

**THE ROBERT D. ARMSTRONG LIVING TRUST**

**May 16, 2005**

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# The Robert D. Armstrong Living Trust

## Table of Contents

<b>Article One Establishing My Trust.....</b>		<b>1-1</b>
Section 1.01	Identifying My Trust .....	1-1
Section 1.02	Reliance by Third Parties on Affidavit or Certification of Trust .....	1-1
Section 1.03	Transferring Property to My Trust .....	1-1
Section 1.04	Powers Reserved by Me as Trustmaker .....	1-2
Section 1.05	Grantor Trust Status.....	1-3
 <b>Article Two Family Information.....</b>		 <b>2-1</b>
 <b>Article Three Trustee Succession and Trust Advisor Provisions .....</b>		 <b>3-1</b>
Section 3.01	Resignation of a Trustee .....	3-1
Section 3.02	Trustee Succession During My Lifetime.....	3-1
Section 3.03	Trustee Succession After My Death.....	3-2
Section 3.04	Notice of Removal and Appointment.....	3-3
Section 3.05	Minimum Number of Trustees After My Death.....	3-3
Section 3.06	Corporate Fiduciaries .....	3-4
Section 3.07	Incapacity of a Trustee .....	3-4
Section 3.08	Appointment of Independent Special Trustee .....	3-4
Section 3.09	Rights and Obligations of Successor Trustees .....	3-5
Section 3.10	Provisions for Trust Advisor .....	3-5
 <b>Article Four Administration of My Trust During My Incapacity .....</b>		 <b>4-1</b>
Section 4.01	Definition of My Incapacity .....	4-1
Section 4.02	Determination of My Incapacity.....	4-1
Section 4.03	Trust Distributions During My Incapacity .....	4-2
 <b>Article Five Administration of My Trust Upon My Death .....</b>		 <b>5-1</b>
Section 5.01	My Trust Shall Become Irrevocable.....	5-1
Section 5.02	Administrative Trust.....	5-1
Section 5.03	Payment of My Expenses and Taxes.....	5-1
Section 5.04	Restrictions on Certain Payments from Qualified Retirement Plans.....	5-2
Section 5.05	Payment of Death Taxes.....	5-2
Section 5.06	No Apportionment Between Current and Future Interests.....	5-3

Section 5.07	Coordination with My Personal Representative .....	5-3
Section 5.08	Authority to Make Tax Elections .....	5-4
Section 5.09	Payment of Charitable Bequests .....	5-6
<b>Article Six Disposition of Tangible Personal Property .....</b>		<b>6-1</b>
Section 6.01	Distribution of Tangible Personal Property by Memoranda .....	6-1
Section 6.02	Distribution of Remaining Tangible Personal Property .....	6-1
Section 6.03	Definition of Tangible Personal Property .....	6-1
Section 6.04	Encumbrances and Incidental Expenses of Tangible Personal Property .....	6-2
Section 6.05	Residuary Distribution .....	6-2
<b>Article Seven Creation of Trust Shares Upon My Death .....</b>		<b>7-1</b>
Section 7.01	Creation of the Marital Share .....	7-1
Section 7.02	Creation of the Non-Marital Share .....	7-1
Section 7.03	Disposition of Property Upon Disclaimer by My Wife .....	7-1
<b>Article Eight The Patty Armstrong Trust .....</b>		<b>8-1</b>
Section 8.01	Distributions of Net Income .....	8-1
Section 8.02	Distributions of Principal .....	8-1
Section 8.03	Unproductive Property .....	8-1
Section 8.04	Qualified Terminable Interest Property .....	8-1
Section 8.05	Termination of the Patty Armstrong Trust at the Death of My Wife .....	8-2
<b>Article Nine The Armstrong Family Trust .....</b>		<b>9-1</b>
Section 9.01	Family Trust Beneficiaries .....	9-1
Section 9.02	Distribution of Income and Principal .....	9-1
Section 9.03	Distribution Guidelines Generally .....	9-1
Section 9.04	Further Guidelines Applicable to Distributions to My Descendants .....	9-2
Section 9.05	Discretionary Guidelines Respecting Distributions to the Armstrong Family Charitable Foundation .....	9-2
Section 9.06	My Wife's Right to Occupy and Use My Residence .....	9-2
Section 9.07	Establishment of a Family Entrepreneurial Loan and Equity Fund .....	9-3
Section 9.08	Termination of the Family Trust .....	9-3
<b>Article Ten The Armstrong Family Charitable Foundation .....</b>		<b>10-1</b>
Section 10.01	Conduct of Business .....	10-1
Section 10.02	Purpose of the Armstrong Family Charitable Foundation .....	10-1

Section 10.03	Distributions .....	10-2
Section 10.04	Termination .....	10-2
Section 10.05	Limitations on Activities .....	10-2
Section 10.06	My General Charitable Intent .....	10-3
Section 10.07	Amendment of the Armstrong Family Charitable Foundation .....	10-4
Section 10.08	Reorganization of the Armstrong Family Charitable Foundation as a Corporation.....	10-4
 <b>Article Eleven Children’s Separate Shares.....</b>		<b>11-1</b>
Section 11.01	Division of My Trust Property .....	11-1
Section 11.02	Administration of Descendants’ Trusts .....	11-1
Section 11.03	General Power of Appointment Over Property Subject to Taxable Generation-Skipping Transfers.....	11-2
 <b>Article Twelve Remote Contingent Distribution.....</b>		<b>12-1</b>
 <b>Article Thirteen Administration of Trusts for Underage and Incapacitated Beneficiaries .....</b>		<b>13-1</b>
Section 13.01	Distributions for Underage and Incapacitated Beneficiaries .....	13-1
Section 13.02	Methods of Distribution.....	13-1
Section 13.03	Application of Article .....	13-3
 <b>Article Fourteen Retirement Plans and Life Insurance Policies .....</b>		<b>14-1</b>
Section 14.01	Retirement Plans.....	14-1
Section 14.02	Life Insurance Policies .....	14-3
Section 14.03	Limitation on Liability of Payor.....	14-4
Section 14.04	Collection Efforts .....	14-4
Section 14.05	No Obligation to Purchase or Maintain Benefits.....	14-4
 <b>Article Fifteen Trust Administration .....</b>		<b>15-1</b>
Section 15.01	Distributions to Beneficiaries .....	15-1
Section 15.02	No Court Proceedings.....	15-1
Section 15.03	No Bond.....	15-1
Section 15.04	Exoneration of My Trustee .....	15-1
Section 15.05	Trustee Compensation .....	15-2
Section 15.06	Employment of Professionals .....	15-2
Section 15.07	Exercise of Testamentary Power of Appointment.....	15-3
Section 15.08	Determination of Principal and Income.....	15-3
Section 15.09	Trust Accounting .....	15-4
Section 15.10	Action of Trustees; Disclaimer.....	15-4
Section 15.11	Delegation of Trustee Authority; Power of Attorney .....	15-5

Section 15.12	Additions to Separate Trusts.....	15-5
Section 15.13	Authority to Merge or Sever Trusts.....	15-5
Section 15.14	Authority to Terminate Trusts .....	15-6
Section 15.15	Merger of Corporate Fiduciary.....	15-6
Section 15.16	Beneficiary's Status.....	15-7
Section 15.17	Discharge of Third Persons .....	15-7
Section 15.18	Certificate by Trustee .....	15-7
Section 15.19	Funeral and Other Expenses of Beneficiary .....	15-7
Section 15.20	Marital Deduction Qualification.....	15-8
Section 15.21	Generation-Skipping Transfer Tax Provisions.....	15-8

**Article Sixteen My Trustee's Powers ..... 16-1**

Section 16.01	Introduction to Trustee's Powers.....	16-1
Section 16.02	Execution of Documents by My Trustee .....	16-1
Section 16.03	Investment Powers in General.....	16-1
Section 16.04	Banking Powers.....	16-2
Section 16.05	Business Powers .....	16-2
Section 16.06	Contract Powers.....	16-5
Section 16.07	Common Investments.....	16-5
Section 16.08	Environmental Powers.....	16-5
Section 16.09	Farming and Ranching Operations.....	16-6
Section 16.10	Insurance Powers.....	16-8
Section 16.11	Loans and Borrowing Powers.....	16-8
Section 16.12	Nominee Powers.....	16-9
Section 16.13	Oil, Gas and Mineral Interests.....	16-9
Section 16.14	Payment of Taxes and Expenses .....	16-9
Section 16.15	Qualified Family Owned Business Interests Deduction.....	16-10
Section 16.16	Qualified Real Property Valuation .....	16-10
Section 16.17	Qualified Tuition Programs .....	16-10
Section 16.18	Real Estate Powers .....	16-11
Section 16.19	Residences and Tangible Personal Property.....	16-11
Section 16.20	Retention and Abandonment of Trust Property.....	16-12
Section 16.21	Securities, Brokerage and Margin Powers .....	16-12
Section 16.22	Settlement Powers .....	16-13
Section 16.23	Sub-Chapter S Corporation Stock Provisions .....	16-13
Section 16.24	Limitation on My Trustee's Powers .....	16-16

**Article Seventeen General Provisions ..... 17-1**

Section 17.01	Maximum Term for Trusts .....	17-1
Section 17.02	Spendthrift Provision.....	17-1
Section 17.03	Contest Provision.....	17-1
Section 17.04	Survivorship Presumption .....	17-2
Section 17.05	Divorce or Annulment.....	17-2
Section 17.06	Changing the Situs of Administration .....	17-2
Section 17.07	Definitions .....	17-2

Section 17.08

General Provisions and Rules of Construction.....17-8

**Schedule A**

**1**

# **The Robert D. Armstrong Living Trust**

## **Article One Establishing My Trust**

The date of this trust agreement is May 16, 2005. The parties to this agreement are Robert D. Armstrong (the "Trustmaker") and Robert D. Armstrong (the "Trustee").

