

## Accessory Dwelling Unit Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*		PROPERTY OWNER(S) REPRESENTATIVE**	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION		<input checked="" type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name	Molly W Neill Revocable Trust	Representative Name	Andrew Neill
Address	4301 W 35th Ave	Address	4301 W 35th Ave
City, State, Zip	Denver, CO, 80212	City, State, Zip	Denver, CO, 80212
Telephone	214-282-2442	Telephone	214-282-2442
Email	a.neill.home@gmail.com	Email	a.neill.home@gmail.com
*All standard zone map amendment applications must be initiated by owners (or authorized representatives) of at least 51% of the total area of the zone lots subject to the rezoning. See page 4.		**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.	
SUBJECT PROPERTY INFORMATION			
Location (address):	4301 W 35th Ave		
Assessor's Parcel Numbers:	02301-09-014-000		
Area in Acres or Square Feet:	5,000 sq ft (approx. .11 acres)		
Current Zone District(s):	U-SU-B		
PROPOSAL			
Proposed Zone District:	U-SU-B1		
PRE-APPLICATION INFORMATION			
Did you have a pre-application meeting with Development Services Residential Team?	<input checked="" type="checkbox"/> <b>Yes - if yes, state the meeting date</b> <u>7/6/21</u> <input type="checkbox"/> <b>No - if no, describe why not</b> _____		
Did you contact the City Council District Office regarding this application?	<input checked="" type="checkbox"/> <b>Yes - if yes, state date and method</b> <u>7/7/21</u> <input type="checkbox"/> <b>No - if no, describe why not (in outreach attachment)</b> _____		

**REVIEW CRITERIA - AFFIRM THE PROPOSED ADU REZONING COMPLIES WITH THE CRITERIA BELOW BY CHECKING THE BOX NEXT TO EACH CRITERION**

<p>General Review Criteria: The proposal must comply with all of the general review criteria. (Check box to the right to affirm) DZC Sec. 12.4.10.7</p>	<p><input checked="" type="checkbox"/> <b>Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan.</b></p> <p><b>Denver Comprehensive Plan 2040</b> The proposed map amendment is consistent with the strategies in the adopted Denver Comprehensive Plan 2040, including:</p> <ul style="list-style-type: none"> <li>• <b>Goal 2, Strategy A. Equitable, Affordable and Inclusive</b> – “Create a greater mix of housing options in every neighborhood for all individuals and families” (p. 28). The proposed zone district allows for an additional dwelling unit that is accessory to the primary single-unit dwelling use. Accessory dwelling units can provide housing for individuals or families with different incomes, ages, and needs compatible with the single-unit neighborhoods.</li> <li>• <b>Goal 8, Strategy A. Environmentally Resilient</b> - “Promote infill development where infrastructure and services are already in place” (p. 54). The proposed map amendment will allow an additional housing unit on the site of an existing home where infrastructure and services such as water, stormwater, and streets already exist. This allows Denver to grow responsibly and promotes land conservation.</li> </ul> <p><b>Blueprint Denver</b> The proposed map amendment is consistent with the applicable neighborhood context, places, street type, and strategies in <i>Blueprint Denver</i>, including:</p> <ul style="list-style-type: none"> <li>• <b>Policy 4, Strategy E - Diversify housing choice</b> through the expansion of accessory dwelling units throughout all residential areas.</li> </ul> <p><b>Neighborhood/ Small Area Plan (list all, if applicable):</b> _____</p>
<p>General Review Criteria: The proposal must comply with all of the general review criteria. (Check boxes to affirm) DZC Sec. 12.4.10.7</p>	<p><input checked="" type="checkbox"/> <b>Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.</b></p> <p><input checked="" type="checkbox"/> <b>Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.</b></p> <p>The proposed map amendment furthers the public health, safety, and general welfare of the city through implementation of the city's adopted plan, including Blueprint Denver which recommends “the expansion of accessory dwelling units throughout all residential areas” (<i>Blueprint Denver</i>, p. 84).</p>

<p>Additional Review Criteria for Non-Legislative Rezonings: The proposal must comply with both of the additional review criteria. (Check boxes to affirm.) DZC Sec. 12.4.10.8</p>	<p><input checked="" type="checkbox"/> <b>Justifying Circumstances - One of the following circumstances exists:</b> Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include:</p> <ul style="list-style-type: none"> <li>a. Changed or changing conditions in a particular area, or in the city generally; or,</li> <li>b. A City adopted plan; or</li> <li>c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.</li> </ul> <p>The proposed map amendment application identifies the adoption of <i>Blueprint Denver</i> as the Justifying Circumstance. As discussed above, <i>Blueprint Denver</i> specifically recommends the city diversify housing choice through the expansion of accessory dwelling units throughout all residential areas. The plan was adopted after the date of approval of the existing zone districts. Therefore, this is an appropriate justifying circumstance for the proposed rezoning.</p> <p><input checked="" type="checkbox"/> <b>The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District.</b></p> <p>The proposed map amendment is consistent with the neighborhood context description, stated purpose and intent of the proposed _____ Zone District.</p>
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**REQUIRED ATTACHMENTS**

Please check boxes below to affirm the following required attachments are submitted with this rezoning application:

- Legal Description of subject property(s). **Submit as a separate Microsoft Word document.** View guidelines at: <https://www.denvergov.org/content/denvergov/en/transportation-infrastructure/programs-services/right-of-way-survey/guidelines-for-land-descriptions.html>
- Proof of Ownership Document (e.g. Assessor’s record, property deed, etc). Proof of ownership for each property owner signing the application, such as (a) Assessor’s Record, (b) Warranty deed, or (c) Title policy or commitment dated no earlier than 60 days prior to application date. If the owner is a corporate entity, proof of authorization for an individual to sign on behalf of the organization is required. This can include board resolutions authorizing the signer, bylaws, a Statement of Authority, or other legal documents as approved by the City Attorney’s Office.

**ADDITIONAL ATTACHMENTS (IF APPLICABLE)**

Please check boxes identifying additional attachments provided with this application (note that more information may be required. Please confirm with your pre-application/case manager planner prior to submittal.):

- Written Narrative Explaining Project
- Site Plan/ Drawings (if available)
- Narrative describing any outreach to City Council office(s), Registered Neighborhood Organizations (RNOs) and surrounding neighbors.
- Written Authorization to Represent Property Owner(s) (if applicable)
- Individual Authorization to Sign on Behalf of a Corporate Entity (e.g. if the deed of the subject property lists an LLC/trust as owner, this is document is required.)

Please list any other additional attachments:

**PROPERTY OWNER OR PROPERTY OWNER(S) REPRESENTATIVE CERTIFICATION**

We, the undersigned represent that we are the owner(s) of the property described opposite our names, or have the authorization to sign on behalf of the owner as evidenced by a Power of Attorney or other authorization attached, and that we do hereby request initiation of this application. I hereby certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate. I understand that without such owner consent, the requested official map amendment action cannot lawfully be accomplished.

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed, (C) title policy or commitment, or (D) other as approved	Has the owner authorized a representative in writing? (YES/NO)
<b>EXAMPLE</b> John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith</i> <i>Josie Q. Smith</i>	01/01/12	(A)	YES
<b>Molly Wigand Neill and Andrew Michael Neill</b>	4301 W. 35th Ave. Denver, CO 80212 214-282-2442 a.neill.home@gmail.com	100%	<i>Molly Wigand Neill</i> <i>Andrew Michael Neill</i>	7/11/21	(D)	NO



4301 W 35<sup>th</sup> Avenue  
Denver, CO 80212

**Legal Description:**

The East 50 Feet of Lots 25 to 28, Block 1, New Home Subdivision, City and County of Denver, State of Colorado.

# 4301 W 35TH AVE

**Owner** NEILL,MOLLY W REVOCABLE TRUST  
4301 W 35TH AVE  
DENVER, CO 80212-1750

**Schedule Number** 02301-09-014-000

**Legal Description** E 50FT OF L 25 TO 28 INC BLK 1 NEW HOME

**Property Type** SFR Grade C, D, or E, w/RK

**Tax District** DENVER

## Print Summary

### Property Description

<b>Style:</b>	15: 2 STORY	<b>Building Sqr. Foot:</b>	2243
<b>Bedrooms:</b>	4	<b>Baths Full/Half:</b>	4/1
<b>Effective Year Built:</b>	1906	<b>Basement/Finish:</b>	340/0
<b>Lot Size:</b>	5,000	<b>Zoned As:</b>	U-SU-B

**Note:** Valuation zoning may be different from City's new zoning code.

### Current Year

	<b>Actual</b>	<b>Assessed</b>	<b>Exempt</b>
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Land		\$399,500	\$28,560	\$0
Improvements		\$498,900	\$35,670	
Total		\$898,400	\$64,230	

### Prior Year

	<b>Actual</b>	<b>Assessed</b>	<b>Exempt</b>
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Land		\$399,500	\$28,560	\$0
Improvements		\$417,600	\$29,860	
Total		\$817,100	\$58,420	

#### System Upgrade Underway:

Due to a system upgrade this feature is not currently available.

4301 W 35<sup>th</sup> Ave.  
Denver, CO 80212

## Outreach Narrative

Email correspondence has been sent to City Councilwoman Amanda Sandoval of District 1



Andrew Neill <a.neill.home@gmail.com>

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### Rezoning Plan

1 message

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**Andrew Neill** <a.neill.home@gmail.com>  
To: districtone@denvergov.org

Wed, Jul 7, 2021 at 10:21 AM

Hi Councilwoman Sandoval,

We live at 4301 W 35th and wanted to reach out to let you know we are submitting an application to change our zoning from U-SU-B to U-SU-B1. We are applying for this change to allow us to build a detached accessory dwelling unit. We would like to rebuild our single garage to be a two car garage with an apartment on top of it.

We are currently in the process of gathering all necessary information before submitting the application. Please let us know if you have any questions, comments or concerns.

Thank you,  
Andrew and Molly Neill

Andrew Neill  
c: 214-282-2442  
[a.neill.home@gmail.com](mailto:a.neill.home@gmail.com)

Email correspondence has been sent to the following Registered Neighborhood Organizations (RNOs):

- Inter-neighborhood Cooperation (INC)
- Neighborhood Coalition of Denver
- West Highland Neighborhood Association
- District 1 Neighborhood Coalition, Inc.



Andrew Neill <a.neill.home@gmail.com>

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## Submission Confirmation

1 message

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**Inter-Neighborhood Cooperation** <wordpress@denverinc.org>

Wed, Jul 7, 2021 at 10:30 AM

To: a.neill.home@gmail.com

Name: Andrew Neill

Email: [a.neill.home@gmail.com](mailto:a.neill.home@gmail.com)

Message: Hello Inter-Neighborhood Cooperation,

We live at 4301 W 35th and wanted to reach out to let you know we are submitting an application to change our zoning from U-SU-B to U-SU-B1. We are applying for this change to allow us to build a detached accessory dwelling unit. We would like to rebuild our single garage to be a two car garage with an apartment on top of it.

We are currently in the process of gathering all necessary information before submitting the application. Please let us know if you have any questions, comments or concerns.

Thank you,  
Andrew and Molly Neill

Andrew Neill  
c: 214-282-2442  
[a.neill.home@gmail.com](mailto:a.neill.home@gmail.com)



Andrew Neill <a.neill.home@gmail.com>

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## Zoning Change Notice

1 message

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**Andrew Neill** <a.neill.home@gmail.com>

Wed, Jul 7, 2021 at 10:21 AM

To: neighborhoodcoalitionsofdenver@gmail.com

Hi Neighborhood Coalition of Denver,

We live at 4301 W 35th and wanted to reach out to let you know we are submitting an application to change our zoning from U-SU-B to U-SU-B1. We are applying for this change to allow us to build a detached accessory dwelling unit. We would like to rebuild our single garage to be a two car garage with an apartment on top of it.

We are currently in the process of gathering all necessary information before submitting the application. Please let us know if you have any questions, comments or concerns.

Thank you,  
Andrew and Molly Neill

Andrew Neill  
c: 214-282-2442  
[a.neill.home@gmail.com](mailto:a.neill.home@gmail.com)



Andrew Neill <a.neill.home@gmail.com>

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## Zoning Change Notice

1 message

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**Andrew Neill** <a.neill.home@gmail.com>

Wed, Jul 7, 2021 at 10:22 AM

To: trevgreco@gmail.com

Hi West Highland Neighborhood Association,

We live at 4301 W 35th and wanted to reach out to let you know we are submitting an application to change our zoning from U-SU-B to U-SU-B1. We are applying for this change to allow us to build a detached accessory dwelling unit. We would like to rebuild our single garage to be a two car garage with an apartment on top of it.

We are currently in the process of gathering all necessary information before submitting the application. Please let us know if you have any questions, comments or concerns.

Thank you,  
Andrew and Molly Neill

Andrew Neill  
c: 214-282-2442  
[a.neill.home@gmail.com](mailto:a.neill.home@gmail.com)



Andrew Neill <a.neill.home@gmail.com>

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## Zoning Change Notice

1 message

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**Andrew Neill** <a.neill.home@gmail.com>

Sun, Jul 11, 2021 at 4:53 PM

To: district1NCDen@gmail.com

Hi District 1 Neighborhood Coalition,

We live at 4301 W 35th and wanted to reach out to let you know we are submitting an application to change our zoning from U-SU-B to U-SU-B1. We are applying for this change to allow us to build a detached accessory dwelling unit. We would like to rebuild our single garage to be a two car garage with an apartment on top of it.

We are currently in the process of gathering all necessary information before submitting the application. Please let us know if you have any questions, comments or concerns.

Thank you,  
Andrew and Molly Neill

Andrew Neill  
c: 214-282-2442  
[a.neill.home@gmail.com](mailto:a.neill.home@gmail.com)

And finally, the following letter will be distributed to all neighbors within 200 feet of our property:

Hello Neighbor,

We live at 4301 W 35th and wanted to reach out to let you know we are submitting an application to change our zoning from U-SU-B to U-SU-B1. We are applying for this change to allow us to build a detached accessory dwelling unit. We would like to rebuild our single garage to be a two-car garage with an apartment on top of it for my aging parents.

We are currently in the process of gathering all necessary information before submitting the application. Please let us know if you have any questions, comments, or concerns.

Thank you,

Andrew and Molly Neill

Andrew Neill  
c: 214-282-2442  
a.neill.home@gmail.com

**MOLLY W. NEILL REVOCABLE TRUST**

**ILLUMINE LEGAL LLC**

*LAW ILLUMINATED*

7887 EAST BELLEVIEW AVENUE, SUITE 1100

DENVER, COLORADO 80111

303-228-2241

## MOLLY W. NEILL REVOCABLE TRUST

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I, **MOLLY W. NEILL**, as Settlor, make this agreement creating the **MOLLY W. NEILL REVOCABLE TRUST** on January 10, 2020. My spouse, **ANDREW M. NEILL** (“Andrew”), and I are the initial trustees (“trustee”). Simultaneously with the signing of this agreement, I am transferring the property described on the attached Schedule A to the trustee as the initial trust estate. The trustee shall hold and dispose of the trust estate upon the terms set forth in this agreement. During my lifetime, the disposition of the trust estate shall be governed by the provisions of Article 3.4.

### PART 1

#### DISPOSITION OF TRUST ESTATE

##### ARTICLE 1.1 STATEMENT OF FAMILY

**1.1.1 Spouse:** My spouse is **ANDREW M. NEILL**. Any references in this instrument to my spouse are to Andrew.

**1.1.2 Children and More Remote Descendants:** I do not currently have children but intend to have children in the near future and wish for such future child or children to receive benefits under this instrument. Accordingly, any references in this instrument to my children are to any children born to or legally adopted by me after the date of this instrument. References to descendants include these children and their descendants.

##### ARTICLE 1.2 ADMINISTRATIVE TRUST UPON MY DEATH

**1.2.1 Administrative Trust:** During the period commencing with my death and lasting until the trustee completes the actions set forth in 1.2.2, an Administrative Trust will be held under this Article. The trust estate of such trust will include all assets that were held in the **MOLLY W. NEILL REVOCABLE TRUST** immediately prior to my death, together with any other property added to such trust upon or after my death, by transfer by will, or otherwise, by me or by others, and any accrued, undistributed, or unrealized income or gains on such property or any reinvested property.

