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Date:  
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### Legend

Patriarch =

Trust =  
Company  
State =  
Corporation =  
A =

B =

C =

D =

E =

Family =

Matriarch =

F =

Child 1 =

Child 2 =

Child 3 =

Child 4 =

Child 5 =

Date 1 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Trustee 1 =

Trustee 2 =

Trustee 3 =

Date 2 =

Trust 9 =

Trustee 4 =

Foundation 1 =

Date 3 =

Trust 10 =

Grandchild 1 =

Date 4 =

Trust 11 =

Grandchild 2 =  
Trustee 5 =  
Fund 1 =  
Date 5 =  
Trust 12 =

Trust 13 =

Grandchild 3 =  
Grandchild 4 =  
Date 6 =  
Trust 14 =

Trust 15 =

Trust 16 =

Trust 17 =

Date 7 =  
Great- =  
Grandchild 1 =  
Trust 18 =

Date 8 =  
Great- =  
Grandchild 2 =  
Date 9 =  
Grandchild 5 =  
Trust 19 =

Great- =  
Grandchild 3 =  
Trust 20 =

Great-Grandchild 4 Trust 21 =

Great-Grandchild 5 Trustee 6 Foundation 2 Date 10 Trust 22 =

Trust 23 =

Trust 24 =

Trustee 7 Date 11 Trust 25 =

Trust 26 =

Grandchild 6 Trust 27 =

Grandchild 7 Trust 28 =

Grandchild 8 =

Dear :

This letter responds to your letter, dated February 2, 2004, and prior correspondence requesting rulings regarding the income, estate, and generation-

skipping consequences of naming a family-owned trust company as trustee of certain family trusts.

The descendants of Patriarch (collectively “the family”) have agreed to form Trust Company in State as a wholly-owned subsidiary of Corporation. The shareholders of Corporation are individual family members, trusts related to the family members, and foundations having a relationship with the family. Trust Company will serve as an independent trustee of certain family trusts.

Patriarch had five children: A, B, C, D, and E, all of whom are now deceased. This letter relates to the trusts currently operating for the benefit of the descendants of C.

Section 3.2 of the Trust Company Bylaws provides that the board of directors for Trust Company shall consist of no less than five nor more than twenty-five persons. The exact number of directors within the minimum and maximum limits is to be fixed and determined from time to time by resolution of a majority of the full board or by resolution of a majority of the shareholders at any meeting thereof. At any time such a resolution is not in effect, the number shall be five.

Section 4.5 of the Trust Company Bylaws provides in relevant part that the board may designate a Discretionary Decisions Review Committee (“DDRC”) whose responsibility shall be to review discretionary decisions made by the trust officers of the company upon the written request of a beneficiary of an affected trust. The DDRC shall be appointed by the board and shall include at least three directors. Upon the receipt of a written request from a beneficiary of an affected trust (as defined in section 12.5) for a review of a discretionary decision (as defined in section 12.5) that has been made by the senior trust officer or by another trust officer and reviewed and approved by the senior trust officer, the committee shall meet as soon as practicable to review the discretionary decision. The DDRC shall render its decision to affirm or alter the discretionary decision of the senior trust officer in writing and such action shall represent the final decision by the company on the discretionary decision in question.

Section 5.6 of the Trust Company Bylaws provides in relevant part that the senior trust officer shall review all discretionary decisions of other trust officers of the company upon the request of a beneficiary or other interested person of a trust.

Section 12.1 of the Trust Company Bylaws provides that there shall be at least one member of the board who is not a Family member (as that term is defined in section 12.5(d)) or a grantor of, a donor to, or a current or contingent beneficiary of an affected trust (as defined in section 12.5(a)).

Section 12.2 of the Trust Company Bylaws provides that all discretionary decisions (as defined in section 12.5(c)) shall be made by the trust officers of the company who are not Family members, subject to review by the senior trust officer and

the DDRC. Therefore, at any time that the company serves as trustee of any affected trust, neither the board nor any committee that includes one or more board members, other than the DDRC, may make or participate in the making of any discretionary decision with respect to any affected trust.

Section 12.3 of the Trust Company Bylaws provides that at any time that the company serves as trustee of an affected trust, no officer or director, including directors serving on the DDRC, of the company may participate in a decision of the company (nor be present during any committee discussion of or vote on such a decision) involving: (a) the making of any discretionary decision with respect to any affected trust if the officer or director, or his or her spouse, is a grantor, donor, or a current or contingent beneficiary; or (b) the making of any discretionary decision with respect to any affected trust if the officer or director, or his or her spouse, is a member of the Family. An officer or director who is subject to the restrictions contained in section 12.3 with respect to a discretionary decision of the company, although absent from at least that part of the meeting at which such matter is considered, shall be deemed present for the purpose of determining whether a quorum is present for that part of the meeting.

Section 12.5(a) of the Trust Company Bylaws provides that an “affected trust” is a trust (i) of which any member of the Family is a grantor, donor or current or contingent beneficiary and (ii) for which the Trustee has any discretionary power, other than an investment power, and the discretionary power is not limited by an ascertainable standard.

