeks the removal of any person acting as a trustee;
- b. Objects in any manner to any action taken or proposed to be taken in good faith by our Trustee under our Trust Agreement, or any amendment thereto, whether our Trustee is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;
- c. Objects to any construction or interpretation of our Trust Agreement, or any amendment thereto, or to the provisions of either, that is adopted or proposed in good faith by our Trustee, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;
- d. Claims entitlement to (or an interest in) any asset alleged by our Trustee to belong to the Probate or Trust Estate, whether such claim is based upon a community or separate property right, Marvin rights, a contract or other

right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

- e. Files a creditor's claim against the assets of the Probate or Trust Estate and such claim is later adjudicated by a court of competent jurisdiction to be invalid;
- f. Anyone, other than us, attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on our lives or any designation of beneficiaries for any pension plan, Keogh, SEP, or IRA;
- g. In any other manner contests our Trust Agreement, or any amendment thereto, executed by us, or in any other manner, attacks or seeks to impair or invalidate any of our Trust's provisions; or
- h. Conspires with or voluntarily assists anyone attempting to do any of the above acts.

Expenses to resist any above contest or other attack of any nature upon any provision of our Trust Agreement, or any amendment thereto, shall be paid from the trusts created hereunder as expenses of administration.

In the event that any provision of this Section is held to be invalid, void, or illegal, the same shall be deemed severable from the remainder of the provisions in this Section and shall in no way affect, impair, or invalidate any other provision in this Section. If such provision is deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The authority of the Trust Protector appointed under Section 8 of Article Three to resolve disputes between Co-Trustees, beneficiary and Trustee, and among beneficiaries in no way nullifies the provisions of this Section. The provisions of this Section shall not apply to any disclaimer by any person of any benefit under our Trust Agreement, or any amendment thereto.

## Execution

We have executed our Trust Agreement on the date set forth on the first page of our Trust Agreement.

We certify that we understand our Trust Agreement and that it correctly states the terms and conditions under which our Trust Estate is to be held, managed and disposed of by our Trustee. We approve this Trust Agreement in all particulars and request our Trustee to execute it.

Trustors:

  
ROBERT J. HOFFMAN, JR.

  
KATHRYN A. HOFFMAN

Trustee:

  
BRIAN J. HOFFMAN

Witnesses:

  
SIGNATURE OF FIRST WITNESS

Michael D. Bonfriso  
NAME OF FIRST WITNESS

  
SIGNATURE OF SECOND WITNESS

Melissa Clemmer  
NAME OF SECOND WITNESS

1522 Route 38  
STREET ADDRESS

1522 Route 38  
STREET ADDRESS

Cherry Hill, New Jersey 08002  
CITY, STATE, ZIP

Cherry Hill, New Jersey 08002  
CITY, STATE, ZIP

STATE OF NEW JERSEY )  
COUNTY OF CAMDEN )  
SS

This instrument was acknowledged before me on May 09, 2019 by ROBERT J. HOFFMAN, JR..

  
Notary Public My Commission Expires: \_\_\_\_\_

STATE OF NEW JERSEY

)

SS

COUNTY OF CAMDEN

)

This instrument was acknowledged before me on May 09, 2019 by KATHRYN A. HOFFMAN.

Angelina B. Fean

Notary Public

My Commission Expires: \_\_\_\_\_

Angelina B Fean  
Notary Public  
New Jersey  
My Commission Expires 3-31-2022  
No. 50057702

STATE OF NEW JERSEY

)

SS

COUNTY OF CAMDEN

)

This instrument was acknowledged before me on May 09, 2019 by BRIAN J. HOFFMAN.

Angelina B. Fean

Notary Public

My Commission Expires: \_\_\_\_\_

Angelina B Fean  
Notary Public  
New Jersey  
My Commission Expires 3-31-2022  
No. 50057702

Prepared by:

Michael D. Bonfrisco, Esquire

Bonfrisco Law Firm

1522 Route 38

Cherry Hill, NJ 08002

(856) 663-3800 FAX (856) 663-3801

[www.bonfriscolaw.com](http://www.bonfriscolaw.com)