**1.2.2 Trustee Actions:** The trustee of the Administrative Trust shall: [1] effect all actions required to be taken following my death pursuant to the applicable provisions of this agreement;



and [2] distribute the remaining assets of the Administrative Trust pursuant to the remainder of this agreement.

### **ARTICLE 1.3 TANGIBLE PERSONAL PROPERTY**

**1.3.1 Disposition by Memorandum:** I direct the trustee to follow the terms of a memorandum handwritten or signed by me, if any, that I shall leave at my death concerning the disposition of certain items of tangible personal property that are assets of this trust at my death. Any such memorandum shall be deemed an amendment to this agreement.

**1.3.2 Disposition to Spouse:** At my death, the trustee shall distribute all tangible personal property that is an asset of this trust and that otherwise is not disposed of under 1.3.1 to my spouse, Andrew, if my spouse survives me.

**1.3.3 Contingent Disposition:** If my spouse, Andrew, does not survive me, the trustee shall distribute such property otherwise not disposed of by 1.3.1 to my children who survive me (and not to the descendants of any child of mine who does not survive me) in substantially equal shares as they shall agree within ninety days of my death, or, if they cannot agree on the division of this property, this property shall be distributed pursuant to 3.16.13. For this purpose, the trustee may select a person to represent a minor child of mine or any child believed by the trustee to be incapable of acting in his or her own best interests. If the trustee in his or her discretion believes that a child does not have sufficient discretion to derive proper use and enjoyment from any item of this property that would otherwise be distributed outright to the child, the trustee may distribute the item to any person, including but not limited to the child's guardian or guardians, deemed suitable by the trustee to have care and control of the item for the child's benefit, on such terms and conditions as the trustee may specify. Notwithstanding the foregoing, if in the trustee's discretion it would not be in the best interest of any of my children to receive possession of any item of such property, such as an automobile, the trustee may sell such item and add the proceeds to my residuary trust estate. If neither my spouse nor any child of mine survives me, this gift shall lapse and such property otherwise not disposed of under 1.3.1 shall be distributed as part of my residuary trust estate under the following provisions of this instrument.

**1.3.4 Expenses:** All reasonable expenses of storage, packing, shipping, delivery, insurance, or sale incurred with respect to my tangible personal property shall be paid by my personal representative as an expense of administration.

## **ARTICLE 1.4 DISPOSITION OF RESIDUARY TRUST ESTATE**

**1.4.1 Disposition If Spouse Survives Me:** If my spouse, Andrew, survives me, the trustee shall divide the residuary trust estate into the Family Share and the Marital Share in accordance with Articles 3.7 and 3.10.

[1] The trustee shall hold the Marital Share in continuing trust, to constitute the **MOLLY W. NEILL MARITAL TRUST**, and to be administered as provided in Article 1.5.

[2] The trustee shall hold the Family Share in continuing trust, to constitute the **MOLLY W. NEILL FAMILY TRUST**, and to be administered as provided in Article 1.6.

**1.4.2 Disposition If Spouse Does Not Survive Me:** If my spouse, Andrew, does not survive me, but I am survived by any child or more remote descendant of mine, the entire residuary trust estate shall be held in continuing trust, to constitute the **MOLLY W. NEILL FAMILY TRUST**, and to be administered as provided below in Article 1.6. If neither my spouse nor any descendant of mine survives me, the entire residuary trust estate shall be distributed as provided in Article 1.9.

## **ARTICLE 1.5 DISPOSITION OF MARITAL TRUST**

**1.5.1 Income:** Commencing with my death, the trustee shall distribute all net income to my spouse, Andrew.

**1.5.2 Principal:** The trustee, in its sole and absolute discretion, may distribute to or for the benefit of my spouse such amount, amounts, or none, of the principal as the trustee may determine to be reasonable or necessary to provide for my spouse's health, education, maintenance, or support.

**1.5.3 Residential Real Property:** This trust shall be administered in accordance with 3.16.16.

**1.5.4 Testamentary Special Power of Appointment:** On my spouse's death, my spouse shall have a testamentary special power of appointment exercisable by the provisions contained in my spouse's will or codicil to such will to appoint the remaining trust estate among any one or more of my descendants or among any one or more qualified charities. Such testamentary special power of appointment shall be subject to 3.8.1.

**1.5.5 Termination and Disposition at Termination:** This trust shall terminate on my spouse's death. The trustee shall distribute the remaining balance of the Marital Trust in trust to the trustee of the Family Trust, to be disposed of as provided below in Article 1.6.

## **ARTICLE 1.6 DISPOSITION OF FAMILY TRUST**

### **1.6.1 Income and Principal:**

- [1] The trustee, in its sole and absolute discretion, may distribute to or for the benefit of any one or more of my spouse, Andrew, and my descendants such amount, amounts, or none, of the net income and principal as the trustee may determine to be reasonable or necessary to provide for any such beneficiary's health, education, maintenance, or support.
- [2] In making a distribution under 1.6.1[1] to provide for any beneficiary's support or maintenance, the trustee may consider any distribution that satisfies this standard, including distributions to maintain a beneficiary in an accustomed standard of living.
- [3] Discretionary income and principal distributions may be made without equalization or proration among such beneficiaries and shall not be taken into account in any later or final distribution to them.

### **1.6.2 Home – Guardians Benefits:**

- [1] The provisions of this paragraph shall apply: [a] at any time prior to the termination date described below when a guardian of the person other than my spouse is acting with respect to any child of mine; or [b] at any time prior to the termination date when no such guardian of the person is acting with respect to any child of mine but when the trustee deems it to be in the best interests of any child of mine to continue to reside with any person other than my spouse who was previously acting as guardian with respect to any of my children. (Before making this determination, the trustee shall consult with the guardian and with all of my then living children about the course or courses of action that they consider to be in the best interests of my children.) In this paragraph, the guardian or guardians or former guardian or guardians of my children other than my spouse are for convenience collectively referred to as "the guardian."
- [2] The trustee may make discretionary distributions from the Family Trust not only to provide for the immediate needs of my children but also to enable the guardian to provide a comfortable living environment for my children, for the guardian, and for the guardian's own children or other dependents. Such distributions may include but shall not be limited to: [a] distributions for the group's collective household and living expenses; [b] distributions that will enable the group to travel together for recreational or educational purposes; and [c] distributions with respect to residential real property as described below. In making any such distributions, the trustee: [a] shall bear in mind my hope that the Family

Trust will always be maintained at a level that will enable the trustee to provide for my children's health, maintenance, education, and support in reasonable comfort; and [b] shall consider the availability of other resources and sources of support that could be applied to these purposes, including but not limited to assets owned by the guardian or held in trust for him or her, but the total exhaustion of such other resources and sources of support shall not necessarily be required before such distributions are made by the trustee.

- [3] If any interest in my principal home is held as an asset of the Family Trust, it may be retained by the trustee as an investment of the Family Trust, or the trustee may sell the interest in my principal home and may acquire a replacement residence as an investment of the Family Trust. The trustee may permit not only my children but also the guardian and his or her own children or other dependents (hereinafter collectively "the permissible occupants") to reside in any such residence rent-free. During any such period of occupancy, the trustee may pay from the Family Trust all related expenses, including but not limited to rental or mortgage payments, real property taxes, assessments for improvements, costs of hazard insurance, utility expenses, and expenses of maintenance, repair, alteration, enlargement, remodeling, or additions (hereinafter, with respect to any residence, referred to collectively as "occupancy expenses"). Alternatively, if any of my children is residing with the guardian in the guardian's own home, the trustee may: [a] reimburse the guardian with respect to all or any part of the guardian's occupancy expenses, particularly those deemed by the trustee to be necessary or desirable to enlarge or remodel the guardian's home to accommodate residency in it by any child of mine; [b] acquire all or any part of the guardian's own home as an investment of the Family Trust, thereafter to be made available for occupancy as set forth above in this paragraph; [c] enter into any other appropriate agreement with the guardian for the sharing of ownership interests in and occupancy expenses of any home in which it is desirable for the permissible occupants to reside, which agreement may include appropriate provisions, applicable as of the earlier to occur of the termination date or the date on which no child of mine is residing with the guardian, requiring or allowing the guardian to acquire or re-acquire any interest in the home then held as an investment of the Family Trust

**1.6.3 Residential Real Property:** This trust shall be administered in accordance with 3.16.16.

**1.6.4 Termination of Family Trust:** This trust shall terminate on the date after my spouse's date of death on which there is no living child of mine under the age of 22 years.

**1.6.5 Disposition at Termination:** On termination, all of the remaining assets of the Family Trust, including accrued or undistributed income, shall be distributed in that number of equal separate shares that will make: [a] one for each of my children who is then living; and [b] one collectively for the then-living descendants of each child of mine who is not then living, to be further divided among them by representation. These shares shall be distributed to the trustee or trustees of the trust administered under Article 1.7, to be held for the benefit of the descendant of mine for whom the share was created.

## **ARTICLE 1.7 DISPOSITION OF LIFETIME TRUSTS FOR DESCENDANTS**

### **1.7.1 Income and Principal:**

- [1] The trustee, in its sole and absolute discretion, may distribute to or for the benefit of any one or more members of the group comprising the descendant of mine for whom this trust is created and any of such descendant's descendants such amount, amounts, or none, of the net income and principal as the trustee may determine to be reasonable or necessary to provide for the health, education, maintenance, or support of such member or members, and as the trustee (other than a beneficiary of this trust acting as trustee) may determine for the comfort and welfare of such member or members.
- [2] In making a distribution under 1.7.1[1] to provide for the support or maintenance of a beneficiary, the trustee may consider any distribution that satisfies this standard, including distributions to maintain a beneficiary in an accustomed standard of living.
- [3] The trustee shall consider dividing this trust into GST exempt and non-exempt portions, as provided in Article 3.10, and the trustee may consider making distributions to a grandchild or more remote descendant of mine only from those portions of the trust that are GST exempt.
- [4] Discretionary income and principal distributions may be made without equalization or proration among such descendants and shall not be taken into account in any later or final distribution to them.

**1.7.2 Directions Regarding Distributions:** All distributions to or for the benefit of any beneficiary from the trust created under this Article 1.7 also shall be subject to the provisions of Article 1.8.

**1.7.3 Termination:** This trust shall terminate on the death of the descendant of mine for whom this trust is created.

**1.7.4 Powers of Appointment:**

- [1] Testamentary Special Power of Appointment. On the death of the descendant of mine for whom this trust is created, such descendant shall have a testamentary special power of appointment exercisable by his or her will or codicil to such will to appoint the remaining trust estate among any one or more of my descendants or among any one or more qualified charities. Such testamentary special power of appointment shall be subject to 3.8.1.
- [2] Contingent Testamentary General Power of Appointment. On the death of the descendant of mine for whom this trust is created, and if at least one descendant of such descendant then is living, the descendant of mine for whom this trust is created shall have, in addition to his or her special power of appointment under 1.7.4[1], a general power of appointment exercisable by provisions contained in his or her will or codicil to such will to appoint the portion of the remaining trust estate that is non-exempt for GST tax purposes (pursuant to Article 3.10) among any one or more creditors of such descendant's estate. Such contingent testamentary general power of appointment shall be subject to 3.8.2.

**1.7.5 Alternative Disposition:** If, or to the extent that, such descendant does not exercise his or her testamentary special power of appointment or contingent testamentary general power of appointment, the remaining trust estate not effectively disposed of by such exercise shall be divided into shares for the descendants of the descendant of mine for whom this trust is created, by representation, or if none, for the descendants of the descendant of mine who was the most immediate ancestor (who has then living descendants) of such descendant, by representation, or if none, for my descendants, by representation. Any share created under this 1.7.5 for a descendant of mine shall be held in trust (or shall augment the trust previously created, if any) for such descendant under this Article 1.7. If no descendant of mine is living at the termination date, such remaining trust estate shall be disposed of under Article 1.9.

**ARTICLE 1.8 DIRECTIONS REGARDING DISCRETIONARY DISTRIBUTIONS**

**1.8.1 Preferred Beneficiaries:** My spouse is the preferred beneficiary of the trust held and administered under Article 1.6. The beneficiary for whom the trust is created is the preferred beneficiary of the trust held and administered under Article 1.7. Although the trustee may make distributions to any non-preferred beneficiary under a trust created under Article 1.6 or Article 1.7, the trustee shall resolve uncertainties concerning distributions of income and principal in favor of the preferred beneficiary to the exclusion of other present or future beneficiaries. Additionally, the

trustee shall resolve uncertainties concerning distributions of income and principal in favor of distributions for a beneficiary's health.

**1.8.2 Guiding Intentions For Distributions For Spouse:** The trustee shall consider not making any distribution of principal from the trust created under Article 1.6 to or for the benefit of my spouse as long as my spouse's support, maintenance, and health are provided for from the marital trust created for my spouse under Article 1.5 or my spouse's separate estate.

**1.8.3 Guiding Intentions For Distributions For Descendants:** In making any discretionary distributions to a beneficiary from a trust held and administered under Article 1.7, my intentions are:

- [1] The trustee shall have the discretion to consider or ignore all of the facts and circumstances that I reasonably would have considered if I were living, including the nature and size of the trust estate, tax aspects, the maturity of such descendant, the particular situation of such descendant in his or her personal life, other income and assets available to him or her, and any other factor the trustee determines to be pertinent to the exercise of its discretion.
- [2] The trust estate should be distributed to help support a constructive life of good character and responsibility on the part of each beneficiary. The trust should not be a disincentive for any beneficiary to reach his or her potential and to lead a rewarding and productive life. Each beneficiary should seek to develop his or her talents and abilities through personal effort and to become financially responsible and a credit to our family and the community.
- [3] The trustee may adopt a program of incentives to make distributions to a beneficiary based upon such beneficiary's individual abilities, productivity, achievements, and successes (for example, education, career, and contributions to the family and community), provided, however, this provision is not intended to limit the trustee's discretion.
- [4] Distributions shall not in any way enable or support substance abuse or addictive behavior. During any period in which the trustee reasonably believes that a beneficiary has a substance abuse problem, the trustee may make distributions for such beneficiary's health and, if such beneficiary is actively participating in drug dependency treatment services or programs, for education, but should strongly consider not making any other distributions other than for room and board in an in-patient treatment program for such substance abuse problem or addictive behavior. If distributions are being withheld by the trustee, such beneficiary may submit to substance abuse testing in order to determine [a] the presence or absence of any actual substances or [b] any medical signs or indicators that would suggest a recent history of substance abuse.

[5] The trustee shall communicate my intentions set forth under this Article 1.8 to each beneficiary of a trust, provided that the trustee shall determine the appropriate age at which to do so.

[6] If a trust holds any GST non-exempt assets, pursuant to Article 3.10, I direct the trustee to consider using the GST non-exempt assets before the GST exempt assets in making distributions to any beneficiary.

**1.8.4 Educational Benefits:** I want each beneficiary to have an opportunity to obtain an education commensurate with his or her abilities and interests. Accordingly, the trustee of the trust created under Article 1.7 shall consider providing for any such beneficiary, if any such beneficiary elects to pursue his or her education, all or any part of the reasonable costs of tuition, books, supplies, board, room, transportation, and other living expenses at a suitable educational institution (including primary, secondary, vocational, college, graduate, or specialized training) approved by such beneficiary and the trustee, keeping in mind my desire that, to the extent reasonably possible, each preferred beneficiary have equal opportunity to receive educational support from the trust.

**1.8.5 Restriction:** Notwithstanding any other provision of this agreement, no distribution of income or principal shall be made from any trust created under this agreement to any beneficiary that would discharge any legal obligation of such beneficiary or of the parent of such beneficiary, including any legal support obligation.

## **ARTICLE 1.9 CONTINGENT DISPOSITION**

If at any time there is no person qualified to receive final distribution of any portion of the trust estate (hereinafter respectively “the date of failure” and “the undistributed portion”), the undistributed portion shall be distributed outright, in as many equal separate shares as will make: [a] one for each member who is living on the date of failure of the group comprising my siblings; and [b] one, collectively, for the descendants who are then living of each member of such class who is not then living, to be further divided among them by representation.



**PART 2**  
**TRUSTEESHIP**

**ARTICLE 2.1 TRUSTEES**

**2.1.1 Trustees:** My spouse, Andrew, and I are the initial trustees of any trust created under this instrument. If one, but not both, of my spouse and me is unable to act, the other of us shall continue to act as sole trustee.