Section 12.5(c) of the Trust Company Bylaws provides that “discretionary decision” means, with respect to an affected trust, (i) the exercise of any incident of ownership with respect to any life insurance policy owned by that trust, or (ii) the exercise or non-exercise of a discretionary power (A) to distribute income or principal of that trust or any beneficiary, (B) to allocate receipts or disbursements between income and principal for purposes of affecting distributions of income or principal of that trust, or (C) to “adjust” income or principal or to make or terminate an election of “total return” or “unitrust” or like power.

Section 12.5(d) of the Trust Company Bylaws provides that “Family” includes each living lineal descendant and spouse of a lineal descendant of Patriarch and Matriarch.

C married E and had five children: Child 1, Child 2, Child 3, Child 4, and Child 5. C, E, Child 1, and Child 2 are deceased.

On Date 1, C and E each created a trust for the benefit of each of their children (collectively, the Series I Trusts). Specifically, C created Trust 1 for the benefit of Child 1 and his descendants. E created Trust 2 for the benefit of Child 1 and his descendants. C created Trust 3 for the benefit of Child 2 and his descendants. E created Trust 4 for the benefit of Child 2 and his descendants. C created Trust 5 for the

benefit of Child 3 and his descendants. E created Trust 6 for the benefit of Child 3 and his descendants. C created Trust 7 for the benefit of Child 4 and his descendants. E created Trust 8 for the benefit of Child 4 and his descendants. Trustee 1, Trustee 2, and Trustee 3 currently serve as trustees of the Series I Trusts. Date 1 is prior to September 25, 1985. The Series I Trusts each have the same operative provisions.

Paragraph 1 of each Series I Trust Agreement provides that each trust shall continue until the death of the last survivor of certain named individuals. Paragraph 2 provides that the trustees may, in their discretion, distribute any or all of the net income of the trust to the Beneficiary (named child) during the Beneficiary's lifetime. After the beneficiary's death, the trustees have the discretion to distribute the net income of each trust to or for the use of the descendants of the Beneficiary, per stirpes. If the Beneficiary has no living descendants, payments of income shall be paid in equal shares, per stirpes, among the Beneficiary's surviving siblings and any descendants of a deceased sibling.

Paragraph 3 of each Series I Trust Agreement provides that upon the termination of each trust, the trustees shall pay the principal and any accumulated income to the descendants of the Beneficiary per stirpes. If the Beneficiary has no living descendants, then the trust shall be distributed in equal shares, per stirpes, among the Beneficiary's next of kin. In no event, however, shall any of the income or corpus of a Series I Trust revert to the grantor of the trust.

Paragraph 11 of each Series I Trust Agreement provides that if there are less than three trustees, a majority of the beneficiary or beneficiaries that are of age and who would be entitled to receive, in whole or in part, the income from the trust if it were then distributed, may appoint a successor trustee(s) so that there is always at least three trustees. If none of the income beneficiaries are of age, the appointment of a successor trustee(s) may be made by the remaining trustee(s), but in such event any successor trustee shall be selected from the next of kin (other than siblings) of the Beneficiary.

On Date 2, E created Trust 9 for the benefit of Child 4 and his descendants. Trustee 4 currently serves as trustee of Trust 9. Date 2 is prior to September 25, 1985.

Article First of the Trust 9 Agreement provides that net income shall be paid to or for the use of Child 4 quarterly for Child 4's life. Article Second provides that Trust 9 will terminate on Child 4's death. On termination the principal shall be paid, per stirpes, to Child 4's living children and the children of any deceased child by representation. If Child 4 dies without living issue, the principal shall be paid in equal shares to Child 4's living brothers and the children of any deceased brother by representation. If no person is entitled to the principal of Trust 9, the principal shall be paid to Foundation 1 or any successor charitable organization to which all or substantially all of its assets have been transferred.

Article Third of the Trust 9 Agreement provides that Trust 9 is irrevocable. Article Ninth provides that the trustees of Foundation 1 are authorized to appoint a successor trustee(s) to maintain at least two trustees at all times.

On Date 3, Child 1 created Trust 10 for the benefit of Grandchild 1 and his descendants. Trustee 4 currently serves as trustee of Trust 10. On Date 4, Child 3 created Trust 11 for the benefit of Grandchild 2 and her descendants. Trustee 5 currently serves as trustee of Trust 11. Date 3 and Date 4 are prior to September 25, 1985. Trust 10 and Trust 11 (collectively, the Series II Trusts) each have the same operative provisions.

Article First of each Series II Trust Agreement provides that the trust will terminate upon the expiration of twenty-one years after the death of the last survivor of a list of named measuring lives.