### **Section 1.01 Identifying My Trust**

My trust may be referred to as "Robert D. Armstrong, Trustee of the Robert D. Armstrong Living Trust dated May 16, 2005, and any amendments thereto."

For the purpose of transferring property to my trust, or identifying my trust in any beneficiary or pay-on-death designation, any description referring to my trust shall be effective if it reasonably identifies my trust and indicates that the trust property is held in a fiduciary capacity.

### **Section 1.02 Reliance by Third Parties on Affidavit or Certification of Trust**

From time to time, third parties may require documentation to verify the existence of this agreement, or particular provisions of it, such as the name or names of my Trustee or the powers held by my Trustee. To protect the confidentiality of this agreement, my Trustee may use an affidavit or a certification of trust that identifies my Trustee and sets forth the authority of my Trustee to transact business on behalf of my trust. The affidavit or certification may include pertinent pages from this agreement, such as title or signature pages.

A third party may rely upon an affidavit or certification of trust that is signed by my Trustee with respect to the representations contained in the affidavit or certification of trust. A third party relying upon an affidavit or certification of trust shall be exonerated from any liability for actions the third party takes or fails to take in reliance upon the representations contained in the affidavit or certification of trust. A third party dealing with my Trustee shall not be required to inquire into the terms of this agreement or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.

### **Section 1.03 Transferring Property to My Trust**

Any person or entity may transfer property of any kind, nature and description to my trust in any manner authorized by law.

**(a) Initial Funding of My Trust**

By execution of this agreement, I transfer, convey and assign to my Trustee and my Trustee accepts and agrees to hold, the property described in Schedule A, annexed hereto, together with all my right, title and interest in and to all of my property that may by law be held in trust and that may, by this assignment, be transferred to my trust. This assignment shall include, without limitation, all real and personal, tangible and intangible property, located in the United States, whether separate or community, whether acquired before or after the execution of this agreement except for the following assets that are expressly not transferred to my trust by this assignment:

Life insurance policies, unless the ownership of a policy is transferred to my trust by a separate instrument that specifically refers to such policy;

Corporate and self-employed ("Keogh") pension, profit sharing and stock bonus plans;

Qualified retirement plans;

Commercial annuities;

Any property the transfer of which would result in the loss of a homestead exemption or violate a restriction on transfer agreement.

**(b) Acceptance by My Trustee**

By execution of this agreement, my Trustee accepts and agrees to hold the trust property described on Schedule A, along with all other property initially transferred to it by virtue of subsection (a). All property transferred to my trust after the date of this agreement must be acceptable to my Trustee. My Trustee may refuse to accept any property. My Trustee shall hold, administer and dispose of all trust property accepted by my Trustee for my benefit and the benefit of my beneficiaries in accordance with the terms of this agreement.

**Section 1.04 Powers Reserved by Me as Trustmaker**

During my lifetime, I shall retain the powers set forth in this Section in addition to any powers that I reserve in other provisions of this agreement.



**(a) Action on Behalf of My Trust**

During any period that I am serving as a Trustee of my trust, I may act for and conduct business on behalf of my trust without the consent of any other Trustee.

**(b) Amendment, Restatement or Revocation**

I have the absolute right, at any time and from time to time, to amend, restate, or revoke any term or provision of this agreement in whole or in part. Any amendment, restatement, or revocation must be in a written instrument signed by me.

**(c) Addition or Removal of Trust Property**

I have the absolute right, at any time and from time to time, to add to the trust property and to remove any property from my trust.

**(d) Control of Income and Principal Distributions**

I have the absolute right to control the distribution of income and principal from my trust. My Trustee shall distribute to me, or to such persons or entities as I may direct, as much of the net income and principal of the trust property as I deem advisable. My Trustee may distribute trust income and principal to me or for my unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed income shall be added to the principal of my trust.

**(e) Approval of Investment Decisions**

I have the absolute right to approve my Trustee's investment decisions. My approval of investment decisions shall be binding on all other beneficiaries of this agreement.

**Section 1.05 Grantor Trust Status**

By reserving the broad rights and powers set forth in Section 1.04 of this Article, I intend to qualify my trust as a "Grantor Trust" under Sections 671 to 677 of the Internal Revenue Code so that, for federal income tax purposes, I will be treated as the owner during my lifetime of all the assets held in my trust as though I held them in my individual capacity.

During any period that my trust is a Grantor Trust, the taxpayer identification number of my trust shall be my social security number, in accordance with Treasury Regulation Section 301.6109-1(a)(2).

## **Article Two Family Information**

I am married to Patricia Layland Armstrong. Any reference in this agreement to “my wife” is a reference to Patricia Layland Armstrong.

I have three children. Their names and dates of birth are:

Douglas Armstrong, born on April 25, 1963;

Robert W. Armstrong, born on January 2, 1965; and

Elizabeth Anne Armstrong, born on June 26, 1966

All references in this agreement to “my children” are references to these children. References to “my descendants” are to my children and their descendants.

## **Article Three**

### **Trustee Succession and Trust Advisor Provisions**

#### **Section 3.01 Resignation of a Trustee**

A Trustee may resign by giving notice to me. If I am deceased, a resigning Trustee shall give notice to the income beneficiaries of the trust and to any other Trustee then serving.

#### **Section 3.02 Trustee Succession During My Lifetime**

During my lifetime, this Section shall govern the removal and replacement of my Trustees.

##### **(a) Removal and Replacement by Me**

I may remove any Trustee with or without cause at any time. If a Trustee is removed, resigns or cannot continue to serve for any reason, I may serve as sole Trustee, appoint a Trustee to serve with me or appoint a successor Trustee.

##### **(b) During My Incapacity**

During any time that I am incapacitated, Douglas Armstrong, Robert W. Armstrong & Elizabeth Anne Armstrong shall replace any then serving Trustee. If any one of my children is incapacitated or not then living, an individual or corporate trustee named in writing by that child shall replace that child as Cotrustee. If my incapacitated or deceased child has not previously named an individual or corporate trustee to replace that child, a majority of that child's then living descendants who have attained 21 years of age shall name an individual or corporate trustee to replace my child as successor Cotrustee. If my child does not have a then living descendant that has attained 21 years of age, my Trust Advisor shall name an individual or corporate Trustee to replace my child as Cotrustee.

If I am incapacitated, my wife, or if she is also incapacitated or deceased, the person appointed my guardian may remove any Trustee but only for cause. This shall not limit the authority of a Trust Advisor to remove a Trustee under the provisions of Section 3.10(g) of this Article.

All appointments, removals and revocations shall be by signed written instrument.

Notice of removal shall be delivered to the Trustee being removed and shall be effective in accordance with the provisions of the notice.

Notice of appointment shall be delivered to and accepted by the successor Trustee and shall become effective at that time. A copy of the notice shall be attached to this agreement.

### **Section 3.03 Trustee Succession After My Death**

After my death, this Section shall govern the removal and replacement of my Trustees.

#### **(a) Successor Trustees**

I appoint Douglas Armstrong, Robert W. Armstrong & Elizabeth Anne Armstrong to serve jointly as my successor Trustee upon my death, replacing any then serving Trustee. If any one of my children is incapacitated or not then living, an individual or corporate trustee named in writing by that child shall replace that child as Cotrustee. If my incapacitated or deceased child has not previously named an individual or corporate trustee to replace that child, a majority of that child's then living descendants who have attained 21 years of age shall name an individual or corporate trustee to replace my child as successor Cotrustee. If my child does not have a then living descendant that has attained 21 years of age, my Trust Advisor shall name an individual or corporate Trustee to replace my incapacitated or deceased child as Cotrustee.

#### **(b) Trustees of the Separate Trusts**

The beneficiary of a separate trust created under this agreement may, upon attaining the age of 30, appoint himself or herself as sole Trustee of his or her separate trust and notwithstanding the provisions of Section 3.05.

The beneficiary of a separate trust created under this agreement may also name his or her successor trustee by written instrument.

If the interest of a beneficiary will be merged into a life estate or an estate for years because of the beneficiary serving as sole Trustee, the beneficiary shall appoint a Cotrustee to avoid such merger. Similarly, if the interest of a beneficiary becomes, or is likely to become, subject to the claims of any creditor or to legal process as a result of serving as sole Trustee the beneficiary shall appoint an Independent Trustee to serve as Cotrustee.

#### **(c) Removal of a Trustee**

A Trustee may be removed only for cause, which removal must be approved by a court of competent jurisdiction upon the petition of any beneficiary.

In no event shall the court petitioned to approve the removal of a Trustee acquire any jurisdiction over the trust except to the extent necessary to approve or disapprove removal of a Trustee.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

Nothing in this subsection shall limit the authority of a Trust Advisor to remove a Trustee under the provisions of Section 3.10(g) of this Article.

**(d) Default of Designation**

If the office of Trustee of a trust created under this agreement is vacant and no designated successor Trustee is able and willing to act as Trustee, my Trust Advisor shall appoint a successor Trustee. If my Trust Advisor is unable or unwilling to act, my wife shall appoint an individual or corporate fiduciary as successor Trustee.

If my wife and my Trust Advisor are unable or unwilling to act, any income beneficiary of the trust may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy remaining unfilled after a period of 30 days. By making such appointment, the court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making the appointment.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

**Section 3.04 Notice of Removal and Appointment**

Notice of removal shall be in writing and shall be delivered to the Trustee being removed, along with any other Trustees then serving. The notice of removal shall be effective in accordance with its provisions.

Notice of appointment shall be in writing and shall be delivered to the successor Trustee and any other Trustees then serving. The appointment shall become effective at the time of acceptance by the successor Trustee. A copy of the notice shall be attached to this agreement.