[1] Thereafter, if both of my spouse and me are unable to act, the following individuals shall act as successor trustee, each to act in the event of the inability to act of the person named immediately before him:

My father **EMERIC WIGAND**

My uncle **REINHOLD WIGAND**

[2] Any trustee shall be deemed to be unable to act under this instrument if the trustee fails to qualify, dies, declines to act, resigns, is removed, becomes incapacitated, disappears without explanation, cannot be located or contacted, or is otherwise unable to act.

**2.1.2 Trustee of Trusts for Descendants:** With respect to any trust created and administered under Article 1.7 of this instrument for a descendant of mine:

[1] On attaining the age of 30 years, such descendant of mine for whom the trust is created may become individual co-trustee of such trust by delivering written notice to any other then acting trustee or trustees of such trust.

[2] On attaining the age of 35 years, such descendant of mine for whom the trust is created may become sole trustee of such trust by delivering written notice to any other then acting trustee or trustees of such trust, who shall cease to act as trustee or trustees within thirty days of receiving such notice.

**2.1.3 Trustee of Subsequent Trusts:** Once a trustee has been appointed and qualified as a trustee of a separate trust for a beneficiary, and until such trustee dies, resigns, or is removed, such trustee will continue to act as a trustee of such separate trust and (unless otherwise specifically provided under this agreement) of any separate trust for any other beneficiary which is created upon a beneficiary's death.

**2.1.4 Permissive Appointment of Successor Trustee By My Spouse:** Subject to 2.1.8, my spouse, Andrew, whether or not my spouse is then acting as trustee of any trust created under this agreement, shall have the power to appoint or provide a trustee (either an individual or a corporation), or a list of trustees, specifying an order of succession, to succeed the then acting

trustee. This power may be exercised by a written, acknowledged instrument placed in the records of such trust. Any such instrument may be revoked or amended by my spouse in like manner prior to the time it becomes effective. Specifically and without limitation, my spouse may provide as to any such trust for trustees to serve jointly, a succession of trustees, the removal of trustees, the appointment of trustees by others or other means, and compensation not in excess of fair and reasonable amounts; and my spouse can in like manner transfer to another or others all or any part of this power.

**2.1.5 Permissive Appointment of Successor Trustee:** Subject to 2.1.4 and 2.1.8, any individual trustee then acting as the sole trustee (“designating trustee”) may appoint a trustee (either an individual or a corporation), or a list of trustees, to act in the event of the inability to act of all of the trustees named in the foregoing provisions of this instrument. A designating trustee may change a designation from time to time, but only while acting as trustee. Any designation by a trustee who is subsequently removed pursuant to the provisions of Article 2.3 shall become ineffective.

**2.1.6 Permissive Appointment of Co-Trustee:** At any time that an individual is serving as the sole trustee of any trust under this agreement, such individual may appoint any person or corporation to serve with such individual as a co-trustee of such trust while such individual is serving as trustee of such trust. Upon such individual’s ceasing to serve as trustee of such trust, such appointee also shall cease to serve as trustee of such trust, unless such appointee otherwise is designated as a successor trustee by the provisions of, or an action pursuant to the provisions of, this PART 2.

**2.1.7 Restriction:** In no event shall an individual serve, at the same time, as the trust protector of any trust created under this instrument and as the trustee of such trust.

**2.1.8 Co-trustee on Remarriage or Cohabitation:** If, at any time after my death, my spouse is acting as sole trustee of any trust created under this instrument and my spouse remarries, I appoint the following-name individuals, in the order named, to act with my spouse as co-trustee of any trust for which my spouse is acting as trustee: [a] my uncle **REINHOLD WIGAND**; and [b] my father **EMERIC WIGAN**. For purposes of this 2.1.8, “remarries” means: [a] becomes legally married to any individual (including by common law marriage) under the laws of any state or foreign jurisdiction; or [b] cohabits with an individual of the opposite gender (who is not a descendant of a grandparent of my spouse) in the principal place of residence of my spouse and such individual for a period of 180 days or more, whether consecutively or not, in any 365 day period. If all of the individuals named above in this 2.1.8 are unable to act as co-trustee, a co-trustee

shall be appointed to act with my spouse pursuant to Article 2.4, provided, however, my spouse shall be deemed to be unable to act under such Article for this purpose.

**2.1.9 Tax Consequences of Permissive Appointment:** In exercising any permissive appointment power under this Article 2.1, the designating trustee shall take into account gift, estate, and income tax issues in appointing a co-trustee or a successor trustee.

## **ARTICLE 2.2 RESIGNATION**

Any trustee may resign at any time by delivering written notice to me, or after my death or if I am incapacitated, to my spouse, or after the death or incapacity of my spouse, to all of the distribution beneficiaries of the trust of which it is acting as trustee and to any other trustee of such trust then acting. Any such resignation shall become effective as specified in the notice, but no later than thirty days after delivery of the notice unless the trustee and I or such beneficiaries agree otherwise.

## **ARTICLE 2.3 REMOVAL**

During my lifetime, I may remove any trustee by delivering written notice to the trustee, and, after my death or incapacity, my spouse may remove any trustee by delivering written notice to the trustee (except for a trustee appointed pursuant to 2.1.8 to act with my spouse, in which case my spouse shall not have the power to remove such trustee). After the death or incapacity of both of my spouse and me a majority of the those individuals who are alive and not incapacitated of the group named to act as trustee in paragraph 2.1.1[1] or, if all of these individuals are unable to act, a majority of the distribution beneficiaries of the trust who have attained 21 years of age, may remove any professional individual or corporation as trustee in the same manner, provided a professional individual or corporation is appointed to act as successor trustee. Any removal under this paragraph shall become effective immediately upon delivery of the notice unless the trustee and such persons who hold the removal power agree otherwise. Any trustee who or that may be removed under the preceding provisions may be removed without cause and without notice of any reason.

## **ARTICLE 2.4 TOTAL VACANCY IN TRUSTEESHIP**

If no trustee is acting at any time after my death or incapacity, pursuant to 2.1.4, my spouse, or if my spouse then is not living or does not have capacity, a majority of the those individuals who are alive and not incapacitated of the group named to act as trustee in paragraph 2.1.1[1] or, if all

of these individuals are unable to act, a majority of the distribution beneficiaries who have attained 21 years of age, shall appoint a professional individual or corporation as successor trustee of the trust of which no trustee is acting by a writing within a thirty-day period following the date the preceding trustee ceases to act. In the event no successor trustee is so appointed within such thirty-day period, then any beneficiary may request the court having jurisdiction over the trust, without notice, to name a successor trustee. By making such appointment such court shall not acquire any jurisdiction over any trust estate or this agreement, except to the extent necessary to make such appointment.

#### **ARTICLE 2.5 BENEFICIARY SERVING AS TRUSTEE AND INDEPENDENT TRUSTEE**

If an individual serving as trustee of any trust created under this agreement is a beneficiary of such trust, such individual shall be authorized to make distributions to himself or herself pursuant to the terms of such trust, but such individual shall not possess or exercise any powers with respect to, nor authorize or participate in any decision as to: [1] any discretionary distribution to or for the benefit of himself or herself or any other beneficiary except to the extent that such distributions are limited to amounts for the person's health, maintenance, support, and education; [2] any loan to or for the benefit of himself or herself or any other beneficiary without adequate interest and security; [3] any discretionary distribution to any other beneficiary, if such distribution would discharge any of such beneficiary trustee's legal obligations; [4] the termination of such trust because of its small size, if such termination would result in a distribution to himself or herself or if the distribution would discharge any of his or her legal obligations; [5] the treatment of any estimated income tax payment as a payment by such individual except to the extent that the payment is limited to an amount for such beneficiary trustee's health, maintenance, support, and education; or [6] any action to be taken regarding an insurance policy held in such trust insuring the life of such individual unless such action is expressly authorized by other provisions of this agreement. These decisions to take any action described in [1] through [6] above shall be made solely by the other then serving trustee or trustees of such trust who is or are not related or subordinate to the beneficiary trustee as defined under Code Section 672(c) ("independent trustee"); provided, however, notwithstanding the language of Code Section 672(c), such independent trustee may be a sibling of the beneficiary trustee. If no independent trustee then is serving for such trust, the currently acting beneficiary trustee may appoint an independent trustee under the applicable appointment provision under this PART 2, if any, to act as an independent

trustee of such trust. Otherwise, an independent trustee shall be appointed by the trust protector. If an independent trustee is appointed by the trust protector, the sole power and responsibility of the independent trustee shall be to make decisions reserved to the independent trustee under this Article 2.5, and the duration of the independent trustee's appointment shall be determined by the trust protector.

## PART 3

### ADMINISTRATIVE AND DEFINITIONAL PROVISIONS

#### ARTICLE 3.1 POWERS OF TRUSTEE

**3.1.1 Grant:** If the situs of administration of any trust created under this agreement is in Colorado, the trustee shall be subject to all of the duties and may exercise all of the powers in the Colorado Fiduciaries' Powers Act and any amendments after the date of execution of this agreement and after my death. If the situs of administration of any trust created under this agreement is not in Colorado, the trustee shall be subject to all of the duties and may exercise all the powers in the Colorado Fiduciaries' Powers Act, which I incorporate by reference in this agreement as the Act exists on the date of execution of this agreement. In administering any trust under this agreement, the trustee may exercise such powers and the powers set forth below.

**3.1.2 Specific Powers:** To hold, retain, manage, partition, invest, reinvest, sell, exchange, grant, convey, deliver, assign, transfer, lease, option, loan, encumber, mortgage, pledge, abandon, borrow, contract, hold in nominee form, carry out agreements, insure against usual risks, and abandon, settle, or contest claims;

**3.1.3 Invest:** To invest and reinvest in common stocks, preferred stocks, bonds, and other securities, commodities, collectibles, art, and any variety of real or personal property, foreign or domestic, whether or not productive of income or consisting of wasting assets, including notes and debentures (including convertible stocks and securities); certificates of indebtedness; commercial paper; acceptances; variable amount notes; investment trust certificates; equipment trust certificates; bills of exchange; Treasury bills; certificates of deposit; repurchase agreements; demand or time deposits; gold, silver, and other minerals; real estate investment trusts, real estate mortgage investment conduits, land trusts or other title-holding trusts; equity interests or equity participation in improved or unimproved real property, either in the form of direct ownership (with or without leaseback provisions) of such real property, or in the form of stock (closely held or publicly traded), stock purchase warrants, or other forms of interest in the entity owning or developing such real property; loans or debt obligations whether or not secured by mortgages on, or other interests in, real property; mortgages on the fee, leasehold or other interests in real property, installment sales contracts, sale and leasebacks; leases or rental agreements providing income or profits from real property; royalties, overriding or limited royalties, production payments, net profit interests or other interests in minerals, oil, gas, timber or other natural resources in or on land; interests in general and limited partnerships, limited liability companies, limited liability partnerships, syndicates or other organizations which conduct any type of business or own or invest in any interests in or relating to any property real, personal or mixed; contracts for the immediate or future delivery of financial instruments or other property of any issuer; option contracts of any type (including put and call options), whether or not traded on any exchange; interests in trusts; interests in shares of mutual funds or other investment companies (including any investment company for which the trustee or any affiliate thereof serves as an investment advisor); insurance policies and contracts; annuity contracts; evidences of indebtedness of corporations or other enterprises; foreign securities; foreign securities in the form of American depository receipts, European depository receipts, global depository receipts, international depository receipts, and other similar securities represented by an interest in securities of foreign issuers; options; futures; forward foreign currency exchange contracts; short sale contracts; reverse repurchase agreements; United States dollar denominated and non-United States dollar-denominated corporate and

government debt securities of foreign issuers, including debt securities rated below investment grade and comparable unrated securities; indexed securities; restricted securities; put and call options on foreign currency; and interests in business trusts (whether or not maintained by the trustee or any related party);

**3.1.4 Invest in Hedging and Derivative Based Investments:** To engage in short sales of securities; use hedging transactions utilizing spreads and straddles; and acquire financial instruments commonly known as derivatives;

**3.1.5 Business:** To operate a trade or business, in any form, and to liquidate or dispose of any business at such time and upon such terms as the trustee deems advisable;

**3.1.6 Closely-Held Business:** To acquire and retain any interest in any closely-held business entity or arrangement, and to dispose of any such interest;

**3.1.7 Purchase Life Insurance:** To purchase life insurance on any beneficiary in whom a trust has an insurable interest if the trustee deems such a purchase to be in the best interest of such beneficiary and the protection of his or her assets;

**3.1.8 Make Gifts:** To make gifts during my lifetime, as follows: [1] annual exclusion gifts, [2] amounts in direct payment of tuition or medical expenses, [3] gifts to charitable organizations as I have customarily made or as the trustee would deem advisable, [4] gifts to my spouse, [5] gifts within the limits of any applicable exclusion amount available to me, and [6] gifts to any one or more of my descendants for tax-saving or family purposes as the trustee determines to be consistent with my best interests, except that in no event shall the trustee make any gifts to itself. Any gifts to the trustee under this 3.1.8 shall only be made by the trust protector, with such trust protector acting alone in such trust protector's sole judgment, provided that no gift shall discharge any legal obligation of the trust protector, including any legal support obligation. Any gift under [5] or [6] shall be made only if [a] such gift is approved by the trustee and the trust protector, or [b] such gift is approved by the court having appropriate jurisdiction over this trust;

**3.1.9 Lend, Advance, and Borrow:**

[1] Lend: To make loans, secured or unsecured, subordinate or otherwise, to any person, including to any one or more beneficiaries of the trust estate or the trust, and to guarantee the loans of others to any such person;

[2] Advance to Income Beneficiary: To advance trust income to or for the use of an income beneficiary. For all such advances, the trust shall have a lien on the future benefits of such beneficiary from the trust;

[3] Advance to Protect Assets: To advance money for the protection of the trust or its assets and for all expenses, losses, and liabilities incurred in or by the collection, care, administration, or protection of the trust or its assets. For all such advances, the trustee shall have a lien on trust assets and may reimburse himself, herself, or itself with interest at a reasonable rate out of the trust;

[4] Borrow: To borrow money for any purpose from any source, including the trustee, any of its affiliates, or any other fiduciary at any time acting under this agreement, and to secure

the repayment of any and all amounts so borrowed by encumbrance, mortgage, or pledge of any property;

- [5] **Existing Indebtedness:** With respect to any indebtedness owed to the trust, secured or unsecured, to continue the same upon and after maturity, with or without renewal or extension, upon such terms as the trustee deems advisable; and
- [6] **Preservation of Security Interests:** To foreclose any security for such indebtedness, to purchase any property securing such indebtedness, and to acquire any property by conveyance from the debtor in lieu of foreclosure.