Article Second of each Series II Trust Agreement provides that the income of the trust is paid to the Beneficiary (named child) or for the Beneficiary's use and benefit during the Beneficiary's life. The trustee has the discretion to distribute principal to or for the use and benefit of the Beneficiary. The Beneficiary has a testamentary limited power to appoint the trust assets to any lawful issue in any degree of the grantor or a spouse of any of the lawful issue in any degree of the grantor other than the Beneficiary, the Beneficiary's estate, the creditors of the Beneficiary or the creditors of the Beneficiary's estate. Article Third provides that if the Beneficiary does not appoint the assets, then on the Beneficiary's death, the trust will continue until it terminates under Article First.

Article Fifteenth of each Series II Trust Agreement provides in relevant part that the trustee(s) acting under the trust agreement, excluding any trustee who may be a beneficiary to whom income might then be distributed, may appoint a successor trustee to fill any vacancy occurring. If no successor trustee has been named, then a majority of the persons (other than the grantor, any contributor, a spouse either of the grantor during his lifetime or any contributor during the lifetime of the contributor, or any person who is then related or subordinate to the grantor or any contributor as defined in § 672 of the Internal Revenue Code) then acting as trustees of Fund 1 may appoint a successor trustee or a co-trustee as the case may be.

On Date 5, Child 4 created Trust 12 and Trust 13 (collectively, the Series III Trusts) for the benefit of his children and their descendants. Trust 12 is for the benefit of Grandchild 3 and her descendants; and Trust 13 is for the benefit of Grandchild 4 and his descendants. Trustee 4 is currently serving as the trustee of Trust 12. Trustee 3 is currently serving as the trustee of Trust 13. Date 5 is prior to September 25, 1985. The Series III Trusts each have the same operative provisions.



Article First of each Series III Trust Agreement provides that the trust will terminate upon the expiration of twenty-one years after the death of the last survivor of a list of named measuring lives.

Article Second of each Series III Trust Agreement provide that the trustees, excluding any trustees who may be a beneficiary to whom income or principal might then be distributed, have the discretion to distribute income or principal to any one or more members of a class including the Beneficiary (named child) and the Beneficiary's lawful issue. If at any time neither the Beneficiary nor any lawful issue of the Beneficiary is living, then the class shall also include the lawful issue of the grantor. If at any time there are no living issue of the grantor, the class shall also include the lawful issue in any degree of the grantor's parents. Any income not paid shall be accumulated and added to principal. Article Third provides that the Beneficiary has a testamentary limited power to appoint the trust assets to any permissible income or principal beneficiary under the trust other than the Beneficiary, the Beneficiary's estate, the creditors of the Beneficiary or the creditors of the Beneficiary's estate. Article Third provides that if the Beneficiary does not appoint the assets the trust will continue until twenty-one years after the death of the last survivor of the persons named in Article First. On termination, any unappointed assets shall be distributed to the lawful issue of the Beneficiary per stirpes. If there are none, then the principal shall be distributed to the lawful issue of the grantor per stirpes. If there are none, then the principal shall be distributed to the lawful issue of the grantor's parents per stirpes. If there are none, then the principal shall be distributed to Fund 1.

Article Fourteenth of each Series III Trust Agreement provides in relevant part that the trustee(s) acting under the trust agreement, excluding any trustee who may be a beneficiary to whom income might then be distributed, may appoint a successor trustee to fill any vacancy occurring. No person shall act as trustee who at that time shall be the spouse of the grantor or of any contributor or who at that time shall be related or subordinate to the grantor or any contributor as defined in § 672 of the Internal Revenue Code. If there is no trustee acting or no successor trustee has been named, then a majority of the persons (other than the grantor, any contributor, a spouse either of the grantor during his lifetime or any contributor during the lifetime of the contributor, or any person who is then related or subordinate to the grantor or any contributor as defined in § 672 of the Internal Revenue Code) then acting as trustees of Fund 1 may appoint a successor trustee or a co-trustee as the case may be.

On Date 6, Child 3 and Child 4 created the Series IV Trusts for the benefit of their children and their children's descendants. Child 4 created Trust 14 for the benefit of Grandchild 4 and his descendants and Trust 15 for the benefit of Grandchild 3 and her descendants. Child 3 created Trust 16 for the benefit of Grandchild 2 and her descendants. Trustee 3 is currently serving as the trustee of Trust 14 and Trust 15. Trustee 1 is currently serving as the trustee of Trust 16. Date 6 is prior to September 25, 1985. The Series IV Trusts each have the same operative provisions.

Article First of each Series IV Trust Agreement provides that each trust is held for the primary benefit of the Beneficiary (named child). Article Second, paragraph (a) provides that the trustees have the discretion to distribute net income to or for the use of the Beneficiary for the proper care, comfort, happiness, support and education of the Beneficiary and the Beneficiary's issue. Net income not distributed shall be accumulated and added to principal. Article Second, paragraph (b) grants the Beneficiary a testamentary power to appoint the principal of the trust to any one or more of the lawful issue in any degree of the Beneficiary or Child 4. In addition, the Beneficiary has the testamentary power to direct that his or her separate trust be maintained for the lifetime of the Beneficiary's surviving spouse (except as restricted by Article Third), to pay net income to or for the benefit of the Beneficiary's spouse for the spouse's care, comfort, happiness and support in the unrestricted discretion of the trustees. Principal may not be distributed to a surviving spouse. Article Second, paragraph (c) provides that a Beneficiary may not appoint the trust principal in favor of the Beneficiary's estate, the Beneficiary's creditors, or the creditors of the Beneficiary's estate.