**Section 3.05 Minimum Number of Trustees After My Death**

Following my death, there shall at all times be three Trustees for each trust created under this agreement unless an individual Trustee is specifically authorized to serve as sole trustee or unless a corporate fiduciary is serving as Trustee.

If at any time there are fewer than three individual Trustees serving jointly as Trustee of a trust created under this agreement which requires three trustees, and no successor Trustee

is designated in this agreement, the remaining Trustees shall notify the qualifying beneficiaries of the trust in writing that they must name an individual or corporate fiduciary as required in this Article.

Any individual Trustee specifically authorized to serve as a sole trustee under Section 3.03(b) may appoint an individual or a corporate fiduciary as a Cotrustee. A Cotrustee so named shall serve only as long as the Trustee who appointed such Cotrustee serves (or, if such Cotrustee was named by more than one Trustee acting together, by the last to serve of such Trustees), and such Cotrustee shall not become a successor Trustee upon the death, resignation, or incapacity of the Trustee who appointed such Cotrustee, unless so appointed under the terms of this agreement. The Trustee appointing a Cotrustee may revoke the appointment at any time with or without cause.

### **Section 3.06 Corporate Fiduciaries**

Any corporate fiduciary serving under this agreement as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal, state and territorial law and that is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

Such corporate fiduciary shall:

Have a combined capital and surplus of at least One Hundred Million Dollars; or

Maintain in force a policy of insurance with policy limits of not less than One Hundred Million Dollars covering the errors and omissions of my Trustee with a solvent insurance carrier licensed to do business in the state or territory in which my Trustee has its corporate headquarters.

### **Section 3.07 Incapacity of a Trustee**

If any individual Trustee becomes incapacitated, it shall not be necessary for the incapacitated Trustee to resign as Trustee. For Trustees other than me, a written declaration of incapacity by the Cotrustee, if any, or, if none, by the party designated to succeed the incapacitated Trustee, if made in good faith and if supported by a written opinion of incapacity by a physician who has examined the incapacitated Trustee, will terminate the trusteeship.

### **Section 3.08 Appointment of Independent Special Trustee**

If for any reason the Trustee of any trust created under this agreement is unwilling or unable to act with respect to any trust property or any provision of this agreement, my Trust Advisor shall appoint, in writing, a corporate fiduciary or an individual to serve as an Independent Special Trustee as to such property or with respect to such provision. The Independent Special Trustee appointed shall not be related or subordinate to any

beneficiary of the trust within the meaning of Section 672(c) of the Internal Revenue Code. My Trust Advisor may revoke any such appointment at will.

An Independent Special Trustee shall exercise all fiduciary powers granted by this agreement unless expressly limited elsewhere in this agreement or by my Trust Advisor in the instrument appointing the Independent Special Trustee. An Independent Special Trustee may resign at any time by delivering written notice of resignation to my Trust Advisor. Notice of resignation shall be effective in accordance with the terms of the notice.

### **Section 3.09 Rights and Obligations of Successor Trustees**

Each successor Trustee serving under this agreement, whether corporate or individual, shall have all of the title, rights, powers and privileges granted to the initial Trustee named under this agreement. In addition, each successor Trustee shall be subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to the initial Trustee named under this agreement.

### **Section 3.10 Provisions for Trust Advisor**

The function of the Trust Advisor is to assist, if needed, in protecting the interests of my beneficiaries and in achieving my objectives as manifested by the other provisions of this agreement.

Any successor Trust Advisor named or appointed under this Section shall be a corporate fiduciary or an individual who is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

#### **(a) Designation of Trust Advisor**

I appoint Joel Holt to serve as Trust Advisor of each trust created under this agreement.

#### **(b) Resignation of Trust Advisor**

A Trust Advisor may resign by giving notice to me. If I am deceased, a resigning Trust Advisor shall give notice to the income beneficiaries of the trust and to the Trustee then serving.

Such resignation shall take effect on the date set forth in the notice, which date shall not be earlier than thirty (30) days after the date of delivery of the notice of resignation, unless an earlier effective date shall be agreed to by me or by a majority of the income beneficiaries of the trust. A resigning Trust Advisor shall not be liable or responsible for the act of any successor Trust Advisor.

**(c) Removal and Replacement by Me**

I may remove any Trust Advisor with or without cause at any time. If a Trust Advisor is removed, resigns or cannot continue to serve for any reason, I may appoint a successor Trust Advisor.

**(d) Removal by Beneficiaries**

After my death, a majority of the income beneficiaries may remove a Trust Advisor with or without cause at any time.

**(e) Default of a Designated Trust Advisor**

If the office of Trust Advisor for a trust is vacant and there is no effectively named successor Trust Advisor, a majority of the income beneficiaries of the trust may appoint a successor Trust Advisor for the trust.

**(f) Rights of Successor Trust Advisors**

Any successor Trust Advisor shall have all of the authority of any predecessor Trust Advisor, but will not be responsible for the acts or omissions to act of its predecessor.

**(g) Power to Remove and Appoint Trustees**

During any time I am incapacitated and following my death, my Trust Advisor shall have the authority to remove any Trustee of a trust created under this agreement other than my children.

Whenever the office of Trustee of a trust is vacant and no successor Trustee is effectively named, my Trust Advisor shall appoint an individual or a corporate fiduciary to serve as Trustee.

A Trust Advisor may not appoint itself as a Trustee and a Trust Advisor may not simultaneously serve as both Trust Advisor and Trustee.

**(h) Good Faith Standard Imposed**

The authority of my Trust Advisor is conferred in a nonfiduciary capacity, and my Trust Advisor shall not be liable for any action taken in good faith. My Trust Advisor shall not be liable for any act or omission to act and shall be reimbursed promptly for any costs incurred in defending or settling any claim brought against it in its capacity as Trust Advisor unless it is conclusively established that the act or omission to act was motivated by an actual intent to harm the beneficiaries of the trust or was an act of self-dealing for personal pecuniary benefit.



**(i) Power to Amend Trust Agreement**

During any time I am incapacitated and following my death, my Trust Advisor may amend any provision of this agreement as it applies to any trust to which the Trust Advisor is serving as Trust Advisor to:

Alter the administrative and investment powers of my Trustee;

Reflect tax or other legal changes that affect trust administration;

Correct ambiguities, including scrivener errors, that might otherwise require court construction or reformation;

Notwithstanding the foregoing my Trust Advisor shall not amend this agreement in any manner that would result in a reduction in the estate tax marital deduction under Section 2056 of the Internal Revenue Code or the estate tax charitable deduction under Section 2055 to which my estate would otherwise be entitled or limit or alter the rights of a beneficiary in any trust assets held by the trust before the amendment.

An amendment made by my Trust Advisor in good faith shall be conclusive on all persons interested in the trust and my Trust Advisor shall not be liable for the consequences of any amendment or for not having amended the trust. An amendment to this agreement shall be made in a written instrument signed by my Trust Advisor. My Trust Advisor shall deliver a copy of the amendment to the income beneficiaries and my Trustee.

**(j) Not a General Power of Appointment**

Notwithstanding any other provision in this agreement to the contrary, my Trust Advisor shall not participate in the exercise of a power or a discretion conferred under this agreement that would cause my Trust Advisor to possess a general power of appointment within the meaning of Sections 2041 and 2514 of the Internal Revenue Code. Specifically, my Trust Advisor may not use such powers for his or her personal benefit, nor for the discharge of his or her financial obligations.

**(k) Release of Powers**

My Trust Advisor, acting on its own behalf and on behalf of all successor Trust Advisors, may at any time, by a written instrument delivered to my Trustee, irrevocably release, renounce, suspend or reduce any or all powers and discretions conferred on my Trust Advisor by this agreement.

**(l) No Duty to Monitor**

My Trust Advisor shall have no duty to monitor any trust created under this agreement in order to determine whether any of the powers and discretions conferred by this agreement on my Trust Advisor should be exercised. Further, my Trust Advisor shall have no duty to keep informed as to the acts or omissions of others or to take any action to prevent or minimize loss. Any exercise or non-exercise of the powers and discretions granted to my Trust Advisor shall be in the sole and absolute discretion of my Trust Advisor, and shall be binding and conclusive on all persons. My Trust Advisor is not required to exercise any power or discretion granted under this agreement.

**(m) Compensation**

Any Trust Advisor serving hereunder shall be entitled to receive (but not required to accept) reasonable compensation for services as determined by my Trustee. My Trust Advisor shall be entitled to reimbursement for all expenses incurred in the performance of its duties as Trust Advisor, including travel expenses.

Serving in the capacity of Trust Advisor shall not prevent my Trust Advisor from also providing legal, investment or accounting services on behalf of the trust or the trust beneficiaries. If my Trust Advisor is providing professional services, my Trust Advisor is entitled to charge its normal and customary fees for services rendered or to be rendered and in addition is entitled to be compensated for its services as Trust Advisor.

**(n) Right to Examine**

The books and records of each trust created under this agreement, including all documentation, inventories and accountings, shall be open and available for inspection by my Trust Advisor at all reasonable times.

## **Article Four Administration of My Trust During My Incapacity**

### **Section 4.01 Definition of My Incapacity**

I shall be considered incapacitated during any time that, because of age, illness, mental disorders, dependence on prescription medications or other substances, or any other cause, I am unable to effectively manage my property or financial affairs.

### **Section 4.02 Determination of My Incapacity**

For purposes of this agreement, I am incapacitated if I am determined to be so under any one of the following subsections.

#### **(a) Determination by Physicians**

I shall be deemed incapacitated if in the opinion of two independent licensed physicians my then existing circumstances fall within the definition of incapacity as provided in Section 4.01. For purposes of this determination, "two independent physicians" means two physicians that are not related to each other by blood or marriage and are not employed by or principals of the same employer. Physicians who are merely affiliated with the same hospital or other medical care facility may still qualify as independent physicians.