**3.1.10 Divide Trusts:** To divide any trust established by this agreement into two or more separate trusts with terms identical to those of the original trust. With respect to such separate trusts: [1] the trustee may [a] make different tax elections, [b] allocate different inclusion ratios for generation-skipping tax purposes, [c] exercise discretionary powers differently, and [d] invest the property comprising such trusts differently; [2] any beneficiary may disclaim or release interests or powers differently; and [3] any holder of a power to appoint the income or principal of the original trust may exercise such power differently;

**3.1.11 Consolidate Separate Trusts:** To hold the assets of any two or more trusts or parts of such trusts created under this agreement or under this agreement and any other instrument if the trust provisions are substantially similar, as an undivided whole, without separation as between the assets of such trusts or parts of such trusts except when required for distribution and when other provisions specifically provide to the contrary, provided that such separate trusts or parts of such trusts shall have undivided interests in such assets and provided further that no such holding shall defer the vesting of any trust estate in possession or otherwise;

**3.1.12 Merge Trusts:** To merge all or any part of the assets of a trust established by this agreement with the assets of any other trust created by me or any other person and held by the same trustee for the benefit of the same beneficiaries and upon substantially the same terms and conditions as those set forth herein, and at the trustee's discretion, either [1] administer the merged assets as a single trust hereunder, or [2] transfer the trust assets to that other trust, to be administered under the instrument governing that other trust, and thereafter terminate the trust hereunder as a separate entity;

**3.1.13 Delegate:** To delegate, by a writing, any powers, duties, and discretion to any other trustees, persons, partnerships, or corporations for a period of one year or less at a time and to renew such delegation from time to time, and to delegate as so provided without liability for any neglect, omission, misconduct, or default of any such agent, provided such agent was selected and retained with reasonable care and further provided that any powers and discretion vested exclusively in any particular trustee by specific provisions in this agreement shall not be delegated;

**3.1.14 Pay, Appoint, or Distribute to Another Trust:** Any time that a trustee of any trust created under this agreement is empowered to make a payment, distribution, or appointment of principal or income, during the term of such trust or upon its termination, such payment, distribution, or appointment may be made to any other trust, whether or not such other trust is created under this agreement, whether or not such other trust has multiple beneficiaries, and whether or not I am the settlor of such trust. However, such payment, distribution or appointment may be made to such other trust only if all of the beneficiaries of such other trust are persons who would have been



eligible to receive such payment, distribution, or appointment had it been made outright and free of trust under this trust, or as to unborn beneficiaries, if they would have been so eligible if they then were alive. The exercise of this power shall not be treated as an amendment to this agreement or to any trust created under this agreement, but as an exercise of the trustee's discretion over distributions;

**3.1.15 Hire Agents:** To employ investment counsel, accountants, depositories, custodians, brokers, consultants, agents, attorneys and other persons, directly or through any investment vehicle held in the trust, and irrespective of whether any person, firm or corporation so employed shall be a trustee hereunder or shall be a corporate affiliate of a trustee hereunder and irrespective of whether any firm or corporation so employed shall be one in which a trustee hereunder shall be a partner, stockholder, officer, director or corporate affiliate or shall have any interest. The trustee further is authorized to pay the usual compensation for such services out of principal or income as may be deemed advisable; and such compensation may be paid without diminution of or charging the same against the commissions or compensation of any trustee hereunder; and any trustee who shall be a partner, stockholder, officer, director or corporate affiliate in any such firm or corporation nevertheless shall be entitled as partner, stockholder, officer, director or corporate affiliate to receive such trustee's share of the compensation paid to such firm or corporation;

**3.1.16 Investment Manager:** To hire and regularly review the performance of (and fire) investment advisors and investment managers licensed as an investment manager or advisor who will direct and oversee the management of the securities and other trust assets, with the trustee relieved from any liability for any investments directed or recommended by any such investment advisor or manager, provided that such advisor or manager was selected and retained with reasonable care, and to pay reasonable fees for the services of investment advisors and investment managers;

**3.1.17 Oil, Gas, and Minerals:** To drill, test, explore, maintain, develop and otherwise exploit, either alone or jointly with others, any and all property in which the trust may have any rights or interests of whatsoever kind or nature with respect to oil, gas, minerals, timber, or other natural resources, whether originally a part of the trust or subsequently acquired, and to pay the costs and expense thereof, together with all delay rentals, bonuses, royalties, overriding royalties, drilling and operating expenses, taxes, assessments, and other charges and burdens in connection therewith; to enter into operation, farmout, pooling, or unitization agreements in connection with any or all of such rights or interests; to extract, remove, process, convert, retain, store, sell, or exchange such rights and interests and the production therefrom, in such manner, to such extent, on such terms and for such consideration as the trustee may deem advisable; to execute and deliver oil, gas, and other mineral leases containing such provisions as the trustee deems advisable; to execute mineral and royalty conveyances and assignments of leases; to purchase leases, royalties, and any type of mineral interest; to execute and deliver drilling contracts and other contracts, options, and other instruments necessary or desirable in engaging actively in the oil and gas, or other mining business, all of the foregoing to be done on such terms as the trustee deems appropriate;

**3.1.18 Deal with Tangible Personal Property:** To select, store, safeguard, and insure any tangible personal property distributable to or for the benefit of any minor, disabled person, or person not conveniently available and pay the charges incurred for such purposes out of any funds it is authorized to distribute for such beneficiary under this agreement, and to pay any charges incurred for packing and shipping any item of tangible personal property to a beneficiary entitled to it out of the residuary trust estate as an expense of administering the trust;

**3.1.19 Accounting:** To determine all matters of accounting in accordance with generally accepted principles of accounting as established by controlling law or customary practices, provided that any such determination or allocation shall balance fairly the interests of all beneficiaries, and provided further that in exercising any election or option regarding taxes, the trustee is not required to adjust the resulting value of the interest of any beneficiary or to make any adjustment between principal and income; I am mindful that such determinations or allocations may affect the income tax liability associated with one or more trusts created under this agreement and the beneficiaries thereof, including (without limitation) allocations involving certain items of investment income. For purposes of limiting such income tax liability and notwithstanding applicable state law, the trustee may: [1] allocate capital gains to income; [2] include capital gains allocated to principal in a trust's distributable net income if done so consistently on such trust's books, records, and tax returns within the meaning of Code Section 643(a)(3) and the regulations promulgated thereunder; and, [3] utilize capital gains allocated to principal in determining the amount of any discretionary distribution; provided that no power in this 3.1.19 shall be construed to enable the trustee to make any distribution that the trustee could not otherwise make under this agreement in the absence of this 3.1.19 or make any allocation that would result in a taxable gift;

**3.1.20 Establish Reserves:** To establish reserves for taxes, assessments, insurance premiums, repairs, improvements, depreciation, depletion, obsolescence, and general maintenance of buildings, and other property, and for the equalization of payments to or for income beneficiaries, out of the rents, profits, or other income received;

**3.1.21 Release of Powers:** To release by a writing any power expressly or impliedly conferred in this agreement; and

**3.1.22 Scope of Powers:** To exercise all powers expressly or impliedly conferred in this agreement without seeking the aid, authorization, order, or approval of any court. All powers shall:

- [1] Be exercisable by the trustee in any jurisdiction;
- [2] Be exercisable in respect of all assets of the trust estates held by it or under its control;
- [3] Remain exercisable as fiduciary powers of administration only, and without affecting the vesting of any interests, until final distribution of all of the trust estate; and
- [4] Be exercisable without any duty on any person dealing with the trustee to inquire into its authority.

In construing the scope of a power, the trustee shall have the power as most broadly construed, whether in the Colorado Fiduciaries' Powers Act or as set forth above. I authorize and encourage the trustee to implement investment strategies that are employed by the most respected and recognized investors from time to time. I authorize and encourage the trustee to modify its investing approach from time to time as respected investing strategies evolve.

## **ARTICLE 3.2 ADMINISTRATIVE PROVISIONS RELATING TO THE TRUSTEE**

**3.2.1 Trustee's Basic Duties:** During the term of the trust, the trustee shall hold, manage, invest, and reinvest the trust estate, collect the income and profits from it, pay the necessary expenses of trust administration, and distribute the net income and principal as provided in this agreement.

**3.2.2 Compensation:** The trustee shall be entitled to reasonable compensation for its services. With respect to any corporate trustee, such compensation shall be comparable to charges for similar services made from time to time by corporate trustees in the geographic area in which the trust has its principal situs of administration. With respect to any individual trustee, such compensation shall be commensurate with services actually performed. If the trustee is a person with a reasonable established hourly billing rate for professional services rendered, such hourly billing rate shall be deemed to be just and reasonable in determining the compensation due to the trustee, regardless of the services actually performed. The trustee also shall be entitled to reimbursement for expenses necessarily incurred in the administration of the trust. The trustee may waive the right to compensation.

**3.2.3 Bond:** No bond or surety on bond shall be required from any trustee.

**3.2.4 Waiver of Accounting:** No trustee need examine the accounts, records, or acts of any previous trustee, the personal representative of my probate estate, or any agent serving under a power of attorney of which I am or was the principal.

**3.2.5 No Active Court Supervision:** Unless in conflict with applicable local law, the trust shall be administered free from the active supervision of any court and without registration with any court.

**3.2.6 Acts of Other Fiduciaries:** No trustee shall be responsible for the acts or omissions of the personal representative of my probate estate, another trustee, or any agent serving under a power of attorney of which I am or was the principal, or for allowing another trustee to have custody or control of any of the trust assets.

**3.2.7 Actions by Two or More Co-Trustees:** At any time when my spouse and I are acting together as co-trustees, my spouse and I may act independently with respect to the trust, and action taken by either of us shall be binding. If two or more trustees other than my spouse and I are acting, only action taken by a majority of the trustees or, if only two trustees are acting, both of the trustees, shall be binding. A dissenting trustee shall bear no liability or accountability for any action or transaction entered into as a result of the enforcement of the majority trustees' action. Notwithstanding the foregoing, if any powers and discretion are vested exclusively in any particular trustee by specific provisions in this instrument, action taken by such trustee pursuant to such powers and discretion shall be binding. Third parties dealing with the trust may rely upon any such action of the trustee or trustees, as the case may be.

### **ARTICLE 3.3 STANDARD OF CARE**

**3.3.1 General Standard of Care:** The trustee, in the exercise of any of its powers granted under this agreement and under Colorado law, has a duty to act reasonably and equitably with due regard for its obligations and responsibilities toward the interests of beneficiaries and creditors, the trust involved, and the purposes of the trust and with due regard for the manner in which persons of prudence, discretion, and intelligence would act in the management of the property of another. If the trustee has special skills or is named a trustee on the basis of representations of special skills or expertise, the trustee is under a duty to use those skills or such expertise. The provisions of this paragraph shall not apply to me if I am acting as trustee.

**3.3.2 Investment and Management of Assets:** In making investments and managing assets under this agreement or under any trust created under this agreement, the trustee shall follow the standard of care set forth in the Colorado Uniform Prudent Investor Act. The trustee shall invest and manage assets as a prudent investor would, considering the purposes, terms, distribution requirements, and other circumstances of and relating to the trust. The trustee's investment and management decisions with respect to individual assets shall be evaluated not in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

**3.3.3 Self-Dealing Permitted:** The trustee of any trust under this agreement may sell or lend to, purchase or borrow from, or otherwise deal with itself, both individually and as fiduciary, and with partnerships, limited liability companies, corporations, and other business or financial entities or organizations in which the trustee has or may have an interest, expressly including the purchase of life insurance from an affiliate of the trustee, the right of the trustee to purchase any assets from my probate estate or any trust estate at fair market value, and to loan funds or assets belonging to any trust created under this agreement to my probate estate or to any trust created under my will or under any trust agreement made by me, and the trustee shall have the power to loan such funds or assets to any partnership, corporation, or business organization in which I may have an interest, all such loans to be at fair rates of interest and with adequate security, provided that all such transactions are made in good faith and in accordance with this Article.

**3.3.4 Duty To Diversify:** In general, the trustee shall have a duty to diversify trust investments, provided, however, that I recognize that there are special circumstances in which the lack of diversification may better serve the purposes of the trust. The trustee may consider the following to be special circumstances:

- [1] Residential or recreational real property, including real property used as a vacation home;
- [2] Any asset with a low basis for income tax purposes the sale of which would generate an unreasonable tax burden, including capital gains tax;
- [3] Any interest in any closely-held business entity or arrangement in which my family owned, at the time of my death, more than 20% of the voting control or more than 20% of the beneficial or profits interests. For purposes of this 3.3.4, my family shall include any descendant of a grandparent of mine and any spouse of a descendant of a grandparent of mine, or any trust held for the benefit of any such family member; and
- [4] Any other property approved by written releases, delivered to the trustee, by each distribution beneficiary and by each descendant of mine who is a beneficiary of the trust and is living at the time such approval is required.

**3.3.5 Exculpation and Indemnification of Individual Trustees:** Whether or not presently serving as trustee under this agreement, any individual trustee of any trust under this agreement: [1] shall not be held liable or accountable for any adverse consequences of any acts or omissions made with respect to the administration, investment, management, or distribution of such trust during any period in which such individual served as trustee under this agreement, and [2] shall be fully indemnified for any losses, costs, damages, expenses and charges, including reasonable attorneys' fees and costs, including those arising from all litigation, for acts or omissions while

acting as trustee including actions with respect to the administration, investment, management, or distribution of this trust or any trust created under this agreement.

#### **ARTICLE 3.4 DISPOSITION DURING MY LIFETIME**

**3.4.1 Income and Principal:** Until the earlier of my death or incapacity, the trustee shall dispose of the net income and principal as I direct from time to time by a writing delivered to the trustee. If I become incapacitated, during my incapacity, the trustee shall distribute such amount or amounts of the net income and principal as the trustee may determine to be necessary or advisable to provide for the support, maintenance, education and health of my spouse and me. The trustee shall follow as its standard in making such income and principal distributions to my spouse or me the standard of living each of us enjoyed immediately prior to my incapacity. If I become incapacitated, during my incapacity, the trustee may make gifts as provided in 3.1.8 unless the trustee believes that such gifts will impair the financial security of my spouse or me.

**3.4.2 Accounts:** While I am living, any cash funds that become payable to me or to the trustee may be deposited into trust accounts. Withdrawals against trust accounts may be made by me individually or as trustee or, if in accordance with this agreement, by any trustee. Any such withdrawal by me shall constitute written instruction concerning the disposition of the net income or principal. The trustee shall have no liability for any use that I may make of such accounts.

**3.4.3 Personal and Real Property:** I reserve the right to the free use and possession of any tangible personal property or residential real property that I may transfer to the trustee, and, after my death or incapacity, my spouse shall have the right to the free use and possession of any such tangible personal property or residential real property. I further reserve the right to sell or otherwise dispose of any such tangible personal property or such residential real property without notice to the trustee. While I have capacity, or after my death or incapacity if my spouse is exercising my spouse's rights under this paragraph, my spouse or I shall be responsible for any expense or cost related to any such property. Until the earlier of my death or incapacity, or the death or incapacity of my spouse, or unless my spouse or I otherwise direct in a writing delivered to the trustee, the trustee's only responsibility with respect to any such property shall be to hold legal title. At such time, the trustee shall take possession and assume control of any such tangible personal property that the trustee finds by the exercise of reasonable diligence and of any such residential real property.

#### **ARTICLE 3.5 AUTHORIZED ACTIONS AFTER MY DEATH**

**3.5.1 Grant of Authority:** In addition to those authorities, elections, or requirements regarding taxes conferred or imposed by law, and without limitation, the trustee may, but is not required to:

- [1] Compromise Issues: Determine whether or not and to what extent to compromise issues in income tax, death tax, or gift tax proceedings;
- [2] Optional Deductions and Valuations: Exercise those statutory elections to claim administration, medical, or other expenses as death tax or income tax deductions and use those available optional valuation dates for death tax purposes that appear to cause the lowest combined federal and state death and income taxes, including potential capital gains tax that might be incurred during the administration of my estate;

- [3] **Installment Payments:** Elect any available installment method of paying death taxes, and determine whether to claim the interest as a death tax or income tax deduction;
- [4] **Joint Returns:** Join in the execution of joint income tax returns, agree on the allocation of the burden of payment or interest on payment or the benefit of any refund or interest on any refund or credit arising from a joint income tax return or any joint declaration of any estimated income tax, and consent to gift splitting;
- [5] **Basis and Tax Considerations:** Ascertain my basis in assets whenever required, make required or discretionary distributions with appreciated assets, seek protective consents from beneficiaries, and ascertain my past community property, gift tax, generation-skipping transfer tax, and joint interest history when required;
- [6] **Portability Election:** Elect, under Section 2010(c)(5)(A) of the Code, to allow all or any portion of my deceased spousal unused exclusion amount, as defined in Section 2010(c)(4) of the Code, to be taken into account by a surviving spouse of mine;
- [7] **Value Qualified-Use Real Property:** Elect to apply and to file agreements regarding valuation of qualified real property at its use value for farming or in another trade or business;
- [8] **Corporations:** Consent to taxation of any corporation under Subchapter S, and cooperate in determining the advisability of the redemption of shares of stock under Section 303 of the Code; and
- [9] **Retirement Benefits:** Cooperate, to the extent feasible, in electing the method of payment of any of my qualified retirement benefits in a manner that accounts for variable tax burdens under circumstances that appear predictable and pertinent at my death.

In exercising any election or option regarding taxes, the trustee is not required to adjust the resulting value of the interest of any beneficiary or to make any adjustment between principal and income.

**3.5.2 Debts, Expenses, and Taxes:** To the extent that my personal representative provides direction to the trustee regarding the payment of my debts, expenses, and death taxes, the trustee shall follow such directions. If no personal representative is appointed for my probate estate or if my personal representative fails to provide such direction, after my death the trustee shall pay as an expense of administration, my debts, expenses, and death taxes (as defined in 3.5.3) in the following manner:

- [1] **Source of Payment:**
  - [a] The trustee shall pay from the trust estate, without apportionment to or contribution from assets passing outside my probate estate or the trust estate, all debts that are due and enforceable against the trust estate, the expenses of my last illness and funeral, the expenses of administering my probate estate and the trust estate, income tax obligations (including tax, interest, and penalties) I owe at my death or that arise from the income tax obligations I owe at my death, and all death taxes imposed and made payable under the laws of the United States or of any state or country by reason of my death (“obligations”). For the purpose of the previous

sentence, death taxes shall exclude death taxes specifically apportioned as provided in 3.5.2[2].

