*Sample document only – clients must consult legal counsel*

**Irrevocable Trust Agreement with Life Insurance Provisions**

**(Single Life Policies)**

This sample agreement has been prepared as a guide to assist attorneys. This sample agreement cannot be used as a final draft. Clients must seek legal counsel to modify the agreement for the client’s particular circumstances. The client’s attorney will necessarily be responsible for drafting the actual agreement.

A brief summary of the assumptions underlying this sample agreement and some of its key provisions follow.

* This is an irrevocable life insurance trust designed to own a single life policy on the life of the grantor.
* Provisions are included that we believe will qualify the trust as a “grantor” trust as defined in IRC secs. 673-677.
* The trustee may distribute income and principal to the grantor’s spouse and to the grantor’s descendants while either the grantor or the grantor’s spouse is living.
* The amount over which the trust beneficiaries have Crummey withdrawal powers will need to be determined based upon the amount of the insurance premiums, the number of beneficiaries, and other factors.
* Each descendant of a child who predeceases the grantor is given the right to withdraw the amount determined by dividing the amount available for withdrawal by the total number of children and descendants of the deceased child, not just a pro rata share of the deceased child’s withdrawal right.
* If the beneficiaries’ withdrawal rights exceed the “5 and 5 power,” the excess lapse problem may be avoided by either a general power of appointment provision or by including a “hanging power.”
* A trustee may be replaced by an independent corporate trustee either during the life of the grantor, or by the beneficiaries following the death of the grantor.
* Decanting: More than half the states have statutes that allow decanting of irrevocable trusts, meaning the ability to move trust assets to another irrevocable trust with changes, ranging from merely different administrative terms to substantive dispositive provisions. The ability to decant and breadth of permitted change is very state-specific, but the drafting of the original trust can be designed to incorporate provisions that allow maximum flexibility for changing circumstances. This trust does not include specific decanting provisions, because they will depend primarily on local law.
* Special Needs Trust: Special needs provisions in an irrevocable life insurance trust are typically designed to improve the quality of life for an individual with special needs who is a beneficiary of a governmental need-based program (e.g. Medicaid), by providing additional discretionary trust resources without causing the beneficiary to lose eligibility for said programs. The requisite terms of a Special Needs Trust vary from state to state and should be drafted by a local attorney, if such an addition to this trust is desired.
* Trust Protectors: A Trust Protector performs a function that carries out enumerated administrative and strategic purposes that are typically not reserved to the trustee, settlor, or beneficiaries in a trust. These may include but are not limited to; trustee oversight, adapting to changes without modifying the trust, modifying trust after settlor’s death, addressing overlooked issues and legal protection and tax benefits in a changing environment. While these powers can be enumerated in the trust document, the Uniform Trust Code vaguely addresses Trust Protector provisions, and the availability of trust protector provisions varies by state. While these provisions are becoming more commonplace, this trust does not include specific trust protector provisions, since they are discretionary and state law-specific.

**SAMPLE DOCUMENT ONLY**

**CLIENTS MUST CONSULT LEGAL COUNSEL**

**Irrevocable Trust Agreement with Life Insurance Provisions**

(Single life policies)

 **This trust agreement** (hereafter the “Agreement”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_, by and between (Name) , of \_\_(Address)\_\_, hereafter called the “Grantor”, and (Trust Company), of (Address), hereafter called the “Trustee,” witnesseth**:**

 **Whereas,** the Grantor desires to create a trust (the “Trust”) of certain property, which property has been or will be transferred to the Trustee and is or will be described in Schedule A attached hereto and made a part hereof, such property hereafter called the “Trust Property”; and

 **Whereas,** the Grantor desires to convey whatever right, title and interest he or she may have in such Trust Property to the extent described in the Trust, to be held in trust, upon the express terms and conditions and with the powers and limitations hereinafter contained in this Agreement;

 **Now, therefore**, the Trustee agrees to hold, invest, reinvest and otherwise deal with such Trust Property, including any proceeds thereof and such other property which the Grantor or any other person may hereafter place or cause to be placed under this Agreement, for the following uses and purposes:

**Article 1**

# Name and nature of trust

1. **Name of Trust.** The Trust hereby created shall be known as the (Name of Grantor) IRREVOCABLE FAMILY TRUST and is created for the express benefit of (Names of Beneficiaries) and their descendants.
2. **Declaration of Irrevocability.** The Trust created under the terms of this Agreement is irrevocable, and it is specifically understood and agreed that the assignment and transfer to the Trustee of the Trust Property is so made by the Grantor without reserving to the Grantor any right, power or authority to amend, alter, revoke, terminate or designate the persons who shall possess or enjoy the Trust Property or income therefrom. The Trust Property is delivered by the Grantor to the Trustee absolutely and irrevocably, and without any condition, limitation or reservation whatsoever other than those herein expressly set forth. The Grantor relinquishes absolutely and forever all possession and enjoyment of, or the right to income from, the Trust Property, whether directly, indirectly or constructively, as well as every interest of any nature, present or future, vested or contingent, in the Trust Property, unless such is expressly reserved in this Agreement.
3. **Family.** The Grantor is now married to (Name), hereafter called the Grantor’s “Spouse.” The children of the Grantor now living are (Names). All references herein to Grantor’s “child” or “children” shall include the above named children as well as all children hereafter born to or adopted by the Grantor.

**Article 2**

**Trust property**

1. **Establishment and Acknowledgment of Trust.** The Grantor hereby establishes this Trust and the Grantor hereby absolutely and irrevocably transfers and assigns to the Trustee all of the Grantor’s right, title and interest in and to the Trust Property. The Trustee hereby acknowledges receipt of the Trust Property and agrees to hold the Trust Property and any additions thereto from any source, and to administer, manage, invest and reinvest all such property, according to the terms and conditions of this Agreement. The initial Trust Property is listed on Schedule A attached to this Agreement.
2. **Power to Receive Additional Property.** The Trustee herein is authorized, in its sole discretion, to receive additional property or cash from any person, firm, corporation, estate or trust, including the Grantor. The Trustee may receive such property subject to the payment of, or liability for, state and/or federal estate, transfer, succession, inheritance, or other death taxes, including any interest or penalties thereon, and the Trustee shall be authorized to sign any required consent against such property. Such property or cash shall thereupon become a part of the Trust Property subject in every respect to the terms, powers, conditions and purposes of this Agreement, with the same force and effect as if it had been received upon the creation of this Trust.

# Article 3

**Administration during the life**

**of the grantor**

1. **General.** The Trustee shall hold, invest and reinvest the principal of this Trust and shall receive and collect any income thereon, and, after deducting therefrom the expenses of administering the Trust, shall dispose of or pay over the net income and principal in the manner hereinafter set forth.