Article Third of each Series IV Trust Agreement provides that if the Beneficiary fails to exercise the power of appointment granted in Article Second, then upon the death of the Beneficiary, the trustees shall divide the trust into as many separate and equal parts as there are children of the Beneficiary then surviving and deceased children of the Beneficiary with living issue. Any part set aside for the issue of a deceased grandchild of Child 4 shall be further divided into parts on a per stirpes basis for such issue. If the Beneficiary dies without issue, any property not effectively appointed shall be distributed per stirpes to Child 4's issue then living, the share of any such issue for whom a separate trust is being maintained under a Series IV Trust to be held, administered and distributed by the trustees as part of that trust. Each separate part allotted to the Beneficiary's issue shall be administered and disposed of by the trustees for the benefit of the respective beneficiary as follows: if at the time of the division the respective beneficiary has attained the age of eighteen years, the trustees shall distribute free of trust the principal allocated for the benefit of the beneficiary and the separate trust shall terminate. If the respective beneficiary has not attained the age of eighteen years, the trust will continue until the respective beneficiary's eighteenth birthday. During such time the trustees have the discretion to distribute the net income or principal to or for the respective beneficiary's benefit for the proper care, comfort, support, maintenance and education of the beneficiary. In addition, principal may be distributed to meet any important and serious emergency or situation with which the beneficiary is confronted from any cause or for any other purposes deemed by the trustees to be for the beneficiary's best interest. Any income not distributed shall be added to principal. The trustees shall distribute the principal of the separate trust to the respective beneficiary on the beneficiary's eighteenth birthday. In the event of the death of a beneficiary after the appointment and creation of the separate trust for the beneficiary's benefit under Article Third, all remaining properties shall be distributed to the executors of the deceased beneficiary's estate and the separate trust shall terminate.

Article Fourth of each Series IV Trust Agreement provides that notwithstanding any other provisions, each trust shall, unless sooner terminated, terminate upon the expiration of twenty-one years after the date of death of the last survivor of the descendants of Patriarch who were in being on the date of the execution of the trust agreement.

Article Fifteenth of each Series IV Trust Agreement provides that the trustee(s), excluding any trustee who may be a beneficiary to whom income might then be distributed, may appoint successor trustees or increase the number of trustees by adding co-trustees. Such successor or co-trustees may be any individual, other than the grantor, or may be any bank or trust company incorporated under the laws of State, or under the laws of the United States or of any foreign country, provided, however, that during the continuance of the trust no person shall act as trustee who at that time shall be the spouse of the grantor or who at that time shall be related or subordinate to the grantor as defined in § 672 of the Internal Revenue Code. If there is no trustee acting that may appoint a successor trustee, then a majority of the persons (other than the Grantor or any person who is then related or subordinate to the grantor as defined in § 672 of the Internal Revenue Code) then acting as trustees of Fund 1 may appoint a successor trustee or co-trustee as the case may be.

Child 4 created the Series V Trusts for the benefit of his grandchildren. Child 4 created Trust 17 on Date 7 for the benefit of Great-Grandchild 1 and Trust 18 on Date 8 for the benefit of Great-Grandchild 2. Trustee 3 is currently serving as the trustee of the Series V Trusts. Date 7 and Date 8 are after September 25, 1985. The Series V Trusts each have the same operative provisions.

Each Series V Trust Agreement provides in relevant part that the trust shall terminate on the earlier of the named beneficiary's twenty-first birthday or on the death of the named beneficiary. The trustee has the discretion to distribute income or principal to or for the benefit of the named beneficiary during the term of the trust. The assets of the trust shall be distributed outright to the named beneficiary on his or her twenty-first birthday. The trust assets are to be distributed pursuant to the named beneficiary's unrestricted testamentary power of appointment if the trust is terminated by the death of the named beneficiary. Successor trustees are appointed by the trustees.

On Date 9, Grandchild 5 created the Series VI Trusts for the benefit of his children and their descendants. Grandchild 5 created Trust 19 for the benefit of Great-Grandchild 3 and his descendants; Trust 20 for the benefit of Great-Grandchild 4 and his descendants; and Trust 21 for the benefit of Great-Grandchild 5 and her descendants. Trustee 6 is currently serving as the trustee of the Series VI Trusts. Date 9 is after September 25, 1985. The Series VI Trusts each have the same operative provisions.

