

# LIVING TRUST

\*Please note that bracketed language may be included or excluded.

THIS TRUST AGREEMENT (referred to herein as the "Trust Agreement") is entered into by and between [SETTLOR NAME], of [ADDRESS], as Settlor (the "Settlor") *[and as initial Trustee]* and *[CO-TRUSTEE NAME/ADD AS MANY AS APPLICABLE]* of [ADDRESS], as co-Trustees].

## WITNESSETH:

The Settlor hereby creates a trust to be held, administered, and distributed under the provisions of this Trust Agreement. In accordance with the provisions herein stated, the Settlor has transferred to the Trustee the properties listed on the attached Schedule "A." The properties on the attached Schedule "A", and any other property which may hereafter be conveyed to the Trustee, shall be held, administered, and distributed by the Trustee upon the trust and for the purposes and uses herein set forth (collectively, the "Trust Assets").

The Trustee hereby acknowledges receipt of the properties listed in Schedule "A," and consents to hold such property, IN TRUST, upon the terms and conditions set forth in this Trust Agreement.

## I. Title of Trust

The initial trust created by this Trust Agreement shall have the following title: "REVOCABLE TRUST OF *[SETTLOR NAME]*". The Trust Agreement may be amended, modified, or revoked at any time if it follows the provisions stated below.

## II. Revocable Trust During Settlor's Life

### A. Revocability by Settlor

Unless the Settlor is Incapacitated, the Settlor has the power to alter, amend, modify, terminate, or revoke this Trust Agreement during the Settlor's lifetime *[by duly acknowledged, written instrument/ [STATE LAW REQUIREMENTS]]*. Unless the Settlor acts as the sole Trustee, the Settlor must provide notice of any such alteration, amendment, modification, restatement, revocation, or termination to the Trustee following the procedure stated in the third paragraph of the Administrative Provisions under this Trust Agreement. This notwithstanding, this Trust Agreement shall become irrevocable upon the death of the Settlor.

### B. Distributions During Settlor's Lifetime

During the life of the Settlor, the Trustee shall hold, manage, sell, exchange, invest, and reinvest the Trust property, collect all income, and, after deducting such expenses as are properly payable, shall accumulate and distribute the income and principal as herein provided.

The Trustee shall distribute the income and principal of the Trust to the Settlor in such amounts as the Settlor may at any time direct. All undistributed trust income shall be accumulated and added to the principal. If the Settlor becomes Incapacitated, the Trustee shall distribute such amounts of the income and principal of the Trust for the comfort, health, support, maintenance, or other needs of the Settlor as the Trustee shall determine to be necessary or appropriate to maintain the Settlor in accordance with the Settlor's standard of living at the time of the execution of this Trust Agreement.

### **C. Additions Following Death of Settlor**

Following the death of the Settlor, the Trustee shall add to the Trust all properties owned by the Settlor and received by such Trustee which is payable to the Trustee hereunder. These properties shall include, but shall not be limited to, any payments from an employee or self-employed benefit plan, individual retirement account or annuity, or any proceeds of any insurance policy on the life of the Settlor.

### **D. Termination**

The Trust created by this Trust Agreement shall terminate upon the death of the Settlor and the Trust property shall be distributed as provided in the succeeding provisions of this Trust Agreement.

## **III. Distribution Upon Termination**

The Trustee shall make the following distributions upon the death of the Settlor:

### **A. Gifts at Death**

The Trustee shall make the following distributions prior to the payments in Paragraph D of this provision.

#### **1. Gift of Specific Items of Tangible Personal Property**

The Trustee shall distribute to [BENEFICIARY NAME] [DESCRIPTION OF SPECIFIC ITEM OF TANGIBLE PERSONAL PROPERTY]. However, if [BENEFICIARY NAME] fails to survive the Settlor, this gift shall lapse.