	1. **Dispositive Provisions while The Grantor Is Living.** While the Grantor is living, the Trustee may from time to time pay or to apply for the benefit of the Grantor’s spouse, the Grantor’s children, or if a child is deceased, then such deceased child’s then living descendants, so much of the income and principal as the Trustee in its sole discretion deems advisable for such beneficiary’s proper care, support, maintenance and education. Notwithstanding the above, no payment under this provision shall be made in satisfaction of a legal obligation of the grantor nor for the pecuniary benefit of the Grantor. Further, no payment of principal otherwise authorized herein shall be made by the Trustee until the expiration of the time for the exercise of each power of withdrawal which shall arise, as provided in subsection (b) of paragraph 3.1, following a transfer to the Trust, except to the extent that such payment shall exceed in value a reasonable reserve, to be determined in the absolute discretion of the Trustee, from which the exercise of the power may be satisfied. The Trustee shall not be required to maintain equality in making income or principal distributions, annually or for any period, nor shall the Trustee be required to make any distributions of principal. Any income not expended under the terms of this subsection (a) shall be accumulated and added to the principal annually.
	2. **Limited Power of Withdrawal.** While the Grantor is living, the Grantor’s spouse, if he or she is then living, and each living child of the Grantor, or if a child is deceased, then each living descendant of such deceased child, shall have the right during each calendar year, including the year in which this Trust is created and the year in which the Grantor dies, to make withdrawals from the principal of the Trust in accordance with the following provisions:

		1. The Grantor’s Spouse may annually withdraw the amount of the total direct or indirect, actual or deemed inter vivos gifts made to the Trust in that calendar year; provided, however, that no such right shall exist with respect to any addition that shall be considered to have been made by such spouse; and provided further, that the aggregate amount of such withdrawals by the Grantor’s spouse during any calendar year shall not exceed the greater of Five Thousand Dollars ($5,000) or five percent (5%) of the Trust Property, and to the extent that such gifts to the Trust exceed such amount in any calendar year, the Grantor’s Spouse shall have no right to make withdrawals with respect to such excess.
		2. Each then-living child of the Grantor, or if a child is deceased then the then-living descendants of such deceased child collectively, may annually withdraw from the total direct or indirect, actual or deemed inter vivos gifts made to the Trust in that calendar year, an amount determined as follows:

a. Subtract from the total inter vivos gifts made into the trust the amount, if any, which the Grantor’s spouse is entitled to withdraw with respect to such gifts (as calculated above);

b. Divide the remaining amount of such gifts by the number of such then-living children and deceased children with then-living descendants;

Provided, however, that the total amount of such withdrawals by any such beneficiary during any calendar year shall not exceed ($5,000) ($16,000 in 2022) ($32,000 in 2022)($17,000 in 2023) ($34,000 in 2023) (the maximum amount of the annual exclusion from the value of such gifts provided for in sections 2503(b) and 2513 of the Code or other governing federal estate and gift tax law). Any payment pursuant to the exercise of a withdrawal right by a minor shall be made to such minor’s legal representative or natural guardian, or to an account established by the Trustee pursuant to the Uniform Transfers to Minors Act.

* + 1. The Trustee shall give written notice within a reasonable time to each beneficiary of any direct or indirect, actual or deemed inter vivos gifts made to the Trust on such beneficiary’s behalf, and any requested distribution shall be made by the Trustee promptly upon receipt of the written request of the beneficiary. This right of withdrawal (“Crummey Power”) may be exercised by each beneficiary during the thirty (30) day period commencing upon receipt of written notification from the Trustee of such additions to Trust Property; but in no event shall the amount subject to withdrawal in any calendar year exceed the amounts specified in subparagraphs (b)(1) and (b)(2) hereof.
		2. The Trustee may, in the Trustee’s sole discretion, satisfy the exercise of any right of withdrawal by a distribution all or part in cash or other property, including insurance policies, or by borrowing, and the Trustee’s determination shall be final and binding on any beneficiary.
		3. If a beneficiary entitled to make a withdrawal does not exercise such right in full on or before the expiration of such thirty (30) day period, the unwithdrawn portion applicable to that period shall not cumulate to future years, and no payment shall be made in a subsequent year on account of an amount not requested in a prior year.
		4. If, during any year, any beneficiary shall be under a legal disability, then notice shall be given to and the beneficiary’s right of withdrawal may be exercised by any person who may act on the beneficiary’s behalf under state law.
		5. For purposes of this subparagraph (b), the term “total direct or indirect, actual or deemed inter vivos gifts” shall mean any cash or other assets, including life insurance policies (or any interests therein), which are transferred to the Trustee to be held as Trust Property and shall also include any premiums on policies of life insurance (or any interests therein) owned by the Trustee which premiums are paid by the Grantor or any other person, directly or indirectly to the insurance company. The date of the gift shall be deemed to be the date on which the title to such policy or the property is transferred to the trust or the date a premium payment is transmitted to the insurance company issuing the policy. The amount of any gift to the Trust shall be the value of such gift for federal gift tax purposes. The initial principal of the trust shall be treated as a gift for purposes of this subparagraph (b).
		6. To the extent that a beneficiary fails to fully exercise his or her withdrawal right and the lapsing amount exceeds the greater of Five Thousand Dollars ($5,000) or five percent (5%) of the Trust Property on the date of such lapse (or the amounts referred to in section 2514(e) of the Code, as it may subsequently be amended), he or she shall have the power to appoint that amount to the appointee or appointees, including his or her estate, as he or she may select, in the manner and proportions as he or she may direct by his or her Will made at any time, making specific reference to this power. This general power of appointment is granted to such beneficiary and shall be exercisable by him or her alone and in all events.. If the death of any beneficiary occurs prior to the death of the Grantor, to the extent such deceased beneficiary has not exercised this general power of appointment in his or her Will, the amounts that could have been appointed shall remain a part of the Trust Property, to be managed, administered and distributed as provided in Articles 3 and 4 of this Agreement. If the death of any beneficiary occurs after the death of the Grantor, but prior to the time all such deceased beneficiary’s separate share of the Trust Property has been distributed, to the extent such deceased beneficiary has not exercised this general power of appointment in his or her Will, the amounts that could have been appointed shall be distributed per stirpes to such beneficiary’s then living descendants, if any, or if none, then per stirpes to the Grantor’s then living descendants, subject, however to the provisions of paragraph 4.2 of Article 4 relating to distribution of shares to persons then under the age of twenty-five (25) years, and except that each such portion otherwise distributable to a beneficiary for whom a share of this Trust is being held hereunder shall be added to that share. In no event may property be appointed to the Grantor or to a creditor of the Grantor.