Article 2, paragraph (a) of each Series VI Trust Agreement provides that income and/or principal may be paid to or applied for the benefit of the members of a class living from time to time consisting of the named beneficiary, and his or her issue, and each then living spouse of any such beneficiary, in such amounts and at such times as the trustee shall determine; provided, however, that each then living spouse of the named beneficiary or his or her issue shall not be eligible to receive any principal, but only eligible to receive so much of the net income of the trust, in such amounts and at such times as the trustee shall determine, in his absolute discretion. Paragraph (c) provides that each trust shall terminate upon the death of the named beneficiary. At that time the trustee shall distribute the remaining principal and undistributed income of the trust to the appointees, including the named beneficiary's estate, and in such manner and proportions, either outright or in trust, as the named beneficiary may have appointed by a last will and testament. If any part of the then remaining principal and undistributed income of the trust has not been effectively appointed by the named beneficiary, the trust property not so appointed shall be distributed to the named beneficiary's then living issue, per stirpes, or if there are none, then to the then living issue, per stirpes, of Grandchild 5, or if there are none, to the then living issue (excluding Grandchild 5) of Child 2, per stirpes, and if there are none, to Foundation 2.

Article 5 of each Series VI Trust Agreement provides each permissible distributee the right to demand an amount equal to the amount of the transfer in the calendar year divided by the total number of persons having a demand right. The annual demand right cannot exceed the donor's maximum annual federal gift tax exclusion, or if the donor is married on the date of the transfer to the trust, then the annual demand right cannot exceed twice the donor's annual federal gift tax exclusion amount.

Article 9 of each Series VI Trust Agreement provides that if Trustee 6 ceases to act as trustee of a Series VI Trust, Trustee 5 shall serve as successor trustee. Trustee 6 (at any time while she is serving as trustee) or Trustee 5 (at any time while she is serving as trustee), may designate a successor trustee. If no successor has been designated, then a successor shall be appointed by the then serving trustees of Foundation 2.

On Date 10, Grandchild 5 created the Series VII Trusts for the benefit of his grandchildren and their descendants. Trust 22 is for the benefit of Great-Grandchild 3 and his descendants; Trust 23 is for the benefit of Great-Grandchild 4 and his descendants; and Trust 24 is for the benefit of Great-Grandchild 5 and her descendants. Trustee 7 is currently serving as the trustee of the Series VII Trusts. Date 10 is after September 25, 1985. The Series VII Trusts each have the same operative provisions.

Article Two of the Series VII Trust Agreement provides that the trustee has the discretion to distribute net income or principal to the named beneficiary for whom a trust is held. Any income not distributed shall be added to principal. All trust income and principal shall be distributed to the named beneficiary when he or she reaches the age

of thirty-five. If a named beneficiary dies before reaching thirty-five, the trustee shall distribute the income and principal of the trust to the person(s) (including the named beneficiary's estate) as the named beneficiary appoints by will. The trustee shall distribute all property not effectively appointed to the named beneficiary's issue, per stirpes. If there are none, to Grandchild 5's issue, per stirpes. Notwithstanding the preceding provisions, each trust shall terminate no later than twenty-one years after the death of the last to die of Grandchild 5, Grandchild 5's named spouse, Great-Grandchild 3, Great-Grandchild 4, and Great-Grandchild 5, at which time all property shall be distributed to the named beneficiary.

Article Five of the Series VII Trust Agreement provides that any trustee may appoint a co-trustee or one or more successor trustees.

On Date 11, Child 2 created the Series VIII Trusts for the benefit of his children and their descendants. Trust 25 is for the benefit of Grandchild 5 and his descendants; Trust 26 is for the benefit of Grandchild 6 and her descendants; Trust 27 is for the benefit of Grandchild 7 and his descendants; and Trust 28 is for the benefit of Grandchild 8 and her descendants. Trustee 3 is currently serving as the trustee of the Series VIII Trusts. Date 11 is prior to September 25, 1985. The Series VIII Trusts each have the same operative provisions.

Article First of each Series VIII Trust Agreement provides that the trust is held for the benefit of a named primary beneficiary. Article Second provides that the trustees may, in their discretion, distribute net income or principal to or for the benefit of any one or more of the members of a class consisting of the primary beneficiary, the surviving spouse of the primary beneficiary, and the lawful issue in any degree of the primary beneficiary. Any income not distributed shall be accumulated and added to principal.

Article Third of each Series VIII Trust Agreement provides that upon the death of the primary beneficiary (if the primary beneficiary is not survived by a spouse) or upon the death of the spouse (if the primary beneficiary is survived by a spouse), the trustees shall divide the trust fund into as many separate and equal shares as there are children of the primary beneficiary then surviving and deceased children of the primary beneficiary with issue then living. Any share set aside for the issue of a deceased grandchild of Child 2 shall be further divided into shares on a per stirpes basis for the issue. The trustees may distribute net income or principal to or for the benefit of any one or more of the members of a class consisting of the beneficiary for which each subshare is being held and that beneficiary's lawful issue in any degree. Any child of the primary beneficiary for whom a separate trust is allotted shall have a testamentary general power of appointment over the separate trust assets. In the event the power of appointment is not effectively exercised, the trust assets shall be distributed to this issue of the deceased beneficiary. If there are none, then to the living issue of the deceased primary beneficiary, per stirpes. If there are none, then to the living issue of Child 2, per stirpes.