I shall be deemed restored to capacity if my personal or attending physician signs a written opinion that I can manage my property and financial affairs.

#### **(b) Court Determination**

I shall be deemed incapacitated if a court of competent jurisdiction determines that I am legally incapacitated, incompetent, or otherwise unable to effectively manage my property or financial affairs.

#### **(c) Detention or Disappearance**

I shall be deemed incapacitated if I cannot effectively manage my property or financial affairs due to my unexplained disappearance or absence for more than 30 days, or if I am detained under duress. My disappearance, absence, or detention under duress may be established by an affidavit of my Trustee, or, if no Trustee is serving under this agreement, by the affidavit of any beneficiary under this agreement. The affidavit shall

describe the circumstances of my disappearance, absence, or detention under duress. A third party dealing with my Trustee in good faith may always rely on the representations contained in the affidavit.

#### **Section 4.03 Trust Distributions During My Incapacity**

During any period of time that I am incapacitated, my Trustee shall administer my trust and distribute its net income and principal as provided in this Section.

##### **(a) Distributions for My Benefit**

My Trustee shall regularly and conscientiously make appropriate distributions of trust income and principal for my general welfare and comfort under the circumstances existing at the time such distributions are made.

Distributions under this subsection shall include payments for any of my enforceable legal obligations. My Trustee may also make distributions for the payment of insurance premiums for insurance policies owned by me or by my trust, including but not limited to, life, medical, disability, property and casualty, errors and omissions and long-term health care insurance policies.

The examples included in this subsection are for purposes of illustration only and are not intended to limit the authority of my Trustee to make distributions for my benefit that my Trustee determines to be appropriate.

##### **(b) Manner of Making Distributions**

My Trustee may make distributions for my benefit in any one or more of the following ways:

To me, but only to the extent I am able to manage such distributions;

To other persons and entities for my use and benefit;

To my agent or attorney-in-fact authorized to act for me under a legally valid durable power of attorney executed by me prior to my incapacity;

To my guardian or conservator who has assumed responsibility for me under any court order, decree or judgment issued by a court of competent jurisdiction.

**(c) Distributions for the Benefit of My Wife or Others  
Dependent on Me**

My Trustee may distribute as much of the net income and principal of my trust as my Trustee deems necessary for the health, education, maintenance or support of my wife.

My Trustee may also distribute as much of the net income and principal as my Trustee deems necessary for the health, education, maintenance or support of other persons that my Trustee determines to be dependent on me for support.

**(d) Guidance for My Trustee Regarding Distributions**

In making distributions under subsections (a) and (c), my Trustee shall give equal consideration to my needs, the needs of my wife and the needs of persons dependent on me.

When making distributions under subsection (c), I request, but do not require, that my Trustee, in its sole and absolute discretion, consider other income and resources available to the beneficiaries. My Trustee may make unequal distributions, distributions to some but not all beneficiaries or no distributions.

A distribution made to a beneficiary under this Section shall not be considered an advance and shall not be charged against the share of the beneficiary that may be distributable under any other provision of this agreement.

**(e) Distributions to Agents under General Durable Power of  
Attorney**

My Trustee may make distributions to any agent under a valid power of attorney executed by me for the purpose of making gifts as authorized in the power of attorney, or to assist my agent in carrying out my estate planning objectives.

**(f) Power to Make Gifts**

My Trustee is authorized to make gifts as provided in this subsection.

**(1) Continuation of My Gifting**

My Trustee is authorized to honor pledges and continue to make gifts to charitable organizations that I have regularly supported in the amounts I have customarily given. My Trustee may make gifts in order to assure the continuation

of any gifting program initiated by me prior to the time I became incapacitated.

**(2) Gifts Limited to the Annual Exclusion Amount**

My Trustee may make gifts on my behalf, limited in amount to the federal annual gift tax exclusion amount, to or for the benefit of any remainder or contingent beneficiary named or described by class in this agreement for purposes my Trustee considers to be in my best interest or in the best interest of the beneficiary, including, without limitation, the minimization of income, estate, inheritance or gift taxes.

**(3) Gifts in Excess of the Annual Exclusion Amount**

My Trustee may make gifts in excess of the annual federal gift tax exclusion only if my Trust Advisor consents to such gifts in writing. Before consenting to gifts in excess of the annual federal gift tax exclusion, my Trust Advisor must make a determination that such gifts are in my best interest and the best interests of my beneficiaries. My Trust Advisor shall not be liable to me or any beneficiary for exercising or failing to exercise its discretion to make gifts.

**(4) Gifts for Tuition**

My Trustee may prepay the cost of tuition for any remainder or contingent beneficiary named in this agreement. My Trustee shall make such payments directly to the educational institution or by establishing and contributing to a Qualified State Tuition Program established under Section 529 of the Internal Revenue Code.

**(5) Gifts for Medical Expenses**

My Trustee may pay medical expenses for any remainder or contingent beneficiary named in this agreement as permitted under Section 2503(e) of the Internal Revenue Code. My Trustee shall make such payments directly to the medical provider.

**(6) Gift Splitting Authorized**

My Trustee is authorized to consent to the splitting of gifts under Section 2513 of the Internal Revenue Code or under similar provisions of any state, local or territorial gift tax laws.

**(7) Methods of Making Gifts**

My Trustee may make gifts of trust property under this subsection outright, in trust or in any other manner that my Trustee, in its sole and absolute discretion, deems appropriate.

By way of example and without limiting my Trustee's powers under this subsection, my Trustee is specifically authorized to make gifts by creating tenancy in common and joint tenancy interests or establishing irrevocable trusts including charitable or non-charitable split interest trusts. My Trustee may make gifts of trust property by establishing and contributing trust property to corporations, family limited partnerships, limited liability partnerships, limited liability companies or other similar entities and by making gifts of interests in any of those entities.

To accomplish the objectives described in this subsection, my Trustee may establish and maintain financial accounts of all types and may execute, acknowledge, seal and deliver deeds, assignments, agreements, authorizations, checks and other instruments. My Trustee may prosecute, defend, submit to arbitration, settle or propose or accept a compromise with respect to a claim existing in favor of or against me based on or involving a gift transaction on my behalf and may intervene in any related action or proceeding.

My Trustee may perform any other act my Trustee considers necessary or desirable to complete a gift on my behalf in accordance with the provisions of this subsection.

**(8) Standard for Making Gifts**

It is my desire that in making gifts on my behalf, my Trustee consider the history of my gift making and my estate plan. To the extent reasonably possible, I direct my Trustee to avoid disrupting the dispositive provisions of my estate plan as established by me prior to my incapacity.

## **Article Five Administration of My Trust Upon My Death**

### **Section 5.01 My Trust Shall Become Irrevocable**

Upon my death, my trust shall become irrevocable and my social security number may no longer be used to identify my trust. My Trustee shall apply for a separate taxpayer identification number for my trust.

### **Section 5.02 Administrative Trust**

After my death and prior to the distribution of trust property as provided in the subsequent Articles of this agreement, my trust shall be an administrative trust but may continue to be known as the Robert D. Armstrong Living Trust. My administrative trust shall exist for a reasonable period of time necessary to complete the administrative tasks set forth in this Article.

### **Section 5.03 Payment of My Expenses and Taxes**

My Trustee is authorized but not directed to pay from the administrative trust:

Expenses of my last illness, funeral and burial or cremation, including expenses of memorials and memorial services;

Legally enforceable claims against me or my estate;

Expenses of administering my trust and my estate; and

Court ordered allowances for those dependent upon me.

These authorized payments are discretionary with my Trustee. My Trustee may make decisions on these payments without regard to any limitation on payment of such expenses imposed by law and may make payments without obtaining the approval of any court. No third party may enforce any claim or right to payment against my trust by virtue of this discretionary authority.

My Trustee shall pay death taxes out of the principal of the trust property as provided in Section 5.05. If, however, a probate estate is opened within six months from the date of my death, my Personal Representative shall pay claims, expenses and death taxes from my probate estate to the extent that the cash and readily marketable assets included in my probate estate are sufficient to pay such items unless my Trustee has already paid them.



#### **Section 5.04 Restrictions on Certain Payments from Qualified Retirement Plans**

The “designation date” shall mean September 30 of the calendar year following the calendar year in which my death occurs, or such other date as shall be established by Treasury Regulations or other tax law authority as the final date for determining whether this trust meets the requirements for treatment of the trust’s oldest beneficiary as if he or she had been named directly as beneficiary of any qualified retirement plan payable to this trust.

Notwithstanding any other provision of this agreement or state or territorial law to the contrary, and except as provided in Article Twelve, my Trustee may not, on or after the “designation date”, distribute to or for the benefit of my estate, any charity or any other non-individual beneficiary any qualified retirement benefit payable to a trust created under this agreement. It is my intent that all such qualified retirement benefits held by or payable to this trust on or after the designation date be distributed to or held for only individual beneficiaries, within the meaning of Section 401(a)(9) of the Internal Revenue Code.

Accordingly I direct that qualified retirement benefits not be used or applied on or after the designation date for payment of my debts, taxes, expenses of administration or other claims against my estate or for payment of estate, inheritance or similar transfer taxes due on account of my death. This paragraph shall not apply to any bequest or expense that is specifically directed to be funded with qualified retirement benefits.

#### **Section 5.05 Payment of Death Taxes**

For the purposes of this Article, the term “death taxes” shall refer to any taxes imposed by reason of my death by federal, state, local or territorial authorities, including but not limited to estate, inheritance, gift, and direct-skip generation-skipping transfer taxes. For purposes of this Section, death taxes shall not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable recapture tax imposed by any taxing authority. Nor shall death taxes include any generation-skipping transfer tax, other than a direct skip generation-skipping transfer tax.