[**Optional paragraph providing special power of appointment]***The following optional provision may be included when it appears desirable to give an adult relative or friend the power to appoint trust property, including insurance policies, to the Grantor’s children or grandchildren or to another irrevocable trust containing substantially similar provisions. Although an adult child could be designated to exercise the special power, the child would not have the power to appoint trust property to himself or herself.*

* 1. **Special Power of Appointment Over the Trust Property.** During the lifetime of the Grantor, the Grantor’s spouse, if living, otherwise (Name of Adult Relative or Friend), shall have the power at any time to appoint the Trust Property in whole or in part and in any manner and in such proportions as he or she deems advisable, to any child or grandchild of the Grantor, or to an irrevocable trust created by the Grantor having substantially similar provisions, as he or she may direct in writing to the Trustee. The Grantor’s spouse, if living, otherwise (Name of Adult Child, Friend, etc.), may exercise this power of appointment only in favor of the children or grandchildren of the Grantor. In no event may property be appointed to a creditor of the Grantor. This power shall not be exercised in favor of the holder of this power, his or her estate, his or her creditors, or the creditors of his or her estate.]

**Article 4**

**Administration after the death of the grantor**

1. **General.** The Trustee shall hold, invest and reinvest the principal of this Trust and shall receive and collect any income thereon, and, after deducting therefrom the expenses of administering the Trust, shall dispose of or pay over the net income and principal in the manner hereinafter set forth.

	1. **Dispositive Provisions While the Spouse Is Living.** Following the Grantor’s death, the Trustee may from time to time pay to or apply for the benefit of the Grantor’s spouse so much of the income and principal as the Trustee in its sole discretion deems advisable for his or her health, support, maintenance or education.
	2. **Dispositive Provisions Following The Death of the Spouse.** Upon the death of the Grantor’s Spouse, or upon the death of the Grantor if his or her spouse shall not survive the Grantor, the Trustee shall divide the Trust Property, as then constituted, into equal shares so as to provide one share for each then living child of the Grantor, and one share for the then living children, collectively, of each deceased child of the Grantor.

	The income and principal of each share shall be held and distributed as follows:
		1. With respect to the share provided for a child of the Grantor then living:
		The Trustee shall pay to or apply for his or her benefit, from time to time, such sums from the income and principal of that child’s share as the trustee in the exercise of its sole discretion, deems necessary or advisable to provide for his or her proper health, support, maintenance or education.

		As each child of the Grantor attains the age of twenty-five (25) years, or upon divisions of this Trust into separate shares if a child has then reached such age, the Trustee shall distribute to him or her outright absolutely one-half (1/2) in value of the principal and accumulated income of his or her share then being held in trust; and when a child of the Grantor reaches the age of thirty (30) years, or upon division of the Trust into shares if a child has then reached such age, the Trustee shall distribute to him or her outright absolutely the balance of the principal and accumulated income then being held in his or her share and the trust as to that share shall then be terminated.

		If a child of the Grantor should die before receiving full distribution of his or her share, the remainder of that child’s share shall be distributed per stirpes to his or her then living descendants, if any; or if none, then per stirpes to the Grantor’s then living descendants; subject, however, to the provisions of paragraph 4.2 of this Article 4 relating to distribution of shares to persons then under age 25, and except that each portion otherwise distributable to a beneficiary for whom a share of this Trust is then being held hereunder shall be added to that share.
		2. With respect to each share, if there be any, for the then living descendants, collectively, of a deceased child of the Grantor, that share shall be paid over and distributed outright absolutely in equal shares to such descendants of the deceased child; subject, however, to the provisions of paragraph 4.2 of this Article 4 relating to the distribution of shares of persons then under age twenty-five (25), and except that each portion otherwise distributable to a beneficiary for whom a share of this Trust is then being held hereunder shall be added to that share.
2. **Distributions to Persons Under Age 25.** If, at any time, any separate share becomes distributable to a beneficiary who has not attained the age of twenty-five (25) years, then and in each such case, the Trustee shall retain possession of such separate share for the period during which that beneficiary is under the age of twenty-five (25) years; and in the meantime, the Trustee shall use and expend so much of the income and principal of such share as it, in its sole discretion, deems necessary or a advisable for the health, support, maintenance and education of that beneficiary, and any income not so expended shall be added to principal. When the beneficiary attains the age of twenty-five (25) years, any balance held for his or her benefit shall be paid over and distributed outright to him or her. If a beneficiary for whom a separate share is held shall die before attaining the age of twenty-five (25) years, then any remaining portion of his or her share shall be distributed per stirpes to his or her descendants, if any, otherwise to the then living descendants of his or her parent who is a descendant of the Grantor, per stirpes, if any, or if none, to the Grantor’s then living descendants, per stirpes; provided, however, that any portion otherwise distributable to a beneficiary for whom a separate share is then held pursuant to this Agreement shall be paid over to the Trustee of such separate share and become a part thereof.
3. **Failure of Beneficiary.** If, at any time before final distribution, there shall not be in existence anyone who is, or who might become, entitled to receive benefits under the foregoing provisions of this Agreement, any portion remaining shall be distributed as if the Grantor had then died intestate owning such portion and domiciled in the State (or Commonwealth) of (Name ) .
4. **Fall-back Marital Deduction.** Notwithstanding any provisions of this Trust to the contrary, at the death of the Grantor, if any portion of the Trust Property is included in the Grantor’s taxable estate for federal estate tax purposes, that portion shall be subject to the following:

	1. **Distribution to Spouse.** If the Grantor’s spouse survives the Grantor, the Trustee shall distribute that portion of the Trust property to Grantor’s spouse, except that if there are one or more trusts which shall or by election could qualify for the federal estate tax marital deduction in Grantor’s estate, that portion of the Trust Property shall be added in equal shares to those trusts. For purposes of this Article, the Grantor shall be deemed to have survived his or her spouse if the order of the deaths cannot be proved. This distribution shall carry with it a proportionate part of the income of the trust property from the date of death of the Grantor to the date of distribution.
	**Payment of Taxes.** The estate and inheritance taxes with respect to property held by this trust and assessed by reason of the death of the Grantor shall be paid by the Trustee from the principal of the Trust creating the estate or inheritance tax liability. The Trustee may make payment directly, or to the legal representative of Grantor’s estate, as the Trustee deems advisable. The Trustee shall not seek reimbursement for any payments made pursuant to this paragraph.

c) **Reliance Upon Fiduciary.** In making distribution or payment, the Trustee shall accept without inquiry the statement of the fiduciary responsible for filing the federal estate tax return or paying estate or inheritance taxes, as the case may be, as to the amounts required to satisfy the provisions of this Article. The succeeding provisions of this Agreement shall be subject to the Trustee’s making or providing for the foregoing distribution or payment.