- [b] To the extent possible, the trustee shall follow any directions in PART 1 regarding the payment, allocation, or apportionment of the obligations.
  - [c] Subject to 3.5.2[1][b] and to the extent possible, the obligations of my probate estate and the trust estate shall be paid so that no obligations of my probate estate or the trust estate are paid from, allocated to, or apportioned against property that is disposed of by the Articles of my will preceding Article 1.3 or the Articles of this agreement preceding Article 1.4, or that qualifies for a deduction, credit, or exemption from death tax because it passes to or for the benefit of my spouse (if I am married at my death) or to any charitable organization.
  - [d] Subject to 3.5.2[1][b] and to the extent that it is not possible to satisfy remaining obligations in the manner directed in 3.5.2[1][c], such remaining obligations of my probate estate or the trust estate shall be fulfilled from property included in my gross estate (with, to the extent possible, no obligations paid from property that benefits my spouse).
  - [e] Subject to 3.5.2[1][b], the satisfaction of remaining obligations within each classification set forth in 3.5.2[1][d] shall be done in a manner that causes a proportionate reduction in the interests of each beneficiary who or that would receive property under such classification.
- [2] Assets to Which Tax Is Specifically Apportioned: Any death tax allocable to assets under the following clauses shall be apportioned to such assets: [a] any tax imposed with respect to property included in my gross estate for federal estate tax purposes by reason of Section 2035 (relating to adjustments to be made within three years of my death); Section 2036 (relating to retained life estates); Section 2037 (relating to transfers taking effect at death); except with respect to assets held in this trust, Section 2038 (relating to revocable transfers); Section 2040 (relating to joint tenancy property); Section 2041 (relating to powers of appointment); Section 2042 (relating to proceeds of life insurance); or Section 2044 (relating to certain marital deduction property) of the Code; [b] any generation-skipping transfer tax imposed under Chapter 13 of the Code, except to the extent attributable to a direct skip of which I am the transferor and that is not caused by a qualified disclaimer by a non-skip person; [c] any recapture tax with respect to specially valued property imposed by reason of Section 2032A(c) of the Code; [d] any additional estate tax with respect to Section 2057(i)(3)(F) of the Code on disposition of family owned business interests; or [e] any similar tax imposed under a comparable provision of state, local, or foreign law.
- [3] Collection of Tax on Specifically Apportioned Assets: The trustee may pay from the trust estate the tax that is apportioned to specific assets under 3.5.2[2] and seek prompt reimbursement from such holders or recipients of such assets. To the extent possible, however, I direct the trustee to seek timely payment by, or sufficient advance of funds from, the holders or recipients of the specific assets with respect to which the death tax is imposed. I do not waive any right of recovery granted by Sections 2206, 2207, 2207A, or 2207B of the Code. Except to the extent inconsistent with the other provisions of this

Article, I waive the right to reimbursement provided by Section 2603 of the Code. Unless the legal instrument that transfers an interest specifies otherwise, any death tax apportioned to specific assets shall be recovered from the holders or recipients of such assets at the average tax rate imposed (after deductions, credits, and exemptions) on my taxable estate.

**3.5.3 Death Taxes:** Death taxes means all estate, inheritance, succession, or transfer taxes imposed upon property, whether passing under my will, this agreement, or otherwise, including any generation-skipping transfer tax imposed under Chapter 13 of the Code to the extent attributable to a direct skip of which I am the transferor, notwithstanding the provisions of Sections 2603(a)(3) and 2603(b) of the Code, and any income or similar taxes on appreciation (including interest, penalties, and any excise or supplemental taxes) imposed by the laws of any domestic or foreign taxing authority at the time of, or by reason of, my death.

**3.5.4 Intent:** I intend that the directions in this Article be satisfied in an efficient manner that minimizes tax to the greatest extent possible. All questions regarding the application of the directions in this Article shall be resolved accordingly.

### **ARTICLE 3.6 DISTRIBUTIONS TO PERSONS UNDER 35 AND DISABLED PERSONS**

**3.6.1 Intent:** Under the provisions of this agreement and the powers of appointment granted under it, at times property may be distributable outright to a person (including a beneficiary under this agreement or a donee under a power of appointment). I understand that, between the time of execution of this agreement or the time of exercise of a power of appointment granted by it and the time of such a distribution, circumstances may change such that, if I then were selecting the form of distribution at the time of such distribution, I would not make an outright distribution to such person. The results of such changed circumstances may include, but are not limited to, a person who is unable to administer outright distributions because he or she is young and inexperienced, is incapacitated, suffers from a physical or mental disability, or suffers from an addiction to, or a dependency on, drugs or alcohol. In such an instance, it is my intent to grant the trustee the power to hold or distribute property through an arrangement intended to protect the interests of the beneficiary and minimize court involvement and associated costs.

**3.6.2 Grant of Permissive Authority:** If any property ever vests outright under the provisions of this agreement or by exercise of a special power of appointment granted under this agreement in any person under the age of 35 or any person who in the opinion of the trustee is under any disability that renders such person unable to administer distributions properly, the trustee, in its discretion, in any jurisdiction, without giving or requiring bond, without intervention of a guardian, conservator, or other representative, and without supervision of any court, may hold or distribute such property (subsequently referred to in this Article as the “protected property”) in accordance with 3.6.3 and 3.6.4, neither of which shall operate to impair such person’s exclusive and indefeasible vested ownership in and right to benefit from such property.

**3.6.3 In Trust:** The trustee may hold any protected property in a separate trust for such person designated by the name of the person and the word “Trust,” exercising as trustee of such trust all the administrative powers conferred by this agreement. It also shall have the authority to appoint by a writing an individual or corporate successor trustee with identical powers. At any time that neither the trustee nor a successor who or that it has appointed is serving as trustee, the trustee shall be a corporation appointed by the person for whom the trust is created (or by the parent or guardian



of such person if such person has not attained the age at which a guardian no longer would be required under the laws of the state in which such person resides). The trustee may accumulate or distribute only to or for such person or such person's exclusive benefit in accordance with 3.6.4 such amount or amounts of income or principal of the trust as it determines from time to time during the term of the trust. The trust shall terminate when [1] the person [a] attains the age of 35 years (if not disabled), [b] dies, or [c] overcomes the disability (if the person has attained the age of 35 years), or [2] the trust assets are exhausted by discretionary distribution or otherwise, whichever first shall occur. At such termination, such trustee shall distribute the remaining trust estate to the person or to the person's estate if the trust terminates at the person's death.

**3.6.4 Distribution:** The trustee may distribute any protected property to or for the benefit of such person [1] directly to the person, [2] on behalf of the person for the person's exclusive benefit, [3] to any account in a bank or savings institution either in the name of the person or in a form reserving title, management, and custody of such account to a suitable individual for the exclusive use and benefit of the person, [4] in any form of annuity that shall afford to the person all rights to such annuity including the right to claim its commuted value, [5] in all ways provided by laws dealing with gifts or distributions to or for minors or persons under disability provided such laws direct that such minors or persons have the exclusive benefit of such gifts or distributions, and [6] to any suitable individual with whom the person resides or who has the care or control of the person for the exclusive use of the person, without obligation to see to the further application of such distribution, and the receipt for distributions by any such individuals or custodians shall fully discharge the trustee.

### **ARTICLE 3.7 CREATION OF MARITAL SHARE AND FAMILY SHARE**

**3.7.1 Marital and Family Shares:** The entire residuary trust estate shall constitute the Marital Share. My spouse, my spouse's fiduciary, or my spouse's agent serving under a power of attorney authorizing disclaimers may disclaim, in whole or in part, by any method recognized by law, my spouse's interest in and power over any part or all of the Marital Share, in which event the disclaimed property shall constitute the Family Share, to be disposed of pursuant to 1.4.1. Except as otherwise specifically provided in the instrument of disclaimer, the disclaimer shall not be considered a disclaimer of any interest of my spouse in the Family Share. In the event of such a disclaimer, my spouse shall not have any inter vivos or testamentary right or power (whether as trustee or otherwise) to appoint or otherwise direct the beneficial enjoyment of the portion of the Family Trust consisting of disclaimed property unless such right or power is limited by an ascertainable standard.

**3.7.2 Election:** I direct the trustee to elect that all of the property passing to the Marital Share be treated as qualified terminable interest property for purposes of qualifying for the unlimited federal estate tax marital deduction. However, if the trustee determines that either the timing of my death and the computation of the death taxes in my estate, or other unforeseen and unusual circumstances, render the election inappropriate, such election as to all or any part of the property passing to the Marital Share need not be made. The trustee shall bear no liability or accountability for any election, or failure to elect, in whole or in part, made in accordance with this provision.

**3.7.3 Determination of Marital Share and Family Share:** In determining the Marital Share and the Family Share, the values and facts finally determined for federal estate tax purposes shall control. The Marital Share and the Family Share shall be entitled to pro rata shares of income from and after the deceased spouse's death. The trustee may fund the Marital Share and the Family

Share in kind, in money, or partially in each, with no requirement that any particular asset be allocated to either share or that any asset be allocated pro rata.

**3.7.4 Special Provisions Applying to Marital Share:** I intend that the Marital Share shall qualify for the unlimited federal estate tax marital deduction and that all questions shall be resolved accordingly. I therefore direct that:

- [1] The Marital Share shall be composed only of interests in property that qualify for the federal estate tax marital deduction;
- [2] All powers and discretions of the trustee (including all investment decisions, administrative powers, tax elections, and allocation of assets) shall be exercisable only in a manner consistent with qualification for the federal estate tax marital deduction;
- [3] If obtaining a federal estate tax marital deduction shall require the trustee to sign an agreement, it shall enter into such agreement without liability;
- [4] If the trustee is in doubt as to whether, in accordance with generally accepted principles of trust accounting, any disbursement should be charged, or receipt credited, to income or principal, the trustee shall charge such disbursement to principal and credit such receipt to income;
- [5] The trustee shall manage the Marital Trust so that there shall be produced for my spouse during my spouse's lifetime an income consistent with the value of the trust property and its preservation;
- [6] My spouse shall have the right to require that any unproductive property in the Marital Trust be made productive or be converted to productive property within a reasonable time;
- [7] The mandatory distributions of income from the Marital Trust to my spouse shall be made in convenient installments, at least annually;
- [8] Any net income accumulated or accrued but undistributed from the Marital Trust at the surviving spouse's death shall be paid to the surviving spouse's estate; and
- [9] Unless the my spouse directs otherwise by specific reference to the Marital Trust, the trustee shall pay from that portion of the Marital Trust that is qualified terminable interest property the entire increment in death taxes (including penalties and interest) imposed on my spouse's estate to the extent that the total of such death taxes is greater than would have been imposed if that portion of the Marital Trust were not included in the my spouse's estate for death tax purposes. The trustee shall pay such taxes, if any, from that portion of the Marital Trust which is non-exempt for generation-skipping transfer tax purposes pursuant to Article 3.8. To the extent that the non-exempt portion of the Marital Trust is insufficient to pay such taxes, the trustee may pay the remaining death taxes from that portion of the Marital Trust which is exempt for generation-skipping transfer tax purposes.

## **ARTICLE 3.8 POWERS OF APPOINTMENT**

**3.8.1 Testamentary Special Powers of Appointment:** The holder of any testamentary special power of appointment granted by this agreement, acting alone, may exercise such power by a non-

holographic will or codicil to such will that [1] specifically refers to such power, [2] is executed on or after the date of execution of this agreement, and [3] is admitted to formal or informal probate. The holder of such power, in addition to and not in substitution for any other provisions of applicable law relating to powers of appointment, may: appoint outright or in trust; select the trustee and if an appointment is made in trust, grant such administrative powers to the trustee as such holder deems appropriate; appoint life interests to one or more objects of such special power with remainders to others; appoint to a remote appointee, even though an ancestor of such person who is a permissible appointee is living; impose lawful conditions or restrictions upon any appointment, provided that no one who is not an object of the power is benefited; appoint different types of interests to different appointees; create new powers of appointment in any appointee; appoint to one or more objects to the exclusion of other objects; impose lawful spendthrift restrictions; and generally appoint to the permissible class of appointees in any manner such holder selects, provided always that no appointment shall benefit, directly or indirectly, the holder of such power, such holder's estate or creditors, or the creditors of such holder's estate; and further provided that in no event shall such power of appointment extend to any policies of life insurance on the life of the holder of such power or to any proceeds of any such policies. The holder of any special power of appointment may not exercise such power in a manner violating any restriction under 3.15.3, and any attempt to do so shall be entirely ineffectual.

**3.8.2 Contingent Testamentary General Powers of Appointment:** The holder of any contingent testamentary general power of appointment granted by this agreement, acting alone, may exercise such power by a non-holographic will or codicil to such will that [1] specifically refers to such power, [2] is executed on or after the date of execution of this agreement, and [3] is admitted to formal or informal probate. Any such exercise of a contingent testamentary general power of appointment shall be effective only if and to the extent that, pursuant to the terms of such power, it is applicable at the time of the power holder's death. In the event that any general power of appointment is not effectively exercised, any property with respect to which such power of appointment is applicable shall bear the entire increment in the burden of death taxes and other governmental charges to the extent that the total of such taxes and charges is greater than would have been imposed if such property were not subject to such power of appointment, and the trustee shall pay such taxes from such trust estate.

## **ARTICLE 3.9 LIFE INSURANCE ON MY LIFE**

**3.9.1 Retained Rights:** All incidents of ownership (including the right to change the recipients, surrender or cancel, borrow upon, receive dividends, and to make any election, or exercise any option) in any life insurance policy on my life payable to the trustee are retained by me and shall be exercisable by me without notice to or consent by the trustee or any beneficiary under this agreement.

**3.9.2 Premiums and Safekeeping:** During my life, [1] the responsibility to pay premiums on policies payable to the trustee shall rest solely with me, and [2] the trustee shall be under no obligation with respect to such policies except to hold the policies delivered to it and to deliver such policies upon my written request.

**3.9.3 Collection of Proceeds:** Upon my death, the trustee of the trust for administration created after my death shall collect or, in its discretion, may prosecute to collect the net proceeds of policies on my life that then are payable to the trustee, including any double indemnity benefits payable to the trustee. The trustee may leave any such proceeds with the issuing insurance company under

any settlement option available under the terms of any policy or the practice of such company. Receipt of and release from the trustee for such proceeds shall be a full discharge of the liability of such insurance company with respect to such proceeds, and no insurance company need inquire into or take notice of this agreement or see to the application of such payments.

### **ARTICLE 3.10 SPECIAL INSTRUCTIONS TO FIDUCIARIES RELATING TO GENERATION-SKIPPING TRANSFERS AND PROTECTION OF FIDUCIARIES**

**3.10.1 General:** I am mindful of the burdens of trusteeship and the changing laws affecting trusts. At trust expense, the trustee of any trust created under this agreement should employ experts to advise it on elections and options available with respect to potential generation-skipping transfers and other tax implications that may arise as a result of administration, terminations, or distributions under the trust.

**3.10.2 Definitions:** The term GST tax means the federal generation-skipping transfer tax as imposed by the Code. The term GST exemption means the exemption from the GST tax that may be allocated to any property with respect to which I am the transferor or deemed transferor.

**3.10.3 Allocation of GST Exemption:** It is my intention to use all of the GST exemption that remains available to me as a transferor under Section 2631(a) of the Code, or any successor provision or amendment of the Code. I give my personal representative (or, if no personal representative is appointed or if my personal representative does not exercise the power, the trustee) the power, exercisable without court approval, [1] to allocate my GST exemption to any property that is subject to this agreement with respect to which I am the transferor for purposes of the GST tax and [2] to exclude any such property from such allocation. My personal representative (or the trustee) may exercise such power with or without the objective of benefiting my descendants in an equal or proportionate manner and without a requirement to adjust the resulting value of any property or interest received by any beneficiary. The trustee shall provide any information or documentation requested by my personal representative in relation to the allocation or non-allocation of my GST exemption and, as requested by my personal representative, shall consult with my personal representative regarding such allocation or non-allocation.