#### **2. Gift of Balance of Tangible Personal Property.**

Except as may be provided as a specific gift elsewhere in this Trust Agreement, the Trustee shall distribute, outright and free of trust, all tangible personal property of a use or classification to *[the Settlor's descendants who survive the Settlor per stirpes/the person or persons to whom the*

*remaining trust assets will be distributed in accordance with Paragraph D of this Article],* with particular items to be allocated as they may agree, or if they cannot agree, as the Trustee shall determine in the Trustee's sole and absolute discretion. If any beneficiary hereunder is a minor, the Trustee may distribute such minor's share to such minor or for such minor's use to such minor's parents, guardians, or any person with whom such minor is residing or who has the care or control of such minor. The receipt of the person to whom such minor's share is distributed shall be a complete discharge of the Trustee. The cost of packing and shipping such property to any such beneficiary shall be charged against the Trust property as an administration expense.

## **B. Payment of Taxes.**

1. Following the death of the Settlor, all estate, inheritance, or similar taxes arising in connection with the Settlor's death with respect to any property included in the Settlor's gross estate for the purpose of calculating such taxes, whether or not such property passes under this Trust Agreement, under the Settlor's Will, or otherwise, shall be paid from the remaining trust assets without apportionment.
2. To the extent the remaining Trust Assets are insufficient for the payment of such taxes, then any excess taxes, except otherwise specifically provided in this Paragraph B, shall be paid on a pro-rata basis from all the assets passing by reason of the Settlor's death.
3. Notwithstanding the foregoing, no portion of such taxes shall be apportioned or charged to property qualifying fully for the charitable deduction for federal estate tax purposes. However, to the extent that the assets passing by reason of the Settlor's death that do not qualify for the charitable deduction are insufficient for the payment of such taxes, then any excess taxes shall be paid on a pro-rata basis from the assets that qualify for the charitable deduction.
4. The provisions of this Paragraph B shall not apply to any generation-skipping transfer taxes imposed by 26 U.S.C. Section 2601, which taxes shall instead be payable in accordance with the provisions of 26 U.S.C. Section 2603.

## **C. Payment of Debts.**

The Trustee, in the Trustee's discretion, may pay from the Trust property all or any part of the Settlor's funeral expenses, claims which are legally enforceable against the Settlor's estate, and other reasonable expenses of administration of the Settlor's estate. The payments made pursuant to this Paragraph shall be made prior to the distributions provided for in Paragraph D of this Article.

The Trustee may make such payments directly or may pay over the amounts thereof to the duly qualified executor, personal representative, or administrator of the Settlor's estate. Written statements by the executor, personal representative, or administrator of the Settlor's estate of the sums that may be paid under this Paragraph shall be sufficient evidence of their amounts, and the Trustee shall be under no duty to confirm that such payments were applied properly. Except as otherwise specifically provided in this Trust Agreement, if at the time of the Settlor's death any of the Settlor's property is subject to a mortgage, lien, or other debt, the Settlor directs that the devisee taking such property shall take it

subject to such mortgage, lien, or other debt and that such person shall not be entitled to have the obligation secured thereby paid out of the Settlor's general estate.

#### **D. Remainder.**

The Trustee shall distribute the remaining income and principal of the Trust to the Settlor's descendants who survive the Settlor per stirpes. If none of the Settlor's descendants survive the Settlor, all the remaining income and principal of the Trust shall be distributed to the Settlor's Heirs.

### **IV. Trustee Provisions.**

#### **A. Additional and Successor Trustees.**

1. After the Settlor's death or if the Settlor becomes Incapacitated, the individual Trustee shall have the power, by giving notice to the other acting Trustee or Trustees of such trust, or, if there are none, to the beneficiaries of such trust pursuant to the procedure in Paragraph B of the Administrative Procedures provision of this Trust Agreement, to name an individual or corporation as an additional or successor Trustee of such trust.

2. If at any time after the Settlor's death or after the Settlor becomes Incapacitated there is no appointed or acting Trustee of any trust established hereunder, a majority of the adult beneficiaries of the trust shall have the power to appoint a successor Trustee by [acknowledged] written instrument or, if there are no adult beneficiaries, or a majority of the adult beneficiaries cannot come to an agreement, a court of competent jurisdiction shall appoint a successor Trustee.

#### **B. Expenses and Commissions.**

Every Trustee shall be reimbursed for the reasonable costs and expenses incurred in connection with such Trustee's duties. The alternate and successor Trustees including any Corporate Fiduciary shall be entitled to fair and reasonable compensation for services rendered by such Trustee in an amount not exceeding the customary and prevailing charges for services of a similar character at the time and place such services are performed.

### **V. Administrative Procedures.**

#### **A. Survivorship.**

No person shall be deemed to have survived the Settlor if such person shall die within *[thirty (30)/ [OTHER NUMBER IN WORDS] ([OTHER NUMBER])]* days after the Settlor's death. Any person who is prohibited by law from inheriting property from the Settlor shall be treated as having failed to survive the Settlor.

## **B. Notice.**

Any notice required or permitted to be given pursuant to the terms of this Trust Agreement must be given by written *[and acknowledged]* instrument actually delivered to the person to whom it is required or permitted to be given.

## **C. Property, Books of Account, and Records.**

All properties, books of account, and records of any trust created under this Agreement shall be made available for inspection at all times during normal business hours to the Settlor or to any person designated by the Settlor. At any time prior to the death of the Settlor, the Trustee shall provide a current account showing receipts, disbursements, and inventory of the Trust assets to the Settlor, if requested by the Settlor.

## **D. Reliance on Legal Opinion.**

In acting or declining to act, each Trustee may rely upon the written opinion of a competent attorney licensed and in good standing in the jurisdiction where the subject matter of any opinion is sought, any facts stated in any instrument, furnished in writing and believed to be true, or any other evidence deemed sufficient. Each Trustee shall be indemnified and further held harmless from any liability for any action taken, or for the failure to take any action if done in good faith and without gross negligence.

## **VI. Trustee Powers.**

### **A. Powers.**

Each Trustee shall have and possess the following powers and authorities with respect to this Trust Agreement:

#### **1. Retention of Property.**

To retain, without liability for any depreciation or loss occasioned by such retention, any property transferred to the Trustee by the Settlor or any other person when the Trustee determines that, because of the circumstances involved, any trust created hereunder would be better served by not diversifying the investment in such property.

#### **2. Dealing in Trust Assets.**

To exchange, sell, convey, or lease for cash, property, or credit, or to partition, from time to time, publicly or privately, at such prices, on such terms, times, and conditions and by instruments of such character and with such covenants as the Trustee may deem proper, all or any part of the assets of each

trust, and no vendee or lessee of the Trustee shall be required to look to the application made by the Trustee of any funds paid to the Trustee.

### **3. Borrowing.**

To borrow money from any source (including any Trustee or from the Settlor's testamentary estate) and to mortgage, pledge, or in any other manner encumber all or any part of the assets of any trust as may be advisable in the judgment of the Trustee for the advantageous administration of such trust.

### **4. Investment.**

To invest and reinvest any part of this trust in any kind of property whatsoever, real or personal, and such investments and reinvestments may be made without regard to the proportion that such property may bear to the entire trust estate if the Trustee determines that, because of the circumstances involved, such trust would be better served by not diversifying such investment or reinvestments. Further, the Settlor may direct the Trustee as to the investments to be made by the Trustee, and the Trustee shall not be liable to any person for any losses resulting from following the written direction of the Settlor in investing trust assets.

### **5. Dealing with Interested Parties.**

To enter into any transaction on behalf of this trust despite the fact that another party to any such transaction may be:

- (i) a trust of which any Trustee under this Trust Agreement is also a trustee;
- (ii) an estate of which any Trustee under this Trust Agreement is also an executor, personal representative, or administrator;
- (iii) a business or trust controlled by any Trustee under this Trust Agreement or of which any such Trustee, any director, officer, or employee of any such Corporate Fiduciary, is also a director, officer, or employee;
- (iv) the Settlor, any other beneficiary, or any Trustee under this Trust Agreement acting individually;

### **9. Purchasing.**

To purchase any of the property in the testamentary estate of the Settlor at its fair market value and to retain any property so acquired without liability for depreciation or loss occasioned by such purchase and retention;

### **10. Storing Personal Property.**

To store personal property given to a person who is a minor or who is Incapacitated for later distribution to such person, or to sell such property and add the proceeds of sale to a trust of which such person is a beneficiary;