**Article 5**

## Administrative powers

1. **General.** The Trustee shall have the following powers exercisable in its discretion in addition to and not in limitation of any other inherent, implied or statutory powers granted by law of herein otherwise conferred:

	1. To hold and continue to hold, as an investment, any property received by the Trustee as long as the Trustee may deem advisable; and to invest funds in any variety of real or personal property including, without limitation, stocks, bonds, notes, mortgages, and lands, whether or not such investments be of the character permissible for investments by fiduciaries.
	2. To sell, lease, pledge, mortgage, transfer, exchange, or otherwise dispose of, or grant options with respect to, any and all property, real and personal, at any time forming a part of any trust hereunder, in such manner, at such time or times, for such purposes, for such prices, and upon such terms, credits and conditions as the Trustee may deem advisable. Any lease made by the Trustee may extend beyond the period fixed by statute for leases made by fiduciaries and beyond the duration of any trust hereunder.
	3. To borrow money in such amounts and for such purposes as the Trustee shall deem for the best interests of any trust hereunder; and, in connection with such borrowing, to execute and deliver promissory notes or other evidence of indebtedness of any trust hereunder, and to mortgage or pledge all or any part of any real or personal property of the Trust or secure payment of such indebtedness and to repay such indebtedness out of the Trust Property.
	4. To determine what is principal and what is income of any trust; and, in its discretion, to allocate or apportion receipts and expenses between principal and income.
	5. To allocate to the income account or to the principal account, or in part to each, any money, stock distributions, or other property received, and to charge to either of those accounts, or in part to each, any expense, including taxes, and interest and penalties relative thereto, and Trustee’s commissions paid or loss incurred, as the Trustee shall deem equitable; and, in particular, to determine whether, and if so, to what extent (i) premiums on securities acquired at a premium shall be amortized, (ii) account shall be taken of discounts in the case of securities acquired at a discount, (iii) receipts from wasting investments shall be allocated to the principal account, or (iv) rentals from improved real property shall be withheld as a reserve for depreciation in respect of such property.
	6. To hold the assets of the separate trusts, shares, or portions of trusts created by this Agreement as a single fund for joint investment and management without the need for physical segregation, dividing the income proportionately among them. Segregation of the various trusts, shares or portions need only be made on the books of the Trustee for accounting purposes.
	7. To purchase property from, sell property to or otherwise deal with the executor, trustee or other representative of the Grantor’s estate or trusts, even though the Trustee be such executor, trustee or representative, without responsibility or liability for any loss resulting to this Trust from any such purchase or sale.
	8. To make loans, secured or unsecured, and without responsibility or liability therefore, including but not limited to loans to the administrators or executors of the Grantor’s estate, whether or not such administrators or executors may be the Trustee hereunder, to a corporation or any other business entity in which the Grantor or the Grantor’s heirs has or had an interest, or to any estate or trust in which the Grantor’s heirs have an interest; provided, however, that any loan to the Grantor shall only be made if adequately documented by the borrower’s promissory note, if security is provided by the Grantor and if adequate interest is charged.
	9. To renew, modify, or extend the time of payment of the terms of any obligations, secured or unsecured, payable to or by any trust created hereunder, in such manner, for such period or periods of time, and on such terms and conditions, as the Trustee may determine.
	10. To participate and consent, directly, or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of any corporation in which any trust hereunder may have any interest; and to receive and continue to hold any property which may be allocated or distributed by reason of any such reorganization, consolidation, merger, dissolution or liquidation; and to consent to the sale, lease, pledge, or mortgage of any property by or to any such corporation; and to make any payments and take any steps which the Trustee shall deem advisable in connection therewith.
	11. To demand, receive, receipt for, sue for, and collect any and all rights, money, properties or claims to which any trust hereunder may be entitled and to compromise, settle, arbitrate or abandon any claim or demand in favor of or against any trust hereunder.
	12. To make or hold investments of any part of any trust hereunder in common or undivided interests with other persons or corporations.
	13. To merge, without court action, any trust created hereunder into or with any other share or trust created under this or any other document, wherein the beneficiaries, distribution of income and principal, ultimate method of distribution, and all other administrative terms and provisions are substantially similar. The Trustee may select the trust instrument under which the single resulting trust shall be administered; provided, however, that the trust instrument having the earliest effective rule against perpetuities savings clause shall be the one so selected. The decision of the Trustee in this regard shall be conclusive on all parties in interest.
	14. To engage the services of legal, accounting and investment counsel to assist and advise the Trustee in the administration of the Trust, and to pay for such services out of the principal or income as the Trustee, in its discretion, shall determine.
	15. To vote in person or by proxy, or to refrain from voting, in respect of any securities, and to enter into any voting trust or similar agreement.
	16. With respect to any securities, to consent or object to any action or nonaction of any corporation, or of the directors, officers or stockholders of any corporation, and to deposit any securities under any reorganization or other agreement or with any committee, depositary, agent, or trustee, and to pay fees, assessments, and expenses relative thereto.
	17. To exercise or sell any rights of subscription or other rights received in respect of any securities.
	18. To register securities in the name of any nominee, with or without indication of the capacity in which the securities shall be held, or to hold securities in bearer form.
	19. To make any particular payment, division, or distribution of income or principal in kind, in money, or partly in each, and without regard for the manner in which any other payment, division, or distribution may have been made, and, in the case of any division into shares, to make up the several shares of similar or of different property, and to exercise these powers without regard to the income tax basis of any property so paid, divided, or distributed in the hands of the recipient and without regard to any provision of law expressing a preference for distribution of property in kind. Distribution in kind shall be made at the market value of the property distributed.
	20. Regarding the exercise of any discretionary powers over payment of income or principal to any beneficiary, either to take into account or to disregard, as the Trustee shall deem appropriate in the particular circumstances, any financial resources outside this Agreement or available to such beneficiary.
	21. In general, to exercise every power and discretion in the management of any trust as the Trustee would have if it were the absolute owner thereof, and this general power shall not be limited in any way by the specific powers given herein; provided, however, the Trustee shall not be held accountable by any beneficiary for any action taken by the Trustee for which a basis exists for believing that such action would not cause inclusion of the Trust Property in the gross estate of the Grantor.
	22. If the Trustee, in its sole discretion, determines that by virtue of the amount of the Trust Property it is no longer economically justified or feasible to continue the administration of this Trust, or any separate trust created pursuant hereto, then the Trustee may, without further responsibility, terminate any such trust hereunder and pay the then remaining principal and income of such trust to the person then eligible to receive income therefrom or, if there is more than one such person, to them in such amounts or proportions as the Trustee in its sole discretion may deem appropriate. If any such person is a minor or is, in the Trustee’s opinion, disabled by advanced age, illness or other cause, the Trustee may pay any amount distributable to him or her, to his or her parent, guardian or other legal representative, or in the case of a minor, may deposit it in a savings account in the minor’s name, payable to him or her at majority. In no event shall such amounts be paid to the Grantor. The Trustee shall have no further responsibility for funds so paid or deposited.
	23. To execute and deliver any such instrument in writing which the Trustee may deem advisable to carry out any of the foregoing powers. No party to any such instrument in writing signed by the Trustee shall be obligated to inquire into its validity, or be bound to see to the application by the Trustee of any money or other property paid or delivered to the Trustee pursuant to the terms of any such instrument.