Except as otherwise provided in this Section or elsewhere in this agreement, my Trustee shall provide for payment of all death taxes from the administrative trust without apportionment. My Trustee shall not seek contribution toward or recovery of any such payments from any individual.

##### **(a) Protection of Exempt Property**

In no event shall death taxes be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes.

**(b) Protection of the Marital Deduction**

No death taxes shall be paid from or allocated to any property qualifying for the federal estate tax marital deduction.

**(c) Protection of the Charitable Deduction**

No death taxes shall be allocated to or paid from any assets passing to an organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless my Trustee has first used all other assets available to my Trustee to pay the taxes.

**(d) Property Passing Outside of My Trust**

Death taxes imposed with respect to property included in my gross estate for death tax purposes but passing outside of my trust shall be apportioned among the persons and entities benefited in the proportion that the taxable value of the property or interest bears to the total taxable value of all property and interests included in my gross estate for death tax purposes. The values to be used for the apportionment shall be the values as finally determined under federal, state, local or territorial law as the case may be.

I direct that any death tax paid as a result of the inclusion in my taxable estate of property held in a qualified terminable interest property "QTIP" trust created for me by my wife be apportioned to and collected from the assets of the QTIP trust as provided in Section 2207A of the Internal Revenue Code.

**Section 5.06 No Apportionment Between Current and Future Interests**

No interest in income and no estate for years or for life or other temporary interest in any property or trust are subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder are chargeable against the corpus of the property or trust subject to the temporary interest and remainder.

**Section 5.07 Coordination with My Personal Representative**

The following provisions are intended to help facilitate the coordination between my Personal Representative, if any, and my Trustee. These provisions apply even if my Personal Representative and my Trustee are the same person or entity.

**(a) Reliance on My Personal Representative**

My Trustee may rely upon the written request of my Personal Representative for payments authorized under this Article and the amounts

included in such payments without computing the sums involved. If a payment is made under this Article to my Personal Representative, my Trustee shall not have any duty to inquire into the application of the payment.

**(b) Receipt of Probate Property**

My Trustee may accept or decline any distributions of property tendered to my Trustee by my Personal Representative. As to property deemed acceptable by my Trustee, my Trustee may accept the property without audit and without obligation to review the records of my Personal Representative.

**(c) Purchase of Assets from and Loans to My Probate Estate**

My Trustee is authorized to purchase and retain, as an investment for my trust estate, any property that forms a part of my probate estate. My Trustee may make loans, with or without security, to my probate estate. My Trustee shall not be liable for any loss suffered by my trust as a result of the exercise of the powers granted to my Trustee in this subsection.

**(d) Discretionary Distributions to My Personal Representative**

My Trustee is authorized to distribute to my probate estate, as a beneficiary of this trust, cash or other trust property, including accrued income, to whatever extent my Trustee determines it to be in the best interests of the beneficiaries of my trust.

**Section 5.08 Authority to Make Tax Elections**

Following my death, I authorize my Trustee to make tax elections as provided in this Section. If, however, a Personal Representative is appointed for my probate estate and as my Personal Representative is the recipient of specific statutorily delegated authority relative to any tax election, the discretionary authority granted my Trustee relative to the tax election shall be subordinate to the statutorily delegated authority.

**(a) Tax Elections**

My Trustee's authority to make tax elections shall include, but shall not be limited to, the right to choose the alternate valuation date, the right to elect whether to take administration expenses as estate tax deductions or income tax deductions, the right to allocate my unused generation-skipping exemption to all or any portion of the trust property, the right to make special use valuation elections, and the right to defer payment of all or any portion of any taxes.

My Trustee may elect to treat my administrative trust as part of my estate for federal, state or territorial income tax purposes or both.

My Trustee may make equitable adjustments between income and principal on account of any tax elections made by my Trustee.

**(b) Qualified Terminable Interest Property**

My Trustee may, but shall not be required to, elect to have any trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under Section 2056(b)(7) of the Internal Revenue Code (the "QTIP Election") and for any state or territorial death tax marital deduction under the law of any state or territory (the "state QTIP Election"). My Trustee is not required to make the same election for both federal estate tax purposes and for state or territorial death tax purposes. If my Trustee makes a partial QTIP election, my Trustee shall divide the trust on the basis of the fair market value of the assets of the trust at the time of the division.

My Trustee shall be indemnified and held harmless from any loss, claim or damage incurred by it as a result of any action taken by a beneficiary against my Trustee arising out of my Trustee's decision to make or not make the QTIP election with respect to any portion of the trust property. My Trustee is expressly authorized to use my trust property to pay directly or reimburse itself for any costs or expenses incurred by my Trustee in defending against any legal action, whether threatened or actual, arising under this provision.

My Trustee may make the special election under Section 2652(a)(3) of the Internal Revenue Code to treat all of the trust property of a trust created under this Agreement as to which the QTIP election is made as if the QTIP election with respect to the property had not been made, making me the transferor of such property for purposes of the generation-skipping transfer tax. It is my desire that my Trustee set apart the property to which such election has been made as a separate trust so that the inclusion ratio, as defined in the Internal Revenue Code, of the separate qualified trust is zero.

**(c) Allocation of GST Exemption**

My Trustee may elect to allocate or not allocate any portion of the available GST exemption under Section 2631 of the Internal Revenue Code, or a counterpart exemption under any applicable state or territorial law, to any property of which I am the transferor or deemed transferor for generation-skipping transfer tax purposes, including any property transferred by me during my life as to which I did not make an allocation prior to death. The exercise of such discretion shall be based on the

transfers, gift tax returns and other information known to my Trustee, with no requirement that allocations benefit the various transferees or beneficiaries equally, proportionally, or in any other particular manner.

**(d) Qualified Conservation Easements**

My Trustee may create a qualified conservation easement, as defined in Section 2031(c)(8)(A) of the Internal Revenue Code in any land held by my trust and make the necessary election provided by Section 2031(c)(6).

**Section 5.09 Payment of Charitable Bequests**

I instruct my Trustee to satisfy all of my charitable gifts and bequests, to the extent possible, from property that constitutes income in respect of a decedent.

## **Article Six**

### **Disposition of Tangible Personal Property**

#### **Section 6.01 Distribution of Tangible Personal Property by Memoranda**

I reserve the right to make dispositions of items of tangible personal property by a signed written memorandum executed after I sign this agreement that refers to my trust and lists items of tangible personal property and designates the beneficiary of each item. If I execute a memorandum, the memorandum is to be incorporated by reference into this agreement to the extent permitted by law.

I direct that upon my death, my Trustee distribute the items of tangible personal property listed in the memorandum, together with any insurance policies covering such property and claims under such policies, as provided in the memorandum. Should I leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date shall control as to those items that are in conflict.

If the memorandum can not legally be incorporated by reference, the memorandum shall then be treated as an amendment to my trust and I request that my Trustee follow my wishes and distribute the items of tangible personal property listed in the memorandum according to its terms.

#### **Section 6.02 Distribution of Remaining Tangible Personal Property**

My Trustee shall distribute any tangible personal property not disposed of by a written memorandum as provided in subsequent provisions of this trust agreement.

#### **Section 6.03 Definition of Tangible Personal Property**

For purposes of this Article, my tangible personal property shall include but not be limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia.

My tangible personal property shall not include any property that my Trustee, in its sole and absolute discretion, determines to be part of any business or business interest owned by me or my trust.

If my Trustee receives property to be distributed under this Article from my probate estate or in any other manner after my death, my Trustee shall distribute the property, free of trust, in accordance with this Article. The fact that an item of tangible personal property was not received by my trust until after my death shall not affect the validity of the gift. If property to be distributed under this Article is not part of the trust property

upon my death and is not subsequently transferred to my Trustee from my probate estate or in any other manner after my death, then the specific distribution of property made in this Article shall be considered null and void, without any legal or binding effect.

**Section 6.04      Encumbrances and Incidental Expenses of Tangible Personal Property**

My Trustee shall distribute property under this Article subject to any liens, security interests or other encumbrances on the property.

My Trustee shall pay, as an administration expense, the reasonable expenses of storing, insuring, packing, transporting and otherwise caring for my tangible personal property until each item of property is actually delivered to the appropriate beneficiary.

**Section 6.05      Residuary Distribution**

Any tangible personal property not distributed under this or prior Articles of this agreement shall be distributed as provided in the Articles that follow.

## **Article Seven**

### **Creation of Trust Shares Upon My Death**

My Trustee shall divide the remaining trust property into two separate shares, to be designated the Marital Share and the Non-Marital Share as provided in Section 7.01 and Section 7.02.

#### **Section 7.01      Creation of the Marital Share**

My Trustee shall allocate to the Marital Share all of the cash, securities, brokerage accounts and publicly traded securities owned by my trust. In addition, my Trustee shall allocate to the Marital Share any trust property (assuming that such property qualifies for the federal estate tax marital deduction) that would constitute a taxable transfer under federal, state or territorial law.

The Marital Share shall carry its *pro rata* share of the income, provided that in no event shall the Marital Share receive less income than that required to be paid to my wife under applicable state or territorial law.

My Trustee shall administer the Marital Share as provided in Article Eight.

#### **Section 7.02      Creation of the Non-Marital Share**

My Trustee shall allocate the balance of the trust property to the Non-Marital Share. My Trustee shall hold, administer and distribute the Non-Marital Share as provided in Article Nine.

#### **Section 7.03      Disposition of Property Upon Disclaimer by My Wife**

My wife shall have the right within the time and in the manner provided by law to disclaim any portion or all of the property passing to or for her benefit under this agreement. If my wife disclaims any portion of the property that would otherwise be allocated to the Marital Share, my Trustee shall add the disclaimed property to the Non-Marital Share. If my wife disclaims the interest she has in any portion of the Non-Marital Share, my Trustee shall dispose of the disclaimed interest under the provisions of this agreement as though she had predeceased me.