### **11. Distributions in Kind.**

To make divisions, partitions, or distributions in money or in kind, or partly in each, whenever required or permitted to divide, partition, or distribute all or any part of any trust; and, in making any such divisions, partitions, or distributions, the judgment of the Trustee in the selection and valuation of the assets to be so divided, partitioned, or distributed shall be binding and conclusive, and the Trustee shall not be liable for any differing tax consequences to the beneficiaries hereunder. Further, the Trustee shall be authorized to make distributions from any trust created by this Trust Agreement on a non-pro rata basis, and in the case of non-pro-rata distributions of principal, no such distributions shall be charged against the share or shares ultimately allocated to any beneficiary or trust upon termination thereof;

### **12. Real Property.**

To make leases and subleases and grant options to lease for any period of time, though commencing in the future or extending beyond the duration of any trust; to operate, maintain, improve, rehabilitate, alter, demolish, abandon, release, or dedicate any real property; and to develop or subdivide real property, grant easements, and take any other action with respect to real property that an individual owner could take;

### **13. Digital Assets.**

To access, control, use, cancel, deactivate, or delete a Settlor's Digital Accounts and Digital Assets, and access, control, use, deactivate, or dispose of the Settlor's Digital Devices. "Digital Accounts" are electronic systems for creating, generating, sending, sharing, communicating, receiving, storing, displaying, or processing information that provides access to a Digital Asset which is stored on any type of Digital Device, regardless of the ownership of the Digital Device upon which the Digital Asset is stored. "Digital Assets" mean data, files, text messages, emails, documents, audio, video, images, sounds, social media content, social networking content, apps, codes, health care records, health insurance records, credit card points, travel-related miles and points, computer source codes, computer programs, software, software licenses, databases, or the like, including access credentials such as usernames, passwords, and answers to secret questions, which are created, generated, sent, communicated, shared, received, or stored by electronic means on a Digital Device. "Digital Devices" are electronic devices that can create, generate, send, share, communicate, receive, store, display, or process information.

### **B. Statutory and Common Law Powers.**

In addition to the power granted to each Trustee under Paragraph A of this Article VI, each Trustee shall have and possess all powers and authorities conferred by statute or common law in any jurisdiction in which such Trustee may act, including all powers and authorities conferred by

*[STATUTE CONFERRING FIDUCIARY POWERS]*, and by any future amendments thereto, except for any instance in which such powers and authorities may conflict with the express provisions of this Trust Agreement, in which case the express provisions of this Trust Agreement shall control.

**VI. Governing Law.**

All issues and proceedings regarding the construction, validity and administration of any trust created under this Trust Agreement shall be controlled by the laws of the State of [STATE].

**IN WITNESS WHEREOF,**

the Settlor and the Trustee[s] have hereunto set their hands as of the date first above written.

Settlor and Trustee:

\_\_\_\_\_  
[SETTLOR NAME], as Settlor and Trustee  
[Additional Trustee:

\_\_\_\_\_  
[ADDITIONAL TRUSTEE NAME], Trustee]  
[Witnesses:

\_\_\_\_\_  
[FIRST WITNESS NAME]  
[FIRST WITNESS ADDRESS]

\_\_\_\_\_  
[SECOND WITNESS NAME]  
[SECOND WITNESS ADDRESS]]

STATE OF [STATE]  
COUNTY OF [COUNTY]

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [SETTLOR NAME], who [is personally known to me/has produced [TYPE OF IDENTIFICATION] as identification].

Given under my hand and notarial seal on [MONTH] [DATE], [YEAR].

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF [STATE]



COUNTY OF [COUNTY]

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [ADDITIONAL TRUSTEE NAME], who [is personally known to me/has produced [TYPE OF IDENTIFICATION] as identification].

Given under my hand and notarial seal on [MONTH] [DATE], [YEAR].

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF [STATE]  
COUNTY OF [COUNTY]

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [FIRST WITNESS NAME], who [is personally known to me/has produced [TYPE OF IDENTIFICATION] as identification].

Given under my hand and notarial seal on [MONTH] [DATE], [YEAR].

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_]

STATE OF [STATE]  
COUNTY OF [COUNTY]

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [SECOND WITNESS NAME], who [is personally known to me/has produced [TYPE OF IDENTIFICATION] as identification].

Given under my hand and notarial seal on [MONTH] [DATE], [YEAR].

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_]

# **SCHEDULE A INITIAL TRUST PROPERTY**

[DESCRIPTION OF INITIAL CONTRIBUTION]