At any time and from time to time, and subject to revocation at any time, to transfer the situs of any or all Trust Property to any other place whether within or without the United States; to appoint any other trust company as substitute corporate Trustee as to such assets, and at will to remove (and approve the accounts and give a full release and discharge to) any substitute corporate Trustee or to rescind such appointment.

1. **Restriction.** While the Grantor is living, neither the Trustee nor any other person having a discretionary power to distribute or appoint principal may exercise such power in a manner that could diminish any beneficiary’s power to withdraw principal under subparagraph (b) of paragraph 3.1 of Article 3 hereof.

**Article 6**

**Specific powers concerning insurance**

6.1 **Purchase of Insurance and Annuities.** The Trustee shall have the power to purchase insurance or annuity contracts on the life of the Grantor, the Grantor’s spouse, or any Trust beneficiary or any person in whom a Trust beneficiary has an insurable interest, and to pay the premiums thereon out of such beneficiary’s share or shares of the Trust as the Trustee, in its discretion, shall determine. The Trustee is authorized to rely upon the recommendation of the life insurance professional of the Grantor with respect to such purchase without any duty or obligation to make further inquiry or investigation concerning the policy or the insurance company issuing the policy and shall be fully exonerated from any liability for actions taken in good faith reliance on such life insurance professional’s recommendation. The Trustee is specifically authorized to purchase insurance through, and rely upon the recommendations of, an insurance professional or agency affiliated with the Trustee. [The Grantor specifically acknowledges the affiliation between the Trustee and (Name of Agency) and waives any conflict the Trustee may have in dealing on behalf of the Trust with the affiliated agency, including purchasing insurance or annuities for the Trust if the Grantor’s life insurance professional is an employee of (Name of Agency), so long as such purchase is on terms and under circumstances comparable to those generally available through non-affiliated companies.] The Trustee further is authorized to retain any policy or annuity contract purchased by it or received as an original asset of the Trust without any duty to diversify investments or to invest in securities or other properties during the lives of the Grantor and the Trust beneficiaries.

6.2. **Payment of Premiums.** The Trustee in its discretion may make payments of premiums or other
charges on any such policy out of the income or principal of the Trust; however, no duty or
responsibility for payment of premiums or other charges on account of any such policy shall rest
upon the Trustee. If sufficient funds are not available or provided to the Trustee to pay the premiums or any other charge on any such policy, the Trustee may exercise any option available under the insurance policy to reduce the premiums and/or insurance coverage, to use assets of the policy to pay premiums or to purchase reduced paid-up insurance, to borrow upon the policy or from any other source for the payment of the premiums, or to liquidate any of the Trust Property for the payment of the premiums, whichever option, in the sole discretion of the Trustee, shall be deemed to be in the best interest of the Trust. The Trustee shall have no duty or obligation to inquire whether premium payments have been made, and in the absence of specific written notice to it that premiums have not been paid, it shall have no duty to exercise discretion to allow automatic premium loan provisions to operate, to borrow to pay premiums or to elect the automatic forfeiture feature. The Trustee shall have no liability for the lapse of any policy due to the nonpayment of premiums if sufficient funds are not provided to the Trustee for the payment of such premiums and shall have no duty to inform any person that the assets of the Trust are not adequate to maintain the policy. If the insured under any such policy or policies of insurance becomes totally and permanently disabled within the meaning of such policies, and because of such disability the payment of premiums shall, during the pendency of such disability, be waived, the Trustee, upon receipt of such information, shall promptly notify the insurance companies which have issued such policies and shall take any and all steps necessary to make such waiver of premium provision effective. The Grantor shall be under no duty to pay premiums, assessments, or other charges necessary to keep any policy owned by the Trust in force, and the Grantor shall incur no liability to any Trust beneficiary or other person if the Grantor shall permit any such policy to lapse or become
uncollectible for any reason.

6.3. **Transfers to Trust.** Any life insurance policy acceptable to the Trustee may be transferred to the
Trust by the owner thereof by delivering the policy to the Trustee and causing the Trustee (in its capacity as Trustee) to be named the owner and beneficiary of the policy. Notwithstanding any provision of this Agreement to the contrary, the failure of the Trustee to add a life insurance policy to Schedule A of the Trust, if any, shall in no way limit the efficacy of the transfer of such policy to the Trust. This Agreement shall apply fully to any life insurance policy into which a policy which is a part of the Trust may be converted, reissued or consolidated.

6.4. **Use of Cash Value.** The Trustee shall have no duty to borrow against the cash value of any policy
held in the Trust or otherwise to use the cash value for other investment purposes.

6.5. **Collection of Policy Proceeds.** Upon the death of the Grantor or any other person, the Trustee shall make every effort to collect the proceeds of all insurance policies or annuity contracts that
become payable to the Trustee pursuant to the terms and provisions of this Agreement. The Trustee shall not be entitled to reimbursement from the Grantor’s estate or from any other person for the amount of any indebtedness or interest thereon that shall be a charge against the proceeds of any such policies. The Trustee is hereby authorized to make all necessary proofs of death under such policies, to execute and deliver any and all receipts and releases for the net proceeds thereof, to institute any action, suit or proceeding to collect such net proceeds, and to pay from the Trust principal or income all expenses thereof, including court costs and counsel fees and to do and perform any and all other acts that the Trustee shall deem necessary or advisable to collect the net proceeds; provided however, that the Trustee shall not be under any obligation or duty to institute such actions, suits or proceedings unless it shall be advisable in the opinion of the Trustee’s counsel and unless the Trustee shall have either adequate funds from the Trust with which to pay the expenses of the actions, suits or proceedings or indemnification to the Trustee’s satisfaction against such expenses. Upon payment to the Trustee of the proceeds due under any such policy, the insurer shall be relieved of any responsibility to see to the application or disposition of those proceeds. The Trustee shall not, under any circumstances, be liable or accountable for any loss that may result from the good faith exercise of the authority granted herein.

6.6. **Indemnification of Trustee.** The Trustee shall not, except at its option, enter into or maintain any
litigation, endorse payments of policies or take any other action with respect to any policy until it
shall have been indemnified to its satisfaction against all expenses and liabilities to which it may in
its judgment be involved by such action on its part. The Trustee shall have no duty or responsibility to inquire into whether or not it has been designated as a beneficiary of any policy or of any employee death benefit of which it has not received notice.

6.7. **Full Discharge.** The payment by an insurance company of the proceeds of any policy of insurance
to the Trustee shall be a full discharge of the insurance company on account of such policy and the
insurance company shall not be responsible for the proper discharge of the Trust or any part thereof.