Article Fourth of each Series VIII Trust Agreement provides that notwithstanding any other provision, each trust shall terminate upon the expiration of twenty-one years after the date of death of the last survivor of the descendants of Patriarch who were in being on Date 11. Upon such termination, the trustees shall distribute the trust assets in equal shares to the person(s) who are permissible income beneficiaries.

Article Sixteenth of each Series VIII Trust Agreement provides that the acting trustee(s), excluding any trustee who may be a beneficiary to whom income might then be distributed, may appoint as successor trustees or co-trustees any individual, other than the grantor, or any bank or trust company. No person shall act as trustee who at the time shall be the spouse of the grantor or who at that time shall be related or subordinate to the grantor. If no trustee may appoint successor or co-trustees, the trustees of Fund 1 may appoint successor or co-trustees.

Of the trusts discussed in this letter, the following are trusts for which the grantor(s) is still living: Trust 11, Trust 12, Trust 13, Trust 14, Trust 15, Trust 16, Trust 17, Trust 18, Trust 19, Trust 20, Trust 21, Trust 22, Trust 23, and Trust 24. Potential beneficiaries of all trusts discussed in this letter include individuals who are two or more generations below the grantors' generation, therefore, distributions from each trust may be subject to the GST tax. Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, Trust 12, Trust 13, Trust 14, Trust 15, Trust 16, Trust 25, Trust 26, Trust 27, and Trust 28 were irrevocable on September 25, 1985.

#### RULINGS REQUESTED

You have requested the following rulings: 1) Trust Company is not a "related or subordinate party" within the meaning of § 672(c) with respect to a grantor of the trusts for which Trust Company will serve as trustee. Trust Company will qualify as an independent trustee under § 672(c)(1). 2) Neither the appointment of Trust Company as trustee of the trusts nor Trust Company's exercise of any discretionary powers as to distributions to beneficiaries of the trust will result in any grantor being treated as the owner of any portion of the trust assets under § 674(a). 3) Any grantor serving on Trust Company's Trust Committee will not result in a grantor being treated as the owner of any portion of the trust under § 675(4). 4) Neither the appointment of Trust Company as trustee of the trusts nor Trust Company's exercise of any discretionary distribution powers to beneficiaries of the trusts will result in a grantor's being treated as the owner for any portion of the trust assets under § 677. 5) Neither the appointment of Trust Company as trustee of the trusts nor Trust Company's exercise of any discretionary distribution powers will result in a grantor being treated as the owner of any portion of the trust assets under § 678. 6) Neither the appointment of Trust Company as trustee of the trusts nor Trust Company's exercise of any discretionary powers with respect to distributions to beneficiaries will result in the inclusion of any portion of the trust assets in the estate of any grantor or beneficiary under §§ 2036, 2038, or 2041. 7) The appointment of Trust Company as trustee of the trusts created, funded, and irrevocable

prior to September 25, 1985, will not constitute a constructive addition to the trust and affect the status of the pre-September 25, 1985 trusts as exempt from the generation-skipping transfer tax under § 2601.

## RULINGS 1 and 2

Section 672(c)(2) provides that for purposes of subpart E of part I of subchapter J, the term “related or subordinate party” means any nonadverse party who is any one of the following: the grantor’s father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stockholdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(c) provides that § 674(a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor (1) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries; or (2) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

Based solely on the facts and representations submitted, including the provision of the bylaws of Trust Company that prohibits any family member from taking part in any discretionary distribution decision with regard to any trust for which Trust Company is acting as trustee, we conclude that Trust Company is not a related or subordinate party, within the meaning of § 672(c)(2), to any of the grantors of the trusts for which it will be acting as trustee. Therefore, Trust Company may exercise the powers described in § 674(c) with regard to those trusts without causing the grantors to be treated as the owners of any portion of the trusts under § 674(a).

## RULING 3

Under § 675 and applicable regulations, the grantor is treated as the owner of any portion of a trust if, under the terms of the trust agreement or circumstances attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiary of the trust.

Section 675(4) provides that the grantor shall be treated as the owner of any portion of a trust in respect of which a power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a

fiduciary capacity. For purposes of § 675(4), the term “power of administration” means any one or more of the following powers: (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (B) a power to control the investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

Based solely on the facts and representations submitted, we conclude that our examination of the terms of the trusts and the bylaws of Trust Company reveals none of the circumstances that would cause administrative controls to be considered exercisable primarily for the benefit of the grantors of the trusts for which Trust Company will act as trustee under § 675, if those trusts are substantially identical to the trusts. Thus, the circumstances attendant on the operation of the Trust Company, its trust committee, and the trusts for which the Trust Company is acting as trustee will determine whether any grantor will be treated as the owner of any portion of the trusts under § 675. This is a question of fact, the determination of which must be deferred until the federal income tax returns of the parties involved have been examined by the office with responsibility for such examination.