My wife's right to disclaim any portion or all of the property passing to or for her benefit under this agreement shall either be exercised by my wife personally, or by any fiduciary or agent appointed by my wife who is specifically empowered to exercise her right to disclaim by the terms of the appointment, or under applicable law.



## **Article Eight**

### **The Patty Armstrong Trust**

My Trustee shall hold and administer the Marital Share in trust as provided in this Article. The trust will be referred to as the "Patty Armstrong Trust."

#### **Section 8.01 Distributions of Net Income**

My Trustee shall distribute all of the net income of the Patty Armstrong Trust to my wife at least monthly during her lifetime. Nothing contained in this agreement shall limit the right of my wife to receive the entire net income of the Patty Armstrong Trust.

#### **Section 8.02 Distributions of Principal**

My Trustee shall distribute to my wife as much of the principal of the Patty Armstrong Trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

My Trustee, in its sole and absolute discretion, may consider the needs of my wife and other income and resources available to my wife.

#### **Section 8.03 Unproductive Property**

Upon written request of my wife, my Trustee shall convert any nonproductive property held in the Patty Armstrong Trust to productive property.

#### **Section 8.04 Qualified Terminable Interest Property**

I intend that the Patty Armstrong Trust property shall constitute qualified terminable interest property for federal, state and territorial death tax purposes if and to the extent my Trustee or Personal Representative makes the necessary elections. This agreement shall be interpreted to accomplish such intent.

However, it is my belief that such election will probably not be necessary. I request that my Trustees consult with tax counsel prior to making any such election.

If my Trustee or Personal Representative elects to have some but not all of the property in the Patty Armstrong Trust qualify as qualified terminable interest property for federal or for state or territorial purposes, the qualified property and the non-qualified property shall be separated into separate shares as necessary, but each share shall be held upon identical terms and conditions as if there had been no division. The separate shares may be invested in a common fund with each share owning a proportionate fractional share of the fund.

**Section 8.05 Termination of the Patty Armstrong Trust at the Death of My Wife**

The Patty Armstrong Trust shall terminate upon the death of my wife. My Trustee shall administer the balance or remainder of the Patty Armstrong Trust as provided in Article Eleven.

## **Article Nine**

### **The Armstrong Family Trust**

My Trustee shall hold and administer the Non-Marital Share in trust as provided in this Article. The trust will be referred to as the "Family Trust."

#### **Section 9.01 Family Trust Beneficiaries**

The primary beneficiaries of the Armstrong Family Trust shall be Douglas Armstrong, Robert W. Armstrong, Elizabeth Anne Armstrong and their descendants. My wife, Patricia Armstrong, and my sister, Judith Armstrong Lordi, and her descendants shall also be beneficiaries of the Family Trust. Finally, the Armstrong Family Charitable Foundation established under Article Ten of this agreement shall be a discretionary beneficiary of this trust.

#### **Section 9.02 Authorization to Distribute Income and Principal**

My Trustee, other than an Interested Trustee, in its sole and absolute discretion, may distribute to the Family Trust beneficiaries as much of the income and principal of the Family Trust as my Trustee may determine advisable for any purpose. If there is no Trustee that is not an Interested Trustee, my Trustee, in its sole and absolute discretion, may distribute to the Family Trust beneficiaries as much income and principal as my Trustee determines is necessary or advisable for their health, education, maintenance and support. Any undistributed net income shall be accumulated and added to principal.

#### **Section 9.03 Distribution Guidelines Generally**

My Trustee may make distributions to or for the benefit of one or more of my beneficiaries under this Article. I request, but do not require, that my Trustee consider the respective needs of my beneficiaries as well as other income and resources available to my beneficiaries. When making distributions from the Family Trust, my Trustee may exclude any of the beneficiaries or may make unequal distributions among them. When making distributions to beneficiaries who are my descendants, I request that my Trustees consider the additional guidelines I have provided in subsequent Sections of this Article.

A distribution made to a beneficiary under this Article shall not be considered an advance and shall not be charged against the share to which the beneficiary may be entitled under other provisions of this agreement.

In making provision for my sister, I request that my Trustee be mindful of the kind and nature of support I have provided to my sister and her descendants during my lifetime.

#### **Section 9.04 Further Guidelines Applicable to Distributions to My Descendants**

When distributions are made to my children or their descendants, such distributions shall be equal between my children's (or their descendants') households at each generational level unless my Trustees unanimously agree otherwise. To illustrate: If a distribution is made to my son Douglas, an equal distribution shall be made to my two other children. If a distribution of \$10,000 is made to one or more of Rob's children, a distribution of \$10,000 shall be divided between and distributed to Douglas's children and a distribution of \$10,000 shall also be divided between and distributed to Elizabeth's children. If Elizabeth has only one child, that child shall receive the entire \$10,000 distribution.

My Trustees shall apply the convention of this Section unless my Trustees unanimously agree that the circumstances of a particular beneficiary warrant a disproportionate distribution. I also request that my Trustees recognize that the conduct of a beneficiary may be so abhorrent as to warrant exclusion from a distribution and also recognize that the receipt of a distribution by some beneficiaries could adversely impact the beneficiary's motivation or otherwise cause damage to the beneficiary.

I request that my Trustees exercise both judgment and compassion in recognizing those unusual or unfortunate circumstances that would make disproportionate distributions appropriate.

#### **Section 9.05 Discretionary Guidelines Respecting Distributions to the Armstrong Family Charitable Foundation**

I request, but do not require, that my Trustees make a gift to the Armstrong Family Charitable Foundation of the stock in the corporate entity which owns significant real estate holdings in the Carambola development on St. Croix. Charitable giving has been a hallmark of the Armstrong family on St. Croix for many years, and we have the opportunity to fund that tradition in perpetuity with the gift of this property to the Armstrong Family Charitable Foundation.

#### **Section 9.06 My Wife's Right to Occupy and Use My Residence**

My residence property and the contents of my residence (except any items of tangible personal property specifically distributed by memorandum) will be allocated to the Armstrong Family Trust. My wife shall have the right to use and occupy my residential real estate and have use of the allocated contents for the balance of her lifetime or until she provides my Trustee with a written statement of her desire to permanently reside elsewhere. During the period my wife occupies my residential real property, my Trustee shall maintain the property in good repair, pay the entire cost of all insurance and property taxes associated with the property.

### **Section 9.07 Establishment of a Family Entrepreneurial Loan and Equity Fund**

It is my desire that my family members be encouraged to engage in responsible entrepreneurship. Accordingly, my Trustees are expressly authorized to allocate a portion of the Armstrong Family Trust to fund an entrepreneurial loan and equity fund to be governed by guidelines that are established in writing by my Trustees. The resources allocated to this fund shall be used, in the sole and absolute discretion of my Trustees, to invest in or loan money to family members (including my sister's children) that present responsible business proposals to the Trustees.

Because of my desire to promote responsible and thoughtful entrepreneurship, I request that my Trustees invest time and resources to develop the guidelines which will be applied to any loan or investment proposal. I request that my Trustees consider the age, skill and experience of the individual presenting each proposal in the context of the scale of the funds requested. It is not my desire that the resources of this trust be used to fund doubtful or ill-considered proposals. However, I recognize that not every entrepreneurial venture will be successful, and accordingly, my Trustees shall have no liability to any beneficiary of this trust for any loss resulting from any loan or investment made in good faith from this fund.

### **Section 9.08 Termination of the Family Trust**

The Family Trust shall terminate upon the earlier of:

- (a) The expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities as provided in Section 17.01; or
- (b) The date on which my Trustees and my Trust Advisor unanimously agree to terminate the trust.

Upon termination, my Trustee shall administer the balance or remainder of the Family Trust as provided in Article Eleven.

## **Article Ten**

### **The Armstrong Family Charitable Foundation**

My Trustee shall administer the property allocated to the Armstrong Family Charitable Foundation as a private foundation as that term is defined in Section 509 of the Internal Revenue Code and as provided in this Article.

#### **Section 10.01 Conduct of Business**

The private foundation shall at all times after creation be known as the Armstrong Family Charitable Foundation.

My Trustee shall always conduct the activities of the private foundation in the name of the Armstrong Family Charitable Foundation.

My Trustee shall, to the extent it is both reasonable and practical, take all appropriate measures to ensure that the ultimate beneficiaries of this private foundation are notified in writing that the funds they receive originate with, and were made possible by, the Armstrong Family Charitable Foundation.

#### **Section 10.02 Purpose of the Armstrong Family Charitable Foundation**

The Armstrong Family Charitable Foundation is created exclusively for charitable, religious, scientific, literary or educational purposes including, for such purposes, making distributions to organizations that qualify as exempt organizations within the meaning of Section 501(c)(3) of the Internal Revenue Code.

My Trustee may accept property, whether real, personal, mixed, by way of gift, bequest, or devise, from any person or entity, to be held, administered, and disposed of in accordance with the provisions of this Article.

But no gift, bequest, or devise of any property shall be accepted by my Trustee if it is conditioned or limited in a manner:

That requires the disposition of the income or principal of the property to any person or organization other than a qualified organization or for other than charitable purposes; or

That, in the opinion of my Trustee, jeopardizes the federal income tax exemption of this private foundation pursuant to Section 501(c)(3) of the Internal Revenue Code.

### **Section 10.03 Distributions**

All distributions are subject to the provisions of Section 10.05. My Trustee shall make distributions of net income and principal of the private foundation for one or more charitable purposes, including the making of distributions to one or more qualified organizations, at such times and in such amounts or proportions as it shall determine, in its sole and absolute discretion.

Income or principal derived from contributions by corporations shall be distributed by my Trustee for use solely within the United States or its possessions.

Any income accrued on private foundation property prior to the transfer of such property to the Trustees shall be treated as income of the private foundation. My Trustee may make payments or distributions from income or principal, or both.

### **Section 10.04 Termination**

The private foundation shall continue forever, unless it is terminated by the Trustee in the Trustee's absolute discretion. Upon termination, my Trustee shall distribute the remaining private foundation property to one or more charitable organizations selected by the Trustee, in such proportions and among such organizations as the Trustee, acting in its sole discretion may determine.

Any private foundation property not disposed of by my Trustee shall be distributed by the Court of appropriate jurisdiction for the location of the principal office of the Private foundation. All distributions shall be exclusively for the charitable purposes or to the charitable organization or organizations that the Court selects.

### **Section 10.05 Limitations on Activities**

The private foundation shall not engage in any activities that are unlawful under the laws of the United States and the laws of the United States Virgin Islands.

The net income and principal of the private foundation shall be devoted exclusively for charitable purposes and shall in no part and under no circumstances be given or contributed to, or inure to the benefit of, any individual or entity. The private foundation, however, may pay reasonable compensation to and reimburse the reasonable expenses of any individual or entity for services rendered to the private foundation or for goods and facilities provided to the private foundation.

No substantial part of the activities of the private foundation shall consist of carrying on propaganda or otherwise attempting to influence legislation.

No part of the activities of the private foundation shall involve participating in or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for political office.

Notwithstanding any other provision of this agreement, the private foundation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code, or by any organization, contributions to which are deductible under Section 170(c) of the Internal Revenue Code.

Each tax year, my Trustee shall distribute the income for each tax year at such time and in such manner as to not become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code.

Notwithstanding any other provision of this agreement, my Trustees shall not:

Engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code;

Retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code, subject, however, to all Treasury Regulations with respect to divestment thereof;

Make any investment which jeopardizes the private foundation's charitable purposes as defined in Section 4944 of the Internal Revenue Code; or

Make any taxable expenditure as defined in Section 4945(d) of the Internal Revenue Code.

Nothing in this agreement shall be construed as restricting the Trustee from investing the private foundation's assets in any manner that would result in the annual realization of a reasonable amount of net income or gain from their sale or disposition.

### **Section 10.06 My General Charitable Intent**

I intend that the private foundation be exempt from federal, state and territorial income taxes and that a contribution to the private foundation be deductible for federal, state and territorial income, estate, inheritance, and gift tax purposes. Any provisions of this instrument that are inconsistent with my intent shall not be effective.

It is also my intent that the private foundation be used as a positive tool to improve the quality of life on St. Croix and to provide a vehicle for my children and their descendants to express my family's charitable commitment to the island. It is my hope that my children will find this foundation to be a useful tool in teaching their children and more remote generations the value of philanthropy in their own lives.

I request that my Trustees make a genuine effort to develop a clear mission for the foundation. In determining the mission of the foundation, I request that my Trustees thoughtfully consider the causes that have been important to me during my lifetime.



I further request that my Trustees make every effort to develop an organizational structure that will provide exemplary leadership in executing the foundation's mission.

**Section 10.07 Amendment of the Armstrong Family Charitable Foundation**

To the extent allowable by law, my Trustee may amend the terms of this instrument from time to time solely to enable the Trustee to carry out the purposes of the private foundation more effectively, whenever in the Trustee's opinion such an amendment is necessary or advisable; provided however, this subsection shall not be construed as authorizing any amendment that causes any part of the private foundation's assets to be diverted from the charitable purposes set forth in Section 10.02 and Section 10.03, or that may disqualify the private foundation from the status and benefits described in Section 10.06.

Every amendment shall be in writing and shall be signed by the Trustee and deposited with the private foundation records.

**Section 10.08 Reorganization of the Armstrong Family Charitable Foundation as a Corporation**

My Trustee is authorized to form and organize a "not-for-profit" or "non-profit" corporation under the law of the United States Virgin Islands, or any state, territory or district within the United States of America. The corporation when formed shall have the power to administer and control the affairs and property of the private foundation, and to carry out the objectives and purposes of the private foundation as provided for in this Section. The corporation shall be named the "Armstrong Family Charitable Foundation, Inc." My Trustee shall have full discretion in regard to the organization of the corporation and may act as a director or officer of the corporation. My Trustee shall take any action as necessary to cause the corporation to qualify as an exempt charitable organization under applicable federal, state and territorial laws. Upon qualification of the corporation as an exempt charitable organization, my Trustee shall transfer and deliver all of the private foundation's assets to the corporation, and this private foundation shall then terminate.

## **Article Eleven Children's Separate Shares**

Upon the death of the survivor of my wife and me, my Trustee shall administer the trust property allocated to Article Eleven as provided in this Article.

### **Section 11.01 Division of My Trust Property**

My Trustee shall divide the trust property allocated to this Article into separate shares for my descendants, *per stirpes*.

My Trustee shall administer the share for each of my descendants in a separate trust for the benefit of the descendant as provided in the next Section.

### **Section 11.02 Administration of Descendants' Trusts**

My Trustee shall administer the trust for each descendant as follows:

#### **(a) Distributions of Income and Principal**

My Trustee shall distribute to the beneficiary or the beneficiary's descendants, or both, as much of the income and principal of the beneficiary's trust as my Trustee determines is necessary or advisable for their health, education, maintenance and support.

In making distributions, my Trustee shall give principal consideration to the needs of the beneficiary for whom the trust is created and only thereafter to the needs of the beneficiary's descendants.

Any undistributed net income shall be accumulated and added to principal.

#### **(b) Distribution Upon the Death of the Beneficiary**

The beneficiary shall have the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at the beneficiary's death among one or more persons or entities. The beneficiary may not exercise this limited power of appointment to appoint to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or creditors of the beneficiary's estate.

I intend this to be a limited power of appointment and not a general power of appointment as defined in Section 2041 of the Internal Revenue Code.

Insofar as any part of the beneficiary's trust shall not be effectively appointed, my Trustee shall distribute the remaining unappointed balance

*per stirpes* in trusts to the descendants of the beneficiary. If the beneficiary has no living descendants, my Trustee shall distribute the balance of the trust property *per stirpes* in trusts to the descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine or, if no such descendant is then living, *per stirpes* in trusts to my descendants. My Trustee shall administer the trusts under the same provisions as the beneficiary's trust.

If I have no living descendants, my Trustee shall distribute the balance of the trust property as provided in Article Twelve.

### **Section 11.03 General Power of Appointment Over Property Subject to Taxable Generation-Skipping Transfers**

Notwithstanding any provision to the contrary, any beneficiary of any separate trust created in this agreement shall have the unlimited and unrestricted testamentary general power to appoint to the creditors of his estate any property remaining in the trust the distribution of which, in the absence of the power of appointment, would cause a taxable generation-skipping transfer in excess of any available generation-skipping transfer tax exemption. The beneficiary shall have the sole and exclusive right to exercise this general power of appointment.

Any property in the trust that is not distributed under the exercise of the general power of appointment or is not subject to such power because it is not taxable as a generation-skipping transfer shall be distributed under the provisions of the beneficiary's trust.

This provision shall apply to all trusts created for a beneficiary under this agreement and shall supersede any contrary provisions unless the provisions of a separate trust, by reference to this provision, provide otherwise.

## **Article Twelve**

### **Remote Contingent Distribution**

If, at any time after my death, there is no individual beneficiary then qualified to receive final distribution of the trust estate or any part of it under the foregoing provisions of this agreement, then my Trustee shall distribute the portion of the trust estate with respect to which the failure of qualified recipients has occurred to the Armstrong Family Charitable Foundation, or its successor in interest, to be used exclusively for its general charitable purposes. If the organization has no successor in interest or its successors in interest cannot be identified with reasonable certainty, then my Trustee shall designate one or more charitable organizations having the same or similar charitable purposes as the Armstrong Family Charitable Foundation to receive all of the trust property. Each charitable organization must be a charity of a type described in Section 2055(a) of the Internal Revenue Code. My Trustee shall determine the amounts, shares and interests of the distributions.

# **Article Thirteen**

## **Administration of Trusts for Underage and Incapacitated Beneficiaries**

### **Section 13.01 Distributions for Underage and Incapacitated Beneficiaries**

Whenever my Trustee is authorized or directed to make a distribution to a beneficiary who is younger than 30 years of age, is incapacitated or who is, in my Trustee's opinion, unable to manage the distribution properly, my Trustee may either make the distribution or retain the amount to be distributed in any manner my Trustee may determine advisable, including any of the methods set forth in the following Section.

I request, but do not require, that before making a distribution to a beneficiary, my Trustee, to the extent that it is both reasonable and possible, consider the ability the beneficiary demonstrated in managing prior distributions of trust property.

### **Section 13.02 Methods of Distribution**

My Trustee may distribute or retain trust property in any one or more of the following methods for the benefit of any beneficiary subject to the provisions of this Article:

**(a) Distribution to Beneficiary**

My Trustee may distribute trust property directly to the beneficiary.

**(b) Distribution to Guardian or Conservator or Family Member**

My Trustee may distribute trust property to the beneficiary's guardian, conservator, parent or a family member or other person who has assumed the responsibility of caring for the beneficiary.

**(c) Distribution to Custodian**

My Trustee may distribute trust property to any person or entity, including my Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act, or similar statute.

**(d) Distribution to Other Persons or Entities**

My Trustee may distribute trust property to other persons and entities for the use and benefit of the beneficiary.

**(e) Distribution to Agent under Durable Power of Attorney**

My Trustee may distribute trust property to an agent or attorney-in-fact authorized to act for the beneficiary under a legally valid durable power of attorney executed by the beneficiary prior to the incapacity.

**(f) Retention in Trust**

My Trustee may retain trust property in a separate trust for the benefit of the beneficiary until the beneficiary attains 30 years of age or, in the opinion of my Trustee, is no longer incapacitated (as the case may be).

My Trustee shall distribute as much of the net income and principal of any trust created under this subsection that my Trustee deems necessary or advisable for the health, education, maintenance and support of the beneficiary for whom the trust was created. My Trustee shall accumulate any undistributed net income and add such income to principal.

When the beneficiary for whom a trust is created under this subsection attains 30 years of age or is no longer incapacitated (as the case may be), the beneficiary may withdraw from the trust at any time or times any portion or all of the accumulated trust income and principal.

The beneficiary for whom a trust is created under this subsection shall have the testamentary general power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities, including the creditors of the beneficiary's estate. The beneficiary shall have the sole and exclusive right to exercise this general power of appointment.

I intend that this testamentary power of appointment be a general power of appointment as defined in Section 2041 of the Internal Revenue Code.

If the beneficiary fails to validly exercise this testamentary general power of appointment, my Trustee shall distribute the balance of his or her trust property to the then living descendants of the beneficiary, *per stirpes*.

If the beneficiary has no then living descendants, my Trustee shall distribute the beneficiary's remaining trust property *per stirpes* to the living descendants of the beneficiary's nearest lineal ancestor who was my descendant or if no such descendant is then living, to my then living descendants, *per stirpes*.

If I have no then living descendants, my Trustee shall distribute the remaining trust property as provided in Article Twelve.

**Section 13.03 Application of Article**

Any decision made by my Trustee under this Article shall be final, controlling and binding upon all beneficiaries subject to the provisions of this Article.

The provisions of this Article shall not apply to distributions to me or to my wife from any trust established under this agreement.

## **Article Fourteen**

### **Retirement Plans and Life Insurance Policies**

The provisions of this Article apply to qualified retirement plans and insurance policies owned by or made payable to my trust.

#### **Section 14.01 Retirement Plans**

The provisions of this Section apply to qualified retirement plans.

##### **(a) Rights of My Trustee**

Subject to the provisions below pertaining to distributions from qualified retirement plans, my Trustee may exercise the right to determine the manner and timing of payments (by lump sum or otherwise) of qualified retirement plan benefits that are permitted under qualified retirement plans and are consistent with the federal income tax rules regarding required minimum distributions under Section 401(a)(9) of the Internal Revenue Code.

My Trustee may make a qualified disclaimer of any qualified retirement benefits or non-qualified annuity benefits payable to my trust.

My Trustee shall not be liable to any beneficiary for the death benefit election selected or for any decision regarding the disclaimer of any qualified retirement benefits payable to my trust.

##### **(b) Distributions from Qualified Retirement Plans to the Patty Armstrong Trust**

If the Patty Armstrong Trust becomes the beneficiary of death benefits under any qualified retirement plan, each year, beginning with the year of my death, my Trustee must withdraw at least the greater of:

The net income earned on the Patty Armstrong Trust's share of the plan during the year; and

The required minimum distribution required to be withdrawn from the Patty Armstrong Trust's share of the plan under Section 401(a)(9) of the Internal Revenue Code.

My Trustee may withdraw additional amounts from the Patty Armstrong Trust's share of the plan as my Trustee deems advisable; but only if the dispositive terms of the trust authorize my Trustee to immediately distribute the withdrawn amount as provided in this subsection. My



Trustee shall immediately distribute all net amounts withdrawn to my wife.

If my wife is then deceased, my Trustee shall instead distribute to the remainder beneficiary, the amount which would have been distributed to my wife had she then been living.

The purpose of this Section is to insure that the life expectancy of my wife may be used to calculate the minimum distributions required by the Internal Revenue Code and this Section shall be interpreted consistent with this intent despite any direction to the contrary in this agreement.

**(c) Distributions from Qualified Retirement Plans to Trusts other than the Patty Armstrong Trust**

Each year, beginning with the year of my death, if any trust created under this agreement other than the Patty Armstrong Trust becomes the beneficiary of death benefits under any qualified retirement plan, my Trustee shall withdraw from the trust's share of the plan, in each year, the required minimum distribution required under Section 401(a)(9) of the Internal Revenue Code. My Trustee may withdraw additional amounts from the trust's share of the plan as my Trustee deems advisable, but only if the dispositive terms of the trust authorize my Trustee to immediately distribute the withdrawn amount as provided in this subsection.

My Trustee shall immediately distribute all net amounts withdrawn to:

My wife, if a beneficiary of the trust; and

If my wife is not a beneficiary of the trust, to my descendants, *per stirpes*, who are beneficiaries of the trust; and

If my wife is not a beneficiary of the trust and no descendant of mine is a beneficiary of the trust, then to the income beneficiaries of the trust in equal shares.

Amounts required to be withdrawn and distributed under this subsection shall, to the extent they are withdrawn and distributed, reduce mandatory distribution amounts under other provisions of this agreement that otherwise require distribution of all of the income of the trust.

The purpose of this Section is to insure that the life expectancy of the beneficiaries of the trust may be used to calculate the minimum distributions required by the Internal Revenue Code. This subsection shall be interpreted consistent with my intent despite any direction to the contrary in this agreement.

**(d) Minimum Required Distribution**

In administering my trust, the minimum required distribution for any year shall be, for each qualified retirement plan, the greater of (1) the value of the qualified retirement plan determined as of the preceding year-end, divided by the applicable distribution period; and (2) the amount that my Trustee shall be required to withdraw under the laws then applicable to the trust to avoid penalty.

If I die before my required beginning date with respect to a qualified retirement plan, the applicable distribution period means the life expectancy of the beneficiary. If I die on or after my required beginning date with respect to a qualified retirement plan, the applicable distribution period means the life expectancy of the beneficiary, or (if longer) my remaining life expectancy.

Notwithstanding the foregoing, if I die on or after my required beginning date with respect to a qualified retirement plan, the minimum required distribution for the year of my death shall mean (a) the amount that was required to be distributed to me with respect to the qualified retirement plan during the year, minus (b) amounts actually distributed to me with respect to the qualified retirement plan during the year.

“Life expectancy,” “required beginning date” and other similar terms used in this subsection, shall be determined in accordance with Section 401(a)(9) of the Internal Revenue Code.

**Section 14.02 Life Insurance Policies**

The following provisions apply to life insurance policies owned by or made payable to my trust.

**(a) Provisions During My Life**

During my life, I reserve all of the rights, powers, privileges, and options, with respect to any insurance policy, annuity or any other third-party beneficiary contract owned by or made payable to my trust, including, but not limited to, the right to designate and change beneficiaries, the right to borrow money, the right to surrender the policy, the right to receive any payments as owner, and the right to make any available elections.

My Trustee shall have no duty to exercise, or refrain from exercising, any rights, powers, privileges or options with respect to any insurance policy, annuity contract or other third-party beneficiary contract. My Trustee shall have no obligation to pay premiums or other contractual amounts that may be payable under any such policy.

**(b) Provisions After My Death**

After my death, my Trustee may make all appropriate elections with respect to such policies and may collect all sums made payable to my trust or my Trustee under all such policies or contracts.

My Trustee may exercise any settlement options or other options or rights that may be available under the terms of any policy or contract. My Trustee shall not be liable to any beneficiary on account of any election made by my Trustee with respect to any policy or contract.

**Section 14.03 Limitation on Liability of Payor**

Persons or entities dealing in good faith with my Trustee shall not be required to see to the proper application of proceeds delivered to my Trustee, or to inquire into any provision of this agreement.

A receipt signed by my Trustee for any proceeds or benefits paid shall be a sufficient discharge to the person or entity making the payment.

**Section 14.04 Collection Efforts**

My Trustee shall make reasonable efforts to collect the proceeds of all life insurance policies and qualified retirement benefits payable to my trust.

My Trustee may commence legal or administrative proceedings to collect the proceeds of any life insurance policy or qualified retirement benefits to which the trust is entitled; provided, however, that my Trustee need not commence any such proceedings until my Trustee is indemnified to its satisfaction for any expenses and liabilities it may incur in connection with the proceeding.

My Trustee may settle or compromise any and all claims with respect to the collection of any life insurance proceeds or qualified retirement benefits to which my trust may be entitled. A settlement made by my Trustee shall be binding on all beneficiaries.

**Section 14.05 No Obligation to Purchase or Maintain Benefits**

Nothing in this agreement shall impose any obligation, legal or otherwise, on me or on my Trustee to purchase, invest, or maintain any qualified retirement plan or life insurance policy.

## **Article Fifteen Trust Administration**

### **Section 15.01 Distributions to Beneficiaries**

Whenever this agreement authorizes or directs a Trustee to make a distribution of net income or principal to a beneficiary, the Trustee may apply for the benefit of the beneficiary any property that otherwise could be distributed directly to the beneficiary. The Trustee shall have no responsibility to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this agreement.

The Trustee may make distributions in cash or in kind, or partly in each, in proportions and at values determined by the Trustee. The Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that the Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

The Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

### **Section 15.02 No Court Proceedings**

This trust shall be administered expeditiously, consistent with the provisions of this agreement, free of judicial intervention, and without order, approval or action of any court. The trust shall be subject to the jurisdiction of a court only if my Trustee or another interested party institutes a legal proceeding. A proceeding to seek instructions or a court determination shall be initiated in the court having original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination shall not subject this trust to the continuing jurisdiction of the court.

### **Section 15.03 No Bond**

My Trustee shall not be required to furnish any bond for the faithful performance of my Trustee's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety shall be required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

### **Section 15.04 Exoneration of My Trustee**