**3.10.4 Division of Trusts:** At any time, including prior to or upon the creation and funding of a trust created under this agreement, the trustee shall have the power in its sole discretion to divide any trust created under this agreement that otherwise would have an inclusion ratio, as defined in Section 2642(a)(1) of the Code, of neither one nor zero into two separate trusts, one to have an inclusion ratio of one (non-exempt portion) and the other to have an inclusion ratio of zero (exempt portion). Any such division shall be done on a fractional basis. As provided in Treas. Reg. §§ 1.1001-1(h), 26.2642-6(d)(4) and 26.2654-1(b)(1)(C)(2), the resulting trusts may be funded on either a pro-rata or non-pro-rata basis.

**3.10.5 Taxes:** If the trustee of any trust created under this agreement is required to pay any tax imposed by Chapter 13 of the Code as a result of any taxable distribution or taxable termination attributable to such trust, I direct such trustee to pay such tax out of the funds available in such trust. Any tax so paid by such trustee shall be charged against any shares or portions into which, under the foregoing provisions of this agreement, such trust is required to be divided at the time the liability for paying such tax arises, in the same proportions that such shares or portions give rise to such tax (taking into account any exclusions, deductions, and credits that are available for

the purpose of calculating the amount of such tax and that are attributable to such shares or portions).

**3.10.6 Authority of Trust Protector To Invade or Terminate:** After my death, to serve tax planning purposes, the trust protector of any trust created under this agreement having an inclusion ratio greater than zero shall have authority to invade the principal of such trust in order to make distributions of all or any amount or portion of the principal of such trust to any one or more members of the group composed of the persons to whom income or principal then may be paid and the remaindermen. This power to invade shall include situations in which a transfer tax may be minimized or deferred [1] by exposing trust principal to gift or estate tax rather than the GST tax, or [2] by making distributions to any skip or non-skip persons who are beneficiaries of a trust to which Chapter 13 of the Code (relating to the GST tax) does not apply. Notwithstanding the prior provisions of this 3.10.6, the trust protector of a marital trust may invade the income or principal of such marital trust only if such invasion does not adversely affect qualification of such trust for the federal estate tax marital deduction. The trust protector shall set forth the proposed invasion in a writing that complies with the notice procedure described in 3.10.7.

**3.10.7 Power of Trust Protector To Amend Provisions:** I recognize that Chapter 13 of the Code and related Treasury Regulations (relating to the GST tax) are complex and subject to change. To accomplish my intent to minimize estate tax, GST tax, and other taxes (considered collectively), I grant to the trust protector of any trust created under this agreement the power to amend the terms of such trust [1] to comply with the requirements of any GST exemption, or [2] to modify the terms of such trust or accelerate distributions to any skip or non-skip persons who are beneficiaries of such trust at a time that Chapter 13 of the Code (relating to the GST tax) does not apply to such trust. The trust protector shall set forth the proposed amendment in a writing. The trust protector shall give notice of the proposed amendment to any trustee of such trust then acting, the distribution beneficiaries, and the remaindermen (but only to a remainderman who is a descendant of mine or a spouse of such a descendant) of the trust to which the proposed amendment applies. If no objection is filed with the court having jurisdiction over the trust by any trustee of such trust, any distribution beneficiaries of such trust, or any such remaindermen within thirty days of such notice, the amendment shall be effective as of the date set forth in the amendment. If an objection is filed, the amendment shall be effective only if and to the extent determined by the court.

**3.10.8 Authority of Trust Protector Regarding Powers of Appointment:** In addition to its other powers and authorities under this Article, the trust protector of any trust created under this agreement shall have the authority to modify the provisions of such trust to grant to any beneficiary of such trust a testamentary general power of appointment in favor of the creditors of such beneficiary's estate. Any such modification shall become effective upon the trust protector's giving written notice of such modification to the trustee of such trust and to the holder of the power of appointment that is affected or granted by such modification.

**3.10.9 Exculpation:** As an inducement to my personal representative, any trustee, or any trust protector to exercise the powers granted in this Article, I hereby direct that any decisions of my personal representative, any trustee, or any trust protector under this Article shall be binding on all of the beneficiaries of any trust created under this agreement and on their successors and assigns, and that my personal representative, any trustee, and any trust protector shall not incur any liability by reason of any adverse consequence of such decisions to any such person, unless my personal representative, any such trustee, or any such trust protector acted, or failed to act, in bad faith or in a manner that was grossly negligent or willfully malfeasant.

## **ARTICLE 3.11 SEVERABILITY; GOVERNING LAW AND CHANGE OF SITUS**

**3.11.1 Severability:** If any provision of this agreement is unenforceable or invalid for any reason, the remainder of this trust agreement shall continue in effect.

### **3.11.2 Governing Law; Change of Situs:**

- [1] For purposes of this 3.11.2, the administrative situs of a trust is the place of such trust's administration.
- [2] The validity of any provision of this agreement shall be determined by the laws of the State of Colorado. The laws of the state in which a trust created under this agreement has its administrative situs shall govern the administration of such trust and the construction of any of its terms, provided that the trust protector shall have the power to designate the law of any other state, in whole or in part, to be the governing law of such trust and to declare that [a] the laws of such state shall thereafter govern the administration of such trust and the construction of any or all of its terms, and that the administrative situs shall be such state, or [b] to the extent permitted by law, the laws of such state shall thereafter govern the administration of this agreement and the construction of any or all of its terms, but that the administrative situs of such trust shall be a different state designated by the trust protector.
- [3] The trust protector shall set forth the designation changing the governing law of the trust in a written notice that complies with applicable notice requirements.
- [4] The trust protector shall weigh the potential benefits of designating the laws of an alternate state as the governing law of the trust against the potential risks, including the complications that may result from the application of multiple state laws to the trust, the potential adverse income, estate, or GST tax consequences that may result, the application of more onerous administrative or accounting requirements, and the effect any fiduciary investment rules may have on the administration of the trust or the rights of the beneficiary.

## **ARTICLE 3.12 INCAPACITY**

**3.12.1 General:** If any individual trustee or any person having the power (including a power exercisable with others) to remove or appoint a trustee or trust protector under this agreement becomes incapacitated through illness, age, or other cause, he or she no longer may act as a trustee or exercise such power. For all purposes of this agreement, any such person shall be deemed to have full capacity until a determination of incapacity is made pursuant to 3.12.3.

**3.12.2 Approval Group:** In this Article, the approval group shall mean my spouse, or, if my spouse is deceased or incapacitated, a majority of the those individuals who are alive and not incapacitated of the group named to act as trustee in paragraph 2.1.1[1] or, if all of these individuals are unable to act, a majority of the distribution beneficiaries (who have attained age 21 and are not incapacitated). Any person whose incapacity is under consideration shall be excluded from such group. At any time a majority of the members of the approval group may request, in writing, that any person referred to in 3.12.1 [1] undergo a medical examination by a physician approved by the approval group (or, if I am the person whose capacity is under consideration, two physicians selected by the approval group, one of whom shall be my primary physician, if any) for purposes

of determining capacity under this Article, and [2] deliver to the approval group a statement (or statements) from such physician (or physicians) that such person has or does not have capacity. Any costs of any medical examination undergone pursuant to this Article shall be borne by the trust with respect to which such person is acting as trustee or has removal or appointment powers.

**3.12.3 Determination of Incapacity:** Any person referred to in 3.12.1 shall be deemed to be incapacitated upon the delivery of a written statement prepared by a physician (or, if I am the person whose capacity is under consideration, physicians) licensed to practice medicine to the approval group of a statement in writing that such person no longer has capacity because such person is lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other disabling cause, to act as a trustee or to exercise any rights granted in this agreement. Such person also shall be deemed to be incapacitated if a majority of the approval group determines that such person has been confined or detained or has disappeared for a period exceeding thirty days, and such confinement, detention or disappearance renders such person unable to manage property and business affairs effectively. In addition, any such person shall be deemed to be incapacitated if such person fails to comply with a written request made by the approval group under 3.12.2 within thirty days after receiving such written request. Upon being deemed to be incapacitated, such person shall be deemed to have resigned as trustee or to have released any removal or appointment powers under this agreement, as applicable.

**3.12.4 Recovery:** If either the physician or physicians who prepared the written statement delivered pursuant to 3.12.3, or any other physician charged with the medical care of a person whose capacity is under consideration and approved by the approval group (or, if I am the person whose capacity is under consideration, any physician or physicians selected by me), delivers to the approval group a statement that such person's incapacity has terminated, such person shall be deemed to have full capacity under this agreement. In addition, if such person's incapacity due to reasons other than medical causes has terminated, and a majority of the approval group agrees that such incapacity has terminated, such person shall be deemed to have full capacity under this agreement. Upon termination of the incapacity pursuant to this 3.12.4, all powers granted under this agreement to such person whose capacity is restored shall be reinstated and any person who was appointed to act in such person's place during the incapacity shall cease to act.

## **ARTICLE 3.13 QUALIFIED PLAN PROVISIONS**

**3.13.1 Retirement Benefits:** The term "Retirement Benefit" means any benefit or amount payable to a trust under this agreement under an individual retirement account (IRA) as defined in Section 408 of the Code, a Roth IRA as defined in Section 408A of the Code, a deemed IRA or a Roth IRA under Section 408(q) of the Code, an annuity or mutual fund custodial account under Section 403(b) of the Code, a pension or profit sharing, stock bonus, or other retirement plan that is qualified under Section 401(a) of the Code, any other retirement plan or arrangement that is subject to the minimum distribution rules of Section 401(a)(9) of the Code or equivalent rules under any other Code section, any annuity, or any qualified plan or qualified arrangement of deferred compensation for services. The plan, trust, account or arrangement under which any Retirement Benefit is held or payable is referred to as a "Retirement Plan."

**3.13.2 Marital Trust:** With regard to any portion of a Retirement Benefit allocated to the Marital Trust held under Article 1.5 ("Marital Trust") the trustee shall direct distribution from any Retirement Plan to the Marital Trust each year, beginning with the date of death of the deceased

spouse, and continuing during the period that the surviving spouse is living, the greatest of the following amounts:

- [1] The net income (as defined by applicable state law) of the Retirement Plan for such year;
- [2] The net income of the Retirement Plan for such year as “net income” is defined for purposes of Section 2056 of the Code;
- [3] The Minimum Required Distribution amount for such year; or
- [4] Such greater amount as the trustee of the Marital Trust shall direct by written instructions to the administrator of the Retirement Plan.

The trustee of the Marital Trust (and not the administrator of the Retirement Plan) shall have sole responsibility for determining the amounts under this 3.13.2. If the amount distributed to the Marital Trust from a Retirement Plan pursuant to this 3.13.2 exceeds the greater of the amount described in 3.13.2[1] or the amount described in 3.13.2[2] above, the trustee shall allocate such excess to principal and, except as provided in 1.5.2, shall accumulate such excess. The trustee shall have the right to require the administrator of any Retirement Plan to make productive any unproductive asset held in such Retirement Plan, and the surviving spouse shall have the power to direct the trustee to exercise such right. The surviving spouse also shall have the power to direct the trustee to demand distribution to the Marital Trust from each Retirement Plan, and to withdraw from such Marital Trust, the greater of the amounts described in 3.13.2[1] and 3.13.2[2] above.

**3.13.3 Family Trust Distribution:** If the Family Trust held under Article 1.6 is a recipient of any portion of any Retirement Benefit held in any Retirement Plan, the trustee shall direct the administrator of each Retirement Plan to distribute to the Family Trust each year, beginning with the date of the deceased spouse’s death, and continuing during the period that the surviving spouse is living, the Family Trust’s share of the Minimum Required Distribution amount for such Retirement Benefit for such year.

**3.13.4 Descendant’s Trust Distribution:** If a trust for a descendant of ours held under Article 1.7 is a recipient of any portion of any Retirement Benefit held in any Retirement Plan, the trustee shall direct the administrator of each Retirement Plan to distribute to the descendant’s trust each year, beginning with the date of death of the surviving spouse, and continuing during the period that the descendant of ours for whom the trust is created is living, such descendant’s trust’s share of the Minimum Required Distribution amount for such Retirement Benefit for such year.

**3.13.5 Limitation:** Notwithstanding any other provision in this agreement, no portion of any Retirement Benefit held as an asset of a trust created under this agreement shall be distributed (including by exercise of a power of appointment) after September 30 of the year following the year of my death:

- [1] To an individual who is born in a calendar year before the calendar year of birth of [a] my spouse, with respect to any Retirement Benefit held in a trust created under Article 1.5 or Article 1.6; [b] my oldest living descendant at the time of my death, with respect to any Retirement Benefit held in a trust created under Article 1.7; or [c] the beneficiary of any trust created under Article 3.6, with respect to any Retirement Benefit held in a trust created under Article 3.6; and



- [2] To any non-individual, including any estate and any qualified or non-qualified charity.

**3.13.6 Allocation to Income and Principal:**

- [1] General Principles. This 3.13.6 shall govern the trustee's accounting for Retirement Benefits held in any Retirement Plan. In general, a Retirement Benefit held in any Retirement Plan shall be deemed an asset of the trust, increases or decreases in its value shall be allocated to income or principal of the trust as provided in this 3.13.6, and distributions from the Retirement Benefit shall be accounted for as provided in this 3.13.6.
- [2] Individual Account Plans. With respect to any Retirement Benefit held in any Retirement Plan that is an individual account plan, for which the trustee receives a reporting of the investment activity in the account so that the trustee readily can determine the income and principal of the trust's interest in the Retirement Plan in accordance with traditional principles of income and principal, the trustee shall account for the trust's interest in the Retirement Benefit as if the applicable Retirement Plan assets were owned by the trust directly. For purposes of this 3.13.6, an individual account plan is a retirement plan that provides for an individual account for each participant and that provides benefits based solely upon the amounts contributed to the account and any earnings and losses. Individual account plans include 401(k) plans, profit sharing plans, stock bonus plans, and money purchase pension plans.
- [3] All Other Retirement Plans. With respect to any Retirement Plan other than an individual account plan, the trustee shall treat the inventory value of the trust's interest in the Retirement Benefits held by such Retirement Plan as principal, and allocate any subsequent increases in value (or charge decreases in value) in such interest to income or principal in accordance with any reasonable method selected by the trustee that is consistent with traditional principles of income and principal and is consistently applied to the trust's interest in such Retirement Plan, including:
- [a] A method specified in any Uniform Principal and Income Act (UPIA) or other state law governing trust accounting for retirement benefits or deferred compensation, but only if such law provides for a reasonable apportionment, each year, between the income and remainder beneficiaries of the total return of the trust for such year. The 10 percent rule of UPIA Section 409(c), or any other state law that determines income with respect to a retirement benefit by reference to the amount of the retirement plan's required distributions rather than by reference to the return on the applicable investments or other traditional principles of income and principal, or that otherwise departs fundamentally from traditional principles of income and principal, may not be used to determine income for any purpose of this trust.
  - [b] In the case of a Retirement Plan similar to the type of Retirement Plan specified in 3.13.6[2] above, the method specified in 3.13.6[2] adapted as necessary.
  - [c] Any method used in the Code or Treasury regulations to distinguish between ordinary income and return of principal (or corpus) with respect to similar assets.
- [4] Treatment of Distributions. When a distribution is received from or under a Retirement Benefit held in any Retirement Plan, and, at the time of such distribution, under the

foregoing rules, the trust's interest in the Retirement Benefit is composed of both income and principal, such distributions shall be deemed withdrawn first from the income portion.

[5] Definition of Inventory Value. The term "inventory value" of an interest in a Retirement Benefit held in any Retirement Plan shall mean:

- [a] In the case of an interest that becomes payable to (or is owned by) a trust created under this agreement as of the date of my death, its fair market value determined in accordance with the rules applicable for valuing such interests for purposes of the federal estate tax (as in effect at my death, or, if such tax does not then exist, as last in effect); or
- [b] In the case of an interest that becomes payable to a trust created under this agreement as of a date after the date of my death (for example, by transfer from another fiduciary, a custodian, or an administrator), its fair market value shall be its value as of my death determined as provided in 3.13.5[5][a], adjusted as necessary for distributions, expenditures, and receipts that occurred between the date of my death and the date of transfer to the trust; or, if the trustee cannot determine its value in that manner, its fair market value shall be its value as of the date it becomes an asset of the trust, determined as provided in 3.13.5[5][a], provided, in the case of an interest transferred to a trust created under this agreement from another fiduciary (such as my personal representative) accrued income so transferred shall be treated as income and shall not be included in inventory value.

#### **ARTICLE 3.14 TRUST PROTECTOR PROVISIONS**

**3.14.1 Appointment:** At any time during my lifetime or after my death, my spouse, or if my spouse is not then living or is incapacitated, the trustee and the eldest then-living distribution beneficiary of a trust for which appointment of a trust protector is sought (if such beneficiary has attained age 21 years and has capacity), or if the eldest distribution beneficiary of such trust has not attained age 21 years or does not have capacity, the trustee and the parent, guardian, or other legal representative of such beneficiary, may appoint a trust protector or successor trust protector of such trust. If no trust protector or successor trust protector is so appointed as needed for any such trust, any beneficiary of such trust (or the parent or guardian of any minor beneficiary of such trust) may nominate a trust protector and petition a court having appropriate jurisdiction over such trust, without notice, to approve such nomination. In such event such court shall not acquire any jurisdiction over any trust estate or this agreement except to the extent necessary to approve such nomination. Any appointment of a trust protector under this 3.14.1 may be limited to a specified time period.

**3.14.2 Requirements:** Any trust protector appointed under 3.14.1 for any trust must be an individual who [1] is not related to or subordinate to me, my spouse, or any beneficiary of such trust within the meaning of Section 672(c) of the Code, under which for the purposes of this sentence such beneficiary shall be treated as a grantor, and [2] has no relationship with any beneficiary of such trust that would affect such individual's ability to balance fairly the rights and interests of all beneficiaries of such trust in exercising the trust protector's powers and discretion under this agreement.

**3.14.3 Responsibilities and Powers:** All powers of the trust protector shall be exercised in a nonfiduciary capacity and without my consent or the consent of the trustee. The powers of the trust protector are as follows:

- [1] At certain times, the trust protector may appoint an independent trustee as provided in Article 2.5.
- [2] During my lifetime, the trust protector may make gifts to the trustee as provided in, and subject to the limitations set forth in, 3.1.8.
- [3] The trust protector may amend this agreement or the terms of a trust created under this agreement in certain circumstances as provided in 3.10.7 (concerning GST tax matters), 3.15.8 (concerning S corporation matters), 3.16.8 (concerning special needs trusts), and 3.16.12 (concerning future death tax laws).
- [4] After my death to serve tax planning purposes, the trust protector may terminate, or invade the principal of, any trust created under this instrument having an inclusion ratio (for GST tax purposes) greater than zero, as provided in 3.10.6.
- [5] The trust protector shall have authority concerning powers of appointment as provided in 3.10.8.
- [6] The trust protector may change the governing law and administrative situs of the trust as provided in 3.11.2.
- [7] The trust protector may terminate such trust in certain circumstances as provided in 3.16.6.

**3.14.4 Exculpation and Indemnification:** A trust protector shall not be held liable or accountable for [1] monitoring or initiating a review of any trust or action taken by any fiduciary appointed under my will, this agreement, or any trust agreement of which I am a settlor, [2] the conduct or performance of any fiduciary appointed under my will, this agreement, or any trust agreement of which I am a settlor, [3] the conduct or performance (or a review thereof) of any fiduciary appointed under any other will or trust agreement, or [4] exercising or not exercising any power granted under this agreement to amend this agreement or a trust created under this agreement (unless the trust protector acted or failed to act in bad faith or in a manner that was grossly negligent or willfully malfeasant). The trustee shall indemnify the trust protector for all losses, costs, damages, expenses, and charges, public and private, including reasonable attorney fees, including those arising from all litigation, groundless or otherwise, that result from the performance or non-performance of the powers given to the trust protector under this agreement (unless the trust protector acted or failed to act in bad faith or in a manner that was grossly negligent or willfully malfeasant).

**3.14.5 Compensation:** The trust protector shall be entitled to just and reasonable compensation from the trust for services provided. If the trust protector has an established hourly billing rate for professional services rendered, such hourly billing rate shall be deemed to be just and reasonable in determining the compensation due to the trust protector.

**3.14.6 Removal:** The trust protector of any trust under this agreement may be removed by the person or persons having the power to appoint a trust protector of such trust under 3.14.1. Removal

of any trust protector shall be made by written notice to such trust protector, may be made at any time, and may be made without cause and without notice of any reason. Any such removal shall become effective immediately upon such delivery or at such other date as the trust protector and the person or persons with removal power may agree.

## **ARTICLE 3.15 S CORPORATION STOCK**

**3.15.1 Definitions:** The term S Corporation means a corporation for which an election under Subchapter S of the Code is in effect. The term Electing Small Business Trust (or ESBT) means a trust that meets the requirements of that term under the Code and applicable regulations. The term Qualified Subchapter S Trust (or QSST) means a trust that meets the requirements of that term under the Code and applicable regulations. The term S beneficiary means the current income beneficiary of a QSST. If a trust otherwise meets the requirements of an ESBT or a QSST, the provisions of this Article shall apply only to the extent not inconsistent with the requirements of an ESBT or a QSST, as applicable.

**3.15.2 Intent:** It is my intent that any trust created under this agreement that owns S Corporation stock meet the requirements of a QSST, including the requirement that the S beneficiary make an appropriate election for QSST treatment, unless the trustee determines that it would be disadvantageous for the trust to be a QSST. Therefore, I direct that all actions be taken and all issues relating to such status be resolved accordingly. I further direct that all powers and discretions of the trustee shall only be exercised and interpreted in a manner consistent with this intent and in compliance with then existing laws and regulations. In the event that the trustee determines that any trust created under this agreement cannot qualify as a QSST or that it would be disadvantageous to be a QSST, then the trustee shall, in the trustee's discretion, either [1] separate such trust into separate trusts that can each qualify as a QSST, as provided for under 3.15.9; or [2] make an appropriate election and take all other necessary steps to qualify such trust as an ESBT.

**3.15.3 S Beneficiary Election:** Consistent with my intent in 3.15.2, if S Corporation stock is to be allocated to a trust under this agreement or if an S election is to be made by a corporation whose stock is to be held in a trust under this agreement, the trustee may seek to obtain the agreement of the S beneficiary (or such beneficiary's legal representative) to make a timely written election with respect to S corporation stock under the Qualified Subchapter S Trust provisions of the Code. The trustee may set compliance dates for delivery of the signed agreement (if any) and election by the S beneficiary, permitting such beneficiary a reasonable time for compliance. If the S beneficiary is unable to or fails to deliver either the signed agreement (if any) or election on or before the applicable compliance date, the trustee is authorized to make an appropriate election and take all other necessary steps to qualify such trust as an ESBT.

**3.15.4 Termination of S Election:** The provisions of this Article shall not prevent revocation of any S election that has been made by a corporation whose stock is held in an ESBT or in a QSST. However, the trustee shall consent to revocation of any S election only if the trustee determines that such revocation is in the best interests of the beneficiaries.

**3.15.5 Trustee Powers:** In addition to the other powers granted by this agreement, the trustee may hold, sell, or otherwise exchange stock in an S Corporation, consent to revoke an S election by any corporation and enter into management and transfer restriction agreements with other shareholders. With respect to S Corporation stock, the trustee may make appropriate allocations between income and principal (except as provided in 3.15.9, if applicable).

**3.15.6 Limitation on Trustee Powers:** All provisions of this agreement shall be construed in accordance with my intention that the trustee shall not have any rights, duties, authority, privileges or immunities that would prevent any trust receiving or holding stock in a corporation for which an S election is in effect from qualifying as an QSST or ESBT, as applicable.

**3.15.7 Exoneration of Trustees:** I have granted the powers under this Article in order to provide the trustee with flexibility that may enable it, in some cases, to prevent the termination of S corporation status for a corporation whose stock is held in a trust. I realize that the decisions as to the exercise of these powers are extremely difficult, and, in consideration of the trustee's agreeing to serve, I specifically exonerate the trustee from any liability to any person with respect to its exercise or non-exercise of these powers.

**3.15.8 Amendment:** I recognize that the Code provisions and applicable regulations relating to trust ownership of S Corporation stock are not only complex, but are also subject to change. Therefore, to accomplish my intent that the requirements of a QSST or ESBT, as applicable, be met, I grant to the trust protector the power to amend the terms of any trust holding S Corporation stock for the sole purpose of complying with the applicable requirements as set forth from time to time in the Code and applicable regulations. Any such amendment shall be in writing, and notice of such amendment shall be given to the trustee and the eldest distribution beneficiary of such trust. If no objection is filed with the court having jurisdiction of this trust by either the trustee or the eldest distribution beneficiary of such trust within thirty days of such notice, the amendment shall be effective as of the date set forth in the amendment. If any objection is filed, the amendment shall be effective only if and to the extent determined by the court.

**3.15.9 Qualified Subchapter S Trust:** In the event the trustee determines that a trust created under this agreement does not qualify as a QSST, the trustee, in its discretion, may hold and administer any S corporation stock otherwise owned by or allocable to such trust in a separate QSST (or in separate QSSTs, as the case may be) subject to the following provisions (notwithstanding any other provision of this agreement):

- [1] One individual entitled to mandatory or discretionary distributions of income under the trust shall be the S beneficiary.
- [2] The trustee shall distribute all income to the S beneficiary.
- [3] Any distribution of principal made by the trustee during the term of the trust shall be made only to the S beneficiary, and any such distribution shall be made in accordance with the principal distribution restrictions set forth in this agreement and as provided in 3.15.10.
- [4] The trust shall terminate as otherwise provided in this agreement.
- [5] If the trust terminates upon the death of the S beneficiary, the trust estate then remaining shall be disposed of as otherwise provided in this agreement (except that no S corporation stock may be distributed to any person who is not an eligible S corporation shareholder).
- [6] In making any allocation between income and principal, the trustee shall assure that the S beneficiary shall enjoy the property comprised of the S corporation stock in a manner at least equal to that ordinarily associated with an income interest. In all events, the trustee shall provide the beneficial enjoyment to the S beneficiary as required of a QSST. Any

separate trust created by this Article for the same S beneficiary from the same trust may hold the stock of more than one S corporation.

**3.15.10 QSST Distributions:** To be a QSST under present law, a trust is required to distribute all of its income currently to one individual S beneficiary who is a citizen or resident of the United States. In addition, such S beneficiary is treated as the federal income tax owner of the S corporation stock. The S beneficiary therefore may be taxed not only on the trust income required to be distributed, but also on income or gain that constitutes a principal item for trust accounting purposes. Accordingly, the trustee of any QSST shall consider distributing trust principal to the S beneficiary in an amount equal to the applicable tax rate multiplied by the amount of taxable income or gain that does not constitute trust income (as determined under the terms of this agreement and applicable local law) but is nevertheless taxable to the S beneficiary under the Code. The applicable tax rate shall be the maximum federal income tax rate plus the maximum state income tax rate applying to such income or gain, after adjustment for any deduction or credit of either tax against the other that is available in the year such income or gain is recognized for federal income tax purposes. This distribution of principal shall be made with respect to the trust's taxable year in which such income or gain is recognized and shall be made either during or within a reasonable time after the close of such year.

## **ARTICLE 3.16 MISCELLANEOUS PROVISIONS**

### **3.16.1 Reports:**

- [1] The trustee shall not be required to render or present any report or information concerning the trust administration, including an accounting, to any beneficiary of any trust under this instrument, except as otherwise provided in this paragraph. Specifically, Colo. Rev. Stat. §15-5-813(3) and its requirements that the trustee report annually to the beneficiaries are expressly overridden, and the following provisions shall control with respect to matters addressed herein.
- [2] The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration, shall render reports upon request to me, and shall provide to any beneficiary reports and other information regarding the trust as set forth in this agreement and as required by applicable law. Upon reasonable request, a beneficiary of any separate trust is entitled to reports of such trust annually and on termination of such trust or change of the trustee. Such reports shall set forth [a] the receipts, disbursements, and distributions of both principal and income during the period of accounting and [b] the invested and uninvested principal and undistributed income for the applicable period. Upon reasonable request, the trustee shall provide a beneficiary with a copy of the terms of the trust that describe or affect such beneficiary's interest and with relevant information about the assets of the trust and the particulars relating to its administration.
- [3] In determining whether or not a beneficiary is "reasonably" informed or whether or not a request is "reasonable," the trustee, in its sole discretion, shall consider a variety of factors, including my intent to maintain the confidentiality of administration of this agreement and the trusts created under this agreement, whether or not such request will be used for a reasonable purpose or has been made in good faith, the maturity of the relevant beneficiary, and the remoteness of such beneficiary's potential interest. I intend that the trustee, in good faith, provide information reasonably required to protect the interests of a beneficiary, but,

and particularly with respect to any beneficiary under the age of 35 years or any person who in the opinion of the trustee is under any disability that renders such person unable to effectively receive and evaluate such information, I also intend that information related to this trust be kept as confidential as possible so that the existence of the assets of this trust will not diminish the incentive of a beneficiary to develop his or her talents through personal effort or the ability of such beneficiary to become financially responsible and a credit to our family and the community.

**3.16.2 Written Notice:** Any written notice either shall be actually delivered or shall be deemed given when such writing is mailed, postage prepaid, to the then current mailing address of the recipient or sent by electronic delivery.

**3.16.3 Perpetuities Provisions:** If any trust created under this agreement (including any trust created by the exercise of any special power of appointment granted under this agreement) is determined to be subject to the law of a jurisdiction that has a rule against perpetuities or similar rule that limits the period during which property may be held in trust or other nonvested form, the trust shall terminate in all events one day prior to the expiration of the longest period that property may be held in trust or other nonvested form under this agreement under the law of such jurisdiction (including any applicable period in gross, such as 21 years, 90 years, 110 years, or 1,000 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule that applies only to certain types of property, such as real property, the provisions of this Article shall apply only to such property. If under the law of such jurisdiction the longest period that property may be held in trust or other nonvested form may be determined with reference to the death of the last survivor of a group of individuals in being upon a certain date (such as the date of my death), those individuals shall consist of all of the descendants of my parents and all of the descendants of my spouse's parents who were in being on such date. Upon termination of a trust pursuant to this paragraph, the remaining trust estate of such trust shall be distributed to the person or persons then eligible to receive current income from such trust, and if so eligible as a group (such as a person and his or her descendants) or class, they shall take by representation. Notwithstanding the above, with respect to any trust created under this agreement holding property that was added to such trust as a result of the exercise of a power of appointment (referred to as the "original power"), the portion of such trust consisting of such property shall be subject to the rule against perpetuities limitation set forth under the instrument authorizing the original power, and any power of appointment conferred upon any person with respect to such portion may not be exercised in any manner that would violate such limitation.

**3.16.4 Distributions:**

[1] **Directions.** In satisfying any distributions under this agreement the trustee may distribute assets in cash or in kind, or partly in each, with any asset valued at its fair market value at the date of distribution. The trustee may make non pro rata distributions of specific assets. To the extent practicable, in satisfying any such distribution, the trustee shall not distribute any property that would result in the disallowance of a loss for federal income tax purposes. Any distributions to a beneficiary under this agreement may be applied for the benefit of such beneficiary. All mandatory distributions of income shall be made in convenient installments, at least annually. Any final distribution of any trust estate shall include any accumulated and accrued but undistributed income.

[2] **Restrictions.** Notwithstanding any other provision of this agreement, no distribution of principal shall be made from any trust created under this agreement to any beneficiary that would discharge any legal obligation of such beneficiary or of the parent of such beneficiary, including any legal support obligation.

**3.16.5 Augmentation of Trusts:** If upon termination of any separate trust created under this agreement, any property (having GST exempt or GST non-exempt property characteristics) becomes distributable to a beneficiary for whom another trust has been created and then is held under this agreement, such property shall be added to and commingled with such other trust (having the same GST characteristics) in augmentation of it, instead of being distributed outright (unless an outright or other distribution is specifically directed). If property becomes distributable to a beneficiary upon attainment of a specified age, such property shall augment proportionately the distributed and undistributed portions of such other trust, instead of being distributed entirely to such beneficiary, subject to 3.16.3.

**3.16.6 Termination of Trusts:** Any trust created in PART 1 of this agreement shall terminate if [1] all principal is paid out under mandatory or discretionary powers granted in such trust, [2] the trust protector determines that the expenses of administration in continuing the trust are greater than its assets warrant, or [3] the trust protector determines that, due to changes in the tax laws, and in light of all other circumstances (including creditor protection and separate property rights), continuing any such trust would not be in the best interests of the trust beneficiaries. If the independent trustee terminates a trust under this paragraph, the trustee shall distribute the remaining assets of any such trust estate to the person or persons then eligible to receive current income from the trust, and if so eligible as a group (such as a person and his or her descendants) or class, they shall take by representation.