#### RULING 4

Section 677(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Section 1.677(a)-1(d) of the Income Tax Regulations provides that, under § 677, a grantor is, in general, treated as the owner of a portion of a trust whose income is, or in the discretion of the grantor or a nonadverse party, or both, may be applied in discharge of a legal obligation of the grantor.

Our examination of the trusts does not reveal any provision that would allow distributions to be made to the grantor, the grantor's spouse, or in discharge of the grantor's legal obligations. Based solely on the facts and representations submitted, we conclude that a living grantor's ownership interest in Trust Company or membership on its board of directors or any of its committees will not give the grantor an interest or power that would cause that grantor to be treated as an owner of any portion of the trusts under § 677.



## RULING 5

Section 678(a) provides, in general, that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of §§ 671 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Based solely on the facts and representations submitted, including the provision of the bylaws of Trust Company that prohibits any family member from taking part in any discretionary distribution decision with regard to any trust for which Trust Company is acting as trustee, we conclude that no beneficiary of a trust for which Trust Company will act as trustee has a power exercisable solely by that beneficiary to vest the trust corpus or income in themselves as a result of that beneficiary's ownership interest in Trust Company or membership on its board of directors or any of its committees.

## RULING 6

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period that does not in fact end before his death –

- (1) the possession or enjoyment of, or the right to the income from, the property, or
- (2) the right either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2036(b)(1) provides in part that for the purposes of § 2036(b)(1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the three-year period ending on the date of the decedent's death, the decedent owned (with the application of § 318), or had the right (either alone or in conjunction with any person) to vote, stock possessing at least twenty percent of the total combined voting power of all classes of stock.

Section 20.2036-1(b)(3) provides in part that if a decedent reserved the unrestricted power to remove or discharge a trustee at any time and to appoint himself as trustee, the decedent is considered as having the powers of the trustee.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at

any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired the power), to alter, amend, revoke, or terminate, or where any power is relinquished during the three-year period ending on the date of decedent's death.

Section 20.2038-1(a)(3) provides in part that if a decedent had the unrestricted power to remove or discharge a trustee at any time and appoint himself trustee, the decedent is considered as having the powers of the trustee.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has, at the time of his death, a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(b)(1) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) provides, in part, that a donee may have a power of appointment if he has the power to remove or discharge a trustee and appoint himself. For example, if under the terms of the instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of the fiduciary duties is not a power of appointment.

Rev. Rul. 95-58, 1995-2 C.B. 191, holds that a decedent/grantor's reservation of an unqualified power to remove a trustee and to appoint an individual or corporate successor trustee that is not related or subordinate to the decedent within the meaning of § 672(c), is not considered a reservation of the trustee's discretionary powers of distribution over the property transferred by the decedent/grantor to the trust. Accordingly, the trust corpus was not included in the decedent's gross estate under §§ 2036 or 2038. The ruling notes that the Eighth Circuit in Estate of Vak v. Commissioner, 973 F.2d 1409 (8<sup>th</sup> Cir. 1992), concluded that the decedent had not retained dominion and control over assets transferred to a trust by reason of his power to remove and replace the trustee with a party that was not related or subordinate to the decedent. Accordingly, the court held that under § 25.2511-2(c), the decedent made a completed gift when he created the trust and transferred assets to it.

Section 672(c) defines the term "related or subordinate party" to mean any nonadverse party who is (1) the grantor's spouse if living with the grantor; or (2) any one of the following: the grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

In order for §§ 2036-2038 to apply, the decedent must have made a transfer of property or any interest therein (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. For purposes of §§ 2036 and 2038, it is immaterial in what capacity the power was exercisable by the decedent.

The governing trust instruments prevent grantors and beneficiaries from directly participating in decisions regarding discretionary distributions from the trusts. Section 12.1 of the Trust Company Bylaws requires that at least one member of the board will not be a Family member, a grantor of, a donor to, or a current or contingent beneficiary of an affected trust. Affected trusts are trusts of which any member of the Family is a grantor, donor, or current or contingent beneficiary and for which the trustee does not have any discretionary power, other than an investment power, that is not limited by an ascertainable standard. Family is defined in section 12.5(d) as each living lineal descendant and spouse of a lineal descendant of Patriarch and Matriarch. Section 12.2, accordingly, restricts discretionary distribution decisions with respect to affected trusts to trust officers who are not descendants or the spouse of a descendant of Patriarch and Matriarch. Discretionary distribution decisions are initially made or reviewed by the Senior Trust Officer and can be appealed to the DDRC at a beneficiary's request. Under section 12.3 of the Trust Company Bylaws, neither a Senior Trust Officer nor a member of the DDRC may participate in discussions or decisions involving an affected trust if the officer or director, or his or her spouse, is a grantor, donor, or a current or contingent beneficiary of the trust. That section further prohibits Senior Trust Officers and members of the DDRC from participating in

discussions or decisions with respect to any affected trust if the officer or director, or his or her spouse, is a member of the Family. Therefore, the grantors and the beneficiaries of the trusts discussed in this letter are sufficiently prohibited from participating in initial decisions and subsequent review of decisions regarding discretionary distributions from their own trusts. In addition, the structure of the bylaws prohibits the grantors and beneficiaries of C's branch and the other four branches of the family from participating in Trust Company's exercise of discretion to make distributions from any of the trusts by or for descendants of Patriarch and Matriarch, thus preventing the possibility of outside reciprocal agreements that may indirectly give members of C's branch of the family effective control over the discretionary distributions from the trusts discussed in this letter.