6.8. **Exculpation of Insurer.** No insurance company or other entity issuing any policy or policies of life
insurance on the life of the Grantor, the Grantor’s Spouse or any other person, which at any time are transferred to or made payable to the Trustee, shall be required to ascertain whether or not any
person other than the Trustee initially named hereunder has become a co-trustee of the Trust or trusts created hereunder, but may deal with the Trustee initially named and make payments to said Trustee in the amounts payable on account of such policy of insurance as if said Trustee were the sole Trustee hereunder.

6.9. **Rights in Policies of Insurance.** The Trustee is hereby vested with all right, title and interest in
and to any policies of insurance irrevocably transferred to the Trust, and is authorized and
empowered to exercise and enjoy all such rights, for the purposes of any trust created hereunder and as absolute owner of such policies, including the right to designate beneficiaries thereof, the right to receive dividends thereon, the right to borrow upon such policies and to pledge them for a loan or loans, the right to permit the policies to lapse, or to cancel, convert, exchange, terminate or surrender the policies and to demand, collect and receive the cash surrender value or other proceeds that may thereupon become available, or to replace, sell, transfer, assign or otherwise dispose of the policies, to take paid-up insurance in a reduced face amount or to take extended insurance and to apply policy reserves for that purpose, and to demand, collect and receive from the insurers all proceeds thereof. The insurance companies which have issued such policies are hereby authorized and directed to recognize the Trustee as absolute owner of such policies of insurance and as fully entitled to all options, rights, privileges and interests under such policies; and any receipts, releases, or other instruments executed by the Trustee in connection with such policies shall be binding and conclusive upon the insurance companies and upon all persons interested in this Trust. The Grantor hereby relinquishes all rights and powers in such policies of insurance, and will, at the request of the Trustee, execute all other instruments reasonably required to effectuate this relinquishment.

6.10. **Intent of Grantor.** The Grantor intends that the sole primary asset of the Trust while either
the Grantor or the Grantor’s Spouse is living will be a policy (or policies) of insurance on the lives of
the Grantor and/or the Grantor’s Spouse. The Grantor does not intend for the Trustee to explore other
investment alternatives or options. The Grantor understands that life insurance is not a typical trust
investment and therefore directs the Trustee to hold insurance policies in the Trust consistent with
this statement of intent regardless of any law or regulation on prudent investment to the contrary.

6.11. **Disposition of Life Insurance on a Beneficiary Having No Incidents of Ownership.** If, at any
time, the Trustee receives or is holding a policy of life insurance insuring the life of a beneficiary
of this Trust and the beneficiary has no incidents of ownership in the policy, then the Trustee shall
segregate the policy in such a fashion that the beneficiary during life shall not be able to benefit in
any way from the policy or have any rights thereto. If such policy is surrendered during the life of
the beneficiary, or if a policy loan is obtained, or the policy is pledged for a loan, the monies
received from said surrender or loan shall be held, administered and distributed by the Trustee as
if the beneficiary were already deceased, notwithstanding any other provisions in this instrument
to the contrary.

6.12. **Trustee Not Responsible.** The Trustee accepts this Trust without any responsibility for the
validity or enforceability of any insurance policies now or hereafter in this Trust or for the legality
or effectiveness of any assignment, designation or change of beneficiary of any policy in this Trust.

6.13. **Split-Dollar Insurance.** The Trustee may enter into either contributory or noncontributory split-
dollar insurance agreements with any person or corporation or transfer any interest in a split-dollar
agreement or insurance policy being paid for on a split-dollar basis. Whenever a person (other than the Trustee) pays the entire premium on a policy owned by the Trust on a split-dollar basis, the Trustee shall notify the beneficiaries of the Trust of their right to withdraw the imputed gift of the
cost of insurance determined by applicable one-year term insurance rates.If the Trust owns a life
insurance policy and a person (other than the Trustee) pays a premium on such policy, then that
payment shall constitute an Addition to the Trust Property, and the Trustee may rely upon that
person’s statement of the date and the amount of such payment. Notwithstanding the preceding
sentence, if such person was under a contractual obligation to make such premium payment
pursuant to a split-dollar life insurance agreement, then such payment shall constitute an Addition
to the Trust Property only to the extent that such payment is treated as a gift to the Trust for federal
gift tax purposes.

**Article 7**

**Accounting, records and supervision of trustee**

1. **Annual Accounting.** While the Grantor is living, the Trustee shall render an accounting at least annually to the Grantor with respect to the assets in the Trust. Such accounting shall consist of a statement of accounts showing in detail income of the Trust property. Upon the death of the Grantor, the Trustee shall render at least annually during the term of the Trust to all adult income beneficiaries and any court-appointed personal representative of any minor or incompetent income beneficiaries of the Trust, a statement of accounts showing in detail, all receipts, disbursements and distributions of both principal and income and a list of assets on hand in the Trust (or any separate trust, as relevant) at the end of the relevant accounting period. If the Trustee does not receive any objection in writing within ninety (90) days after the rendering of such account, such account shall be deemed accepted by such persons, and such acceptance as to all matters and transactions stated in such account or shown thereby shall be final and binding upon all persons (whether or not in being) who are then or may thereafter be interested in or entitled to share in income or principal of the Trust.
2. **Records of Trustee.** The records of the Trustee shall be open at all reasonable times to the inspection of the Grantor and, upon the death of the Grantor, to any beneficiary of the Trust entitled to an accounting under this Agreement, or to any court-appointed representative of any such beneficiary.
3. **Court Supervision.** No accounts need to be filed in any court by any Trustee, and none of the trusts created hereunder need be submitted to the jurisdiction of any court, but the Trustee or beneficiaries are not prohibited from obtaining a court adjudication of any of the Trustee’s accounts, requesting court instructions, or submitting a dispute to an appropriate court.

**Article 8**

### Other provisions relating to the trustee

1. **Appointment of Successors.** The Grantor’s children, or the descendants of any deceased child, shall, if a majority of them agree to do so in writing following the death of the Grantor, remove the Trustee and appoint a successor Trustee. The consent to such removal of the Trustee by any minor or incompetent child, or deceased child’s descendant, shall be evidenced by the signature of the beneficiary’s legally appointed guardian or conservator. Any successor Trustee appointed must be a bank or trust company having all requisite trust powers and assets under administration totaling not less than Fifty Million Dollars ($50,000,000). In the event a trustee resigns, is unable or refuses to act, then any beneficiary of this Trust may apply to a court of appropriate jurisdiction for the appointment of a substitute or successor Trustee, provided, however, that any Trustee shall be a bank or trust company having assets then under administration totaling not less than Fifty Million Dollars ($50,000,000) and having all requisite trust powers.
2. **Liability of Trustee.** No Trustee shall be liable for the acts or omissions of any agent selected with care. No Trustee shall be liable for failure to demand or contest an accounting of any predecessor Trustee or otherwise compel any other Trustee to redress a breach of trust unless requested to do so in writing by a person having the right under this Agreement to demand an accounting as set forth in this Agreement.
3. **Compensation.** Any Trustee shall be entitled to reasonable compensation for services as the Trustee. The Grantor requests that such compensation be comparable to charges for similar services made from time to time by professional trustees in the geographic area in which the
Trustee’s services are rendered and that in all events such compensation shall be commensurate with the services actually performed. Any Trustee shall also be entitled to reimbursement for
expenses necessarily incurred in the performance of the Trustee’s fiduciary duties.
4. **Trustee as Fiduciary Only.** All powers granted in this Agreement to the Trustee are exercisable only in fiduciary capacity and for the best interests of the beneficiaries.
5. **Bond.** No bond or other security shall be required by the Trustee herein named or of any successor Trustees except as specifically required by the laws of the state of jurisdiction.
6. **Merger of Trustee.** If the Trustee merges with or is succeeded by another corporation, the new corporation, if it has trust powers, shall become the Trustee without any action by any person or court.

**Article 9**

**Generation skipping transfer tax (“GSTT”) matters**

9.1. **Severing of Trusts.** If any trust under this Agreement would by reason of an allocation of
GSTT exemption to it have an inclusion ratio, as defined in section 2642 of the Internal
Revenue Code, of less than one (1) but greater than zero (0), then before such allocation, the Trustee shall divide on a fractional basis the trust assets into two (2) separate trusts of equal or unequal value, to permit allocation of the GSTT exemption solely to one trust to be entirely exempt from the federal generation-skipping transfer tax with an exclusion ratio of zero (0) with the other trust having an inclusion ratio of one (1).

**9.2**. **Trust Identification.** The two trusts created under this Article shall have the same provisions and be identified in the same manner as the original trust except that the trust to which the GSTT exemption is allocated shall have the phrase “GSTT exempt” added to its name and the trust to which the GSTT exemption is not allocated shall have the phrase “GSTT nonexempt” added to its name.

9.3. **Order of Trust Distribution.** If GSTT exempt and GSTT nonexempt trusts are established under this Agreement, the Trustee shall have the power to make distributions under the provisions of Articles 4 and 5 to beneficiaries who are “non-skip persons” first from GSTT nonexempt trusts established for them and then from GSTT exempt trusts established for them; in addition, distributions as permitted under the provisions of Articles 4 and 5 to beneficiaries who are “skip persons” may be made first from GSTT exempt trusts established for them and only thereafter from GSTT non-exempt trusts established for them.

9.4. **Trustee Discretion.** The Trustee may make different tax elections and exercise investment,administrative, and distributive discretion, and donees of powers of appointment may exercise their powers differently with respect to each of the separate trusts derived from the divided trust.

9.5. **Definitions.** As used in this Agreement, “GSTT exemption” means the exemption fromfederal generation skipping transfer tax allowed under section 2631 of the Internal Revenue Code. “Skip persons” and “nonskip persons” shall be defined for purposes of this Agreement in accordance with section 2613 of the Internal Revenue Code.

**Article 10**

**Miscellaneous provisions**

10.1 **Definitions.**

* 1. The term “Trust Property” refers to all assets and properties, intangible, tangible, real, personal or mixed, which constitute or form part of the Trust received and held by the Trustee under this Agreement from time to time and at any given time.
	2. The term “Trustee” means any Trustee, and any substitute or successor Trustee.
	3. The term “education” shall mean training or institutional care at any preparatory or trade school, college, graduate or professional school or school for the physically or mentally handicapped, and shall include tuition, board, any special school clothing, books, supplies, tools, instruments and transportation.
	4. The term “per stirpes” shall apply to the distributions of a share of a deceased ancestor to a class or group of beneficiaries who are entitled to receive such share by their right of representing such ancestor, and not as so many individuals, and shall be deemed to require a division into a sufficient number of equal shares to make one share for each living child of the deceased ancestor and one share for the then living descendants of each then deceased child who is survived by living descendants regardless of whether any child of the ancestor is then living.
	5. The term “person” means an individual, a corporation, a partnership, an association, a trust, an estate or any other legal entity or organization.
	6. Masculine and feminine pronouns refer interchangeably to individuals of any gender identity, and to entities other than natural persons.
	7. The terms “children”, “grandchildren”, and “descendants” shall include adopted as well as natural children. A child born after the death of his or her parent shall be deemed living at the time of such death only if such child attains the age of thirty (30) days.
	8. The term “descendant” shall include the children, grandchildren, great-grandchildren, and great-great-grandchildren of a deceased beneficiary.
	9. All references to principal, income or other accounting terms or concepts shall be applied by the Trustee in the exercise of its judgment and discretion. The Trustee shall refer to any applicable laws of the state of jurisdiction and to the general principles of trust law in exercising discretion but need not be bound thereby, provided decisions are reasonable and taken in good faith.
	10. The term “Code” shall mean the Internal Revenue Code of 1986 as amended.

10.2 **Rule Against Perpetuities Provision.** Notwithstanding the directions hereto given to the Trustee as to the distribution of income and principal of the Trust created hereunder, if any such Trust has not previously vested in compliance with the rule against perpetuities and laws against imposing restraints on alienation and against accumulation of income or principal, the same shall terminate on the day on which shall expire the period of twenty-one (21) years after the death of the last survivor of the Grantor’s Spouse and the descendants of the Grantor living on the date of execution of this Agreement, and on such termination, the Trustee shall distribute the property of such Trust in such proportions and to the persons then entitled to the income or then entitled to have income accumulated for their benefit. The foregoing provisions of this paragraph shall not apply to any Trust or sub-trust created by this Agreement to which the rule against perpetuities does not apply under state law. It is the Grantor’s intent that the rule against perpetuities shall only apply when required by state law.

10.3 **Disability of Beneficiary.** In the event amounts should become payable to a beneficiary not adjudicated incompetent but who, by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable properly to administer or care for such amounts, then such amounts may be applied for the benefit of such beneficiary or may be distributed to any person legally appointed to deal with the property of such beneficiary or to any other person who gives written assurance, in form satisfactory to the Trustee, that the funds distributed to him or her will be applied for the benefit of such beneficiary. The Trustee shall be under no further duty to see that any funds so paid are applied for the benefit of such beneficiary and the Trustee shall be discharged from all liability as fully as if payment were made to such beneficiary and such beneficiary were not subject to such legal disability or any such illness or disability.

10.4 **Spendthrift Provision.** All beneficiaries of this Trust are hereby restrained from anticipating, encumbering, alienating or in any other manner assigning their interests in either principal or income, and are without power to do so; nor shall such interests be subject to their liabilities or obligations, nor to judgment or other legal process, bankruptcy proceedings, or claims of creditors or others; provided, however, that this provision shall not limit the right of any beneficiary to disclaim his or her interest hereunder.

10.5 **Jurisdiction.** This Agreement has been executed in the State (or Commonwealth) of (Name) and all questions of law arising under this Agreement shall be determined under and according to the laws of the State (or Commonwealth) of (Name), unless the situs of the trust has been changed as provided in Section 5.1, paragraph x.

10.6 **Savings Clause.** If it is determined that any provision hereof shall in any way violate any applicable law, such determination shall not impair the validity of the remaining provisions of this Agreement.

 **In witness whereof,** the parties hereto have set their hand the day and year above written.

(Formalities of execution will be (Signature of Grantor)\_\_\_\_

governed by local law and should (Name)

be in accordance therewith.)

 (Name of Trustee)\_\_\_\_\_\_

 By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name and Title

**SAMPLE DOCUMENT ONLY**

**ALTERNATIVE TRUST PROVISIONS FOR SINGLE PARENT CREATING TRUST FOR CHILDREN**

(*Single parents often create irrevocable life insurance trusts for the benefit of their children. The following provides a guide to which articles in the preceding sample agreement would require modification and which would require no change.)*

1. THROUGH 1.2 *(No modification required.)*

1.3 FAMILY. *(Omit first sentence.)*

3.1 a) **Dispositive Provisions While the Grantor is Living.** While the Grantor is living, the Trustee may from time to time pay to or apply for the benefit of the Grantor’s children, . . .*(no change in rest of paragraph).*

b) **Limited Power of Withdrawal.** While the Grantor is living, each living child of the Grantor, or if a child is deceased, then each living descendant of such deceased child, shall have the right during each calendar year, including the year in which this trust is created and the year in which the Grantor dies, to make withdrawals from the principal of the Trust in accordance with the following provisions:

 1) Each then-living child of the Grantor, or if a child is deceased then the

 then-living descendants of such deceased child collectively, may annually

 withdraw an amount determined by dividing the amount of the total direct or indirect, actual or deemed inter vivos gifts made to the trust in that calendar year by the number of then-living children and deceased children with then-living descendants; provided, however, that the aggregate amount of such withdrawals by any such beneficiary during any calendar year shall not exceed ($5,000) ($16,000 in 2022)($17,000 in 2023)

(the maximum amount of the annual exclusion from the value of such gifts provided for in section 2503(b) of the Code or other governing federal estate and gift tax law hereunder).

2) The Trustee shall give written notice within a reasonable period of time …

 *(Same as subparagraph (b)(3) paragraph 3.1 of Article 3.)*

 3) *(Same as subparagraph (b)(4) of paragraph 3.1 of Article 3.)*

4) *(Same as subparagraph (b)(5) of paragraph 3.1 of Article 3.)*

 5) *(Same as subparagraph (b)(6) of paragraph 3.1 of Article 3.)*

 6) *(Same as subparagraph (b)(7) of paragraph 3.1 of Article 3.)*

 c) **Special Power of Appointment Over the Trust Property.** *(This Article would usually be omitted. However, if the children are adults, a child could be given the power to appoint the property to the Grantor or any child or grandchild of the Grantor.)*

4.1 a) **Dispositive Provisions.** Following the Grantor’s death, the Trustee shall divide the Trust property, as then constituted, into equal shares so as to provide one share for each living child of the Grantor, and one share for the then-living children, collectively, of each deceased child of the Grantor.

 The income and principal of each share shall be held and distributed as follows:

 1) With respect to the share provided for a child of the Grantor then living:

 *(no change in rest of subparagraph (b) of paragraph 4.1 of Article 4.)*

4.2 *(No modification required.)*

4.3 *(No modification required.)*

5.1 THROUGH 9.1 *(No modification required.)*

9.2 **Rule Against Perpetuities Provision.** (*Omit the words “Grantor’s spouse and the.”)*

9.3 THROUGH 9.6  *(No modification required.)*

**APPENDIX A**

**SAMPLE** **DOCUMENT ONLY**

**HANGING POWER**

*If a decision is reached to include a hanging power in the trust, it is suggested that subparagraph (B)(8) of paragraph 3.1 of Article 3 be changed to provide as follows:*

 Unless the Grantor specifies otherwise with respect to a given gift to the trust, then subparagraph (b)(5) of paragraph 3.1 of this Article 3 to the contrary notwithstanding, a beneficiary’s withdrawal right shall not lapse when the thirty (30) day period expires but shall accumulate and, instead lapse each December 31 in an amount equal to either:
A) The greater of:
 i) $5,000; or
 ii) 5 percent of the beneficiary’s pro rata share of the trust, including
 but not limited to the contribution just made.

 B) If the reference to “$5,000” or “5 percent” in section 2414(e) of the Code or its successor is changed by amendment, the provisions in subparagraph (A) shall be correspondingly changed.

**APPENDIX B**

**SAMPLE DOCUMENT ONLY**

**NOTICE OF WITHDRAWAL PRIVILEGE**

Date:

To: (Name of Beneficiary)

RE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Irrevocable Family Trust dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Executed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Grantor

You are hereby notified that, in accordance with the provisions of the above noted trust, you now have a right to withdraw up to $\_\_\_\_\_\_\_\_ from this trust. The right of withdrawal will expire on \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

If you do not exercise this option, such funds will be held by the Trustee and used for investments, which may include the payment of life insurance premiums.

In order to exercise your right to withdraw, you must give (Name of Trustee) of (Address) written notice of your intention on or before the expiration date noted above.

**APPENDIX B-1**

**SAMPLE DOCUMENT ONLY**

NOTICE OF WITHDRAWAL PRIVILEGE AND BENEFICIARY RECEIPT

Date:

To: (Name of Beneficiary)

RE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Irrevocable Family Trust Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Executed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Grantor

You are hereby notified that, in accordance with the provisions of the above noted trust, you now have a right to withdraw up to $\_\_\_\_\_\_\_\_ from this trust. The right of withdrawal will expire on \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

If you do not exercise this option, such funds will be held by the Trustee and used for investments, which may include the payment of life insurance premiums.

In order to exercise your right to withdraw, you must give (Name of Trustee) of (Address) written notice of your intention on or before the expiration date noted above.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Trustee

# SAMPLE DOCUMENT ONLY

# RECEIPT

The undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as a beneficiary of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Irrevocable Family Trust dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby acknowledges receipt of the above Notice of Withdrawal Privilege and states as follows:

\_\_\_\_\_\_\_\_\_\_\_\_ I waive my right to any withdrawal for the calendar year \_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_ I elect to withdraw \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from the trust.

Dated this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Beneficiary

**­ (Name of trust)**

**Schedule A**

**Date Donor Description of Property Value**

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