**3.16.7 Protective Provisions:** No beneficiary shall have any right to anticipate, transfer, or encumber any part of such beneficiary's interest in the trust estate, and no part of such beneficiary's interest shall be liable for such beneficiary's debts or obligations (including maintenance or alimony) or be subject to attachment, garnishment, execution, creditor's bill, or other legal or equitable process, provided that this paragraph shall not prevent any such beneficiary from exercising any power of appointment granted under this trust agreement or from disclaiming any interest in the trust estate. This paragraph shall not preclude the use of the trustee's power to pay, appoint, or distribute to another trust under 3.1.14.

**3.16.8 Special Needs Trusts:** The trust protector of a trust shall have the power to amend the terms of such trust, by this agreement or a separate trust instrument, in any manner necessary to: [1] prevent distributions from such trust to a beneficiary from limiting or eliminating such beneficiary's eligibility under any state or federal need-based public assistance, including Supplemental Security Income, Social Security Disability Insurance, and Medicaid; and [2] preserve the assets of such trust for the current and future beneficiaries of such trust. The trust protector shall not amend the terms of a trust under this 3.16.8 in a manner that is inconsistent with Article 2.5.

**3.16.9 Survivorship:** Any beneficiary other than my spouse who shall not be living thirty days after the date of my death shall be deemed to have predeceased me. If my spouse actually survives me, my spouse shall be deemed to have survived me. If the order of death of my spouse and me cannot be established by proof, my spouse shall be deemed not to have survived me.



**3.16.10 Accumulations:** Any net income of any trust in any trust accounting year that is not disposed of by the terms of such trust shall be accumulated and become a part of trust principal.

**3.16.11 Disclaimers, Releases, and Renunciations:**

[1] Disclaimer by Beneficiary. Any beneficiary of any trust under this agreement shall have the right to disclaim all or any part of such beneficiary's interest in such trust to which he or she may be entitled under this agreement. In addition to any method recognized by law, any such disclaimer may be made by written notice to the trustee of such trust. Except as otherwise provided in this agreement, any interest so disclaimed shall be distributed as if the beneficiary who disclaimed such interest predeceased me. I encourage any beneficiary considering a disclaimer to consider the federal gift tax and other implications of such a disclaimer.

[2] Disclaimer, Release, or Renunciation by Trustee. Any trustee of any trust under this agreement shall have the right to disclaim, release, or renounce any of its rights or powers granted under this agreement or applicable law. In addition to any method recognized by law, any such disclaimer, release, or renunciation may be made by written notice to each co-trustee, if any, and to the eldest distribution beneficiary of such trust.

**3.16.12 Future Death Tax Laws:** If substantial changes are made to the death tax laws, I plan to amend this agreement to the extent necessary to affect my estate plan consistent with such changes. If I were to become incapacitated, I would not be able to make any such amendment. Accordingly, if at any time prior to my death I become incapacitated, and the trust protector believes that, as a result of changes to the death tax laws, I would have amended this agreement had I not been incapacitated, I authorize the trust protector to amend any terms of this agreement in the manner the trust protector determines that I would have amended it. Any such amendment shall be in writing, and notice of such amendment shall be given to my spouse (if living), each adult descendant of mine who then is living, and the parent or guardian of each minor descendant of mine who then is living. The amendment shall be effective as of the date set forth in the amendment. Any amendment authorized under this paragraph shall be effected only during my life (and only if I then am incapacitated).

**3.16.13 Division of Tangible Personal Property:** If my children are unable to agree to a division of any tangible personal property under this agreement, the appraised dollar value of such tangible personal property shall be converted from dollars into points. The total number of points representing such tangible personal property shall be divided among my children who survive me, in equal shares. Each child of mine shall be able to bid on each item of such tangible personal property. Each such item shall be distributed to the child who bids the highest number of points for such item. If any of my children bid the same number of points on an item of such tangible personal property and are not able to reach an agreement regarding the distribution of such item, they shall cut a deck of cards in order to determine the child who shall receive such item. The number of points bid on an item of tangible personal property distributed to a child shall be deducted from the total number of points available to such child to bid with on any other item. If at any time only one child has points available with which to bid, that child with points remaining shall receive the rest of such tangible personal property not previously bid upon and distributed. If any of such tangible personal property remains undistributed after the bidding is complete because no child of mine wants to own such property, and if no agreement is reached by my children regarding distribution of such tangible personal property between them within four months after the date of my death,

such tangible personal property shall be disposed of by sale, abandonment, destruction, or gift to any charity or person. The proceeds of any sale shall be added to my residuary trust estate.

**3.16.14 No Contest:** If any beneficiary under this instrument, or any other person in any proceeding before a judicial body, contests or disputes the probate of my will, or attempts to prevent any provision of my will or of this instrument from being carried out in accordance with its terms and my manifest intent, then in any of those events, I absolutely revoke any benefit under this instrument to or for such beneficiary, or such benefits that would in any manner pass to a person successful in challenging my will or its probate, or any trust that I may create, declare the same void and of no force or effect, and direct that the benefits otherwise conferred on such beneficiary shall pass in the manner provided in this instrument as if such beneficiary had predeceased me. The provisions of this Article shall not apply in the case of any proceeding brought by anyone or any entity if the purpose of such proceeding is solely to clarify or have construed any ambiguity found in my will or this trust instrument or to seek instructions regarding any such ambiguity.

**3.16.15 Non-Contractual Trust Instrument:** I am aware that my spouse is executing a trust instrument on or about the same date as this trust instrument. This instrument and my spouse's trust instrument are not, and shall not be interpreted to be, mutual instruments and they are not made in pursuance of any contract.

**3.16.16 Residential Real Property:** If any interest in the real property which my spouse and I were using as our principal residence at the time of my death is held as an asset of any trust created under this instrument, the trustee shall accord the free use and enjoyment of such real property as one of the benefits of the trust. The trustee shall also be authorized, in its discretion, to sell or exchange such residential real property held as a trust asset, and to invest the proceeds in other residential real property, or to hold any residential real property acquired by exchange, supplying to my spouse the free use and enjoyment of such newly acquired real property, so that my spouse shall be afforded a satisfactory home during my spouse's lifetime. Such use and enjoyment shall be accorded as my spouse's sole responsibility, but the trustee may utilize so much of the net income of the trust or, if the net income is insufficient, the principal, as it shall determine to be necessary or advisable to discharge the cost of maintenance, upkeep, insurance and taxes on such property unless my spouse shall elect in writing to pay all or part of the same. At such time as my spouse ceases to use such residential real property and has no use for other residential real property for personal use, the trustee shall be free to sell the residential real property which is an asset of the trust and add the proceeds from such sale to the principal of the trust. The trustee shall always have full authority to carry such insurance on such real property, and in such amount and form, as it may require for its own protection, as an expense of administering the trust. The trustee shall not be accountable for any loss sustained by reason of any action taken under the provisions of this paragraph.

**3.16.17 No Partition of Community Property:** To the extent that community property or any interest therein becomes an asset of any trust created under this instrument, such property and the proceeds from any sale or other disposition of such property shall continue to retain its character as community property during the joint lives of my spouse and me. The trustee shall maintain records and accounts to appropriately identify property as community or separate property, provided, however, that the trustee shall have no duty to characterize property of the trust as community property or separate property and shall have the right to rely on my representations or the representations of my spouse as to such property's character. No transfer of community

property directly to the trust or to a nominee on behalf of the trust shall be treated as a partition or commutation of such community property in the absence of an agreement in writing effecting such a partition or commutation by my spouse and me. In the event of a withdrawal of trust property or a complete revocation of the trust during my lifetime, any community property or separate property shall be re-conveyed with the same character it had while an asset of the trust. Except as otherwise provided in this instrument, a transfer of property to the trust is not intended to result in any gift or in any change in the nature of any community property or separate property transferred to the trust.

#### **ARTICLE 3.17 DEFINITIONS**

**3.17.1 Trustee:** The word trustee and the pronoun “it” in reference to trustee always refer interchangeably to the male or female person or persons or to the institution then holding the trusteeship. Trustee also refers to any successor, alternate, or substitute trustee, including corporations that succeed another corporation by merger, consolidation, change of name, or otherwise, and the appointment of a corporate trustee shall be deemed to include appointment of its corporate successor. Any corporate trustee shall be a corporation organized under the laws of any state or of the United States, authorized by law to administer trusts, and maintaining a full-time personal trust department. All successor, alternate, or substitute trustees shall have the same powers, authorities, obligations, and limitations as the original trustee unless other provisions specifically provide to the contrary. Any trustee who or that fails to qualify for any reason shall be deemed to have ceased to act. The appointment of any successor trustee shall become effective upon the date the trustee that such successor trustee is replacing fails to qualify or ceases to act.

**3.17.2 Pronouns, Singular and Plural:** Any pronoun used in the masculine, feminine, or neuter shall be interpreted as the context requires and words used in the singular shall denote the plural and words used in the plural shall denote the singular when the context so requires.

**3.17.3 Children:** A child in gestation who later is born alive shall be considered as a child in being throughout the period of gestation. A child who legally is adopted prior to attaining the age of 21 years by any person and any descendant of such a child by blood or adoption shall be considered a child or the descendant of such person or the descendant of such person’s ancestors. A child born out of wedlock shall be considered a child or descendant of that child’s father or the descendant of that father’s ancestors only if that child is acknowledged by that child’s father as his child either by that child’s father signing a voluntary inter vivos writing or by that child’s father openly holding out the child as his natural child. A child born out of wedlock shall be considered a child or descendant of that child’s mother or the descendant of that mother’s ancestors. Relinquishment of a child for adoption shall terminate all rights of the relinquished child as a child of that child’s natural parents and as a descendant of the ancestors of that child’s natural parents. Notwithstanding the previous sentence, the adoption of a child by a stepparent shall not by itself terminate the parent-child relationship with respect to such child’s natural parent or the ancestor-descendant relationship with respect to any natural ancestor of such child. Any child born to or adopted by me after the date of this agreement shall be considered a child of mine for all purposes under this agreement.

**3.17.4 By Representation:** Whenever a distribution to (or other determination of) descendants by representation is called for by this agreement, the distributable assets (or beneficial interests) are to be divided into as many shares as there are, at the date on which such assets become subject to distribution, descendants in the nearest degree of kinship, and then deceased descendants in the same degree who left then living descendants, each then living descendant in the nearest degree

receiving one share and the share of each then deceased descendant in the same degree being divided among such descendant's descendants in the same manner.

**3.17.5 Beneficiary; Income Beneficiary; Distribution Beneficiary:** Unless the context indicates otherwise, in PARTS 2 and 3 the word beneficiary in this agreement means any person who has any present or future interest, vested or contingent, in any separate trust created under this agreement after my death; provided that the word beneficiary shall not include permissible appointees under any special or general power of appointment granted under this agreement. The phrase "income beneficiary" means any beneficiary then eligible to receive current income from any separate trust created under this agreement. The phrase "distribution beneficiary" means any beneficiary then eligible to receive distributions from a trust created under this agreement. If any beneficiary is under the age of 21 years or under a disability, irrespective of whether legally so adjudicated, then the parent, guardian, conservator, or legal representative may act for such beneficiary for all purposes in PARTS 2 and 3.

**3.17.6 Qualified Charity:** A qualified charity is any organization or other entity to which a transfer (if made by a decedent) would qualify (at the time of such transfer) as a federal estate tax deduction under then existing laws of the United States. For example, under present law, a qualified charity means any organization or other entity described in Section 2055 of the Code, relating to transfers for charitable, educational, scientific, literary, or religious purposes. If no federal estate tax deduction then is available, a qualified charity means any organization or other entity described in Section 501(c)(3) of the Code as in effect when I sign this agreement.

**3.17.7 Tangible Personal Property:** Tangible personal property refers to such items as artwork, furniture, furnishings, silverware, china, clothing, jewelry, sporting equipment, automobiles, and books. The term tangible personal property or any specific gift of tangible personal property includes any insurance policies on such tangible personal property, and the proceeds of such policies, if any, but excludes cash and other items of intangible personal property, even if represented by tangible documentation of ownership, and also excludes tangible personal property used by me in a trade, business, or profession, unless other provisions of this agreement specifically provide to the contrary.

**3.17.8 Code:** The term Code shall refer to the Internal Revenue Code of the United States and refer to the Internal Revenue Code of the United States in effect on the date of my death unless otherwise stated.

**3.17.9 Including:** The word include, including, or any variation thereof is meant to introduce a non-exhaustive list. Such list and the item or items constituting such list are for purposes of example only and do not in any way restrict the clause preceding such list.

**3.17.10 Probate Estate:** The term probate estate means all property of whatever nature and wherever situated in which I may have any interest that is or may be subject to administration by my personal representative.

**3.17.11 Residuary Trust Estate:** The term residuary trust estate means the portion of the trust estate that otherwise is not disposed of by the Articles preceding Article 1.4 and by the payments authorized under Article 3.5. No power of appointment shall be exercised by Article 1.4.

**3.17.12 Trust Estate:** At my death, the trust estate shall consist of the property currently held in the **MOLLY W. NEILL REVOCABLE TRUST**, together with any other property added to the trust during my lifetime or after my death, by transfer during life, by will, or otherwise, by me or by others, and any accrued or undistributed income or gains on such property or any reinvested property. The trust estate of any separate trust shall consist of all property then held in such trust, including accrued or undistributed income. Any separate fund or trust shall be considered as existing at the time a division or allocation is required to be made under this agreement even though such time may be prior to actual funding of such trust.

**ARTICLE 3.18 CHANGES IN AND ADDITIONS TO THE TRUST**

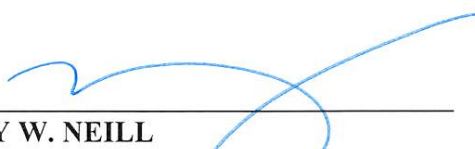
This agreement may be amended from time to time and may be revoked partially or fully by me during my lifetime by a writing delivered to the trustee that shall specify the terms of such amendment or revocation. No amendment shall increase the duties and responsibilities of the trustee without its consent. My will should be examined in connection with the making of any amendment or revocation of this agreement to determine what changes, if any, should be made in my will. I may add to the trust by deed, will, or otherwise. With the written approval of the trustee, other persons may add to the trust or any separate trust established under this agreement.

**ARTICLE 3.19 EXECUTION OF AGREEMENT, RECEIPT OF PROPERTY, ACCEPTANCE OF TRUSTEESHIP**


I, as settlor, sign this agreement, to be effective as of this date.

My spouse, Andrew, and I, as trustees, acknowledge receipt of the property described in Schedule A and signify our acceptance of the trusteeship of the **MOLLY W. NEILL REVOCABLE TRUST**. We covenant that we will administer the trust with all due fidelity.

January 10, 2020  
Date of Execution

  
\_\_\_\_\_  
**MOLLY W. NEILL**  
SETTLOR AND TRUSTEE

January 10, 2020  
Date of Execution

  
\_\_\_\_\_  
**ANDREW M. NEILL**  
TRUSTEE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me by **MOLLY W. NEILL** as settlor and as trustee, on January 10, 2020.

WITNESS my hand and official seal.

My commission expires: November 1, 2020.

WILLIAM DOUGLAS HOAK  
NOTARY PUBLIC  
STATE OF COLOARADO  
NOTARY ID 20124070021  
MY COMMISSION EXPIRES 11/01/2020

  
\_\_\_\_\_  
Notary Public [SEAL]

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me by **ANDREW M. NEILL**, as trustee, on January 10, 2020.

WITNESS my hand and official seal.

My commission expires: November 1, 2020.

WILLIAM DOUGLAS HOAK  
NOTARY PUBLIC  
STATE OF COLOARADO  
NOTARY ID 20124070021  
MY COMMISSION EXPIRES 11/01/2020

  
\_\_\_\_\_  
Notary Public [SEAL]

**MOLLY W. NEILL REVOCABLE TRUST**

**SCHEDULE A**

The following is a description of the original assets of the **MOLLY W. NEILL REVOCABLE TRUST**:

1. \$1.00 in Cash.

I convey, assign, and deliver the above described assets to the trustee on January 10, 2020.

\_\_\_\_\_  
**MOLLY W. NEILL**

SETTLOR