The combination of the firewall provision in the Trust Company Bylaws and the trustee provisions in each trust agreement preclude a donor of any of the trusts from having the retained dominion and control as contemplated by §§ 2036 or 2038. No grantor, therefore, will be considered as having the powers of the trustees under §§ 20.2036-1(b)(3) or 20.2038-1(a)(3) solely as a result of being a shareholder in or participating in the daily activities of Trust Company as they are precluded from participating in discretionary distribution decisions with respect to the trusts discussed in this letter, both directly by the trust agreement and indirectly when made by Trust Company. Therefore, neither the appointment of Trust Company as trustee of the trusts nor its exercise of the discretionary powers over distributions to beneficiaries of the trusts will result in the inclusion of any portion of the value of the trusts in the respective estate of a grantor to one of the trusts discussed in this letter. Accordingly, based on the facts submitted and the representations made, we conclude that the appointment of Trust Company as a trustee of the trusts will not result in the inclusion of any portion of the value of the trusts in the estate of the respective grantor under §§ 2036 or 2038.

Furthermore, the combination of provisions also preclude a beneficiary from having the power to affect the beneficial enjoyment of the trust property as contemplated by § 2041. No beneficiary, therefore, will be considered as having the power of the trustees under § 20.2041-1(b)(1) solely as a result of being a shareholder in and participating in the daily activities of Trust Company as they are precluded from participating in discretionary distribution decisions with respect to the trusts discussed in this letter, both directly by the trust agreement and indirectly when made by Trust Company. Therefore, neither the appointment of Trust Company as trustee of the trusts nor its exercise of the discretionary powers over distributions to beneficiaries of the trusts will result in the inclusion of any portion of the value of the trusts in the respective estate of a beneficiary. We note that some of the trusts discussed in this letter provide certain beneficiaries a general power of appointment over part or all of the assets of the trust. The ruling provided in this letter does not imply that the value of the assets to which the general power of appointment pertains will not be included in a beneficiary's estate. Accordingly, based on the facts submitted and the representations made, we conclude that the implementation of the proposed trust restructuring plan and the appointment of Trust Company as an independent trustee of the trusts will not result in

the inclusion of any portion of the value of the trusts in the estate of a beneficiary who is not granted a general power of appointment by the terms of the trust agreement under § 2041.

#### RULING 7

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term “generation-skipping transfer” to include a taxable distribution, taxable termination, and a direct skip.

Each of the trusts discussed in this letter is a generation-skipping transfer trust because the trusts provide for distributions to one or more generation of beneficiaries below the grantors’ generations. Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, Trust 12, Trust 13, Trust 14, Trust 15, Trust 16, Trust 25, Trust 26, Trust 27, and Trust 28 were irrevocable on September 25, 1985. The trustees represent that there have been no additions, actual or constructive, to these trusts after September 25, 1985.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, is considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), that relate to property includible in a grantor’s gross estate under §§ 2038 and 2042. In the present case, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, Trust 12, Trust 13, Trust 14, Trust 15, Trust 16, Trust 25, Trust 26, Trust 27, and Trust 28 are considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies.

Section 26.2601-1(b)(1)(v)(B) provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if - (1) the power of appointment was created in an irrevocable trust that is not subject to chapter 13 under paragraph (b)(1) of this section; and (2) in the case of an exercise, the power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of twenty-one years plus, if necessary, a reasonable period of gestation (the perpetuities period). For purposes of paragraph (b)(1)(v)(B)(2), the exercise of a power of appointment that validly postpones or suspends the vesting,

absolute ownership or power of alienation of an interest in property for a term of years that will not exceed ninety years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership or the power of alienation beyond the perpetuities period. If a power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided for otherwise, the rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided in the original trust. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

Naming Trust Company as trustee of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, Trust 12, Trust 13, Trust 14, Trust 15, Trust 16, Trust 25, Trust 26, Trust 27, and Trust 28 is an administrative change and will not be considered a shift in a beneficial interest in a trust under § 26.2601-1(b)(4)(i)(D)(1)

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the

material submitted in support of the request for rulings it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your attorney.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

James F. Hogan

James F. Hogan  
Senior Technician Reviewer, Branch 9  
Office of Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosure

Copy of this Letter for § 6110 purposes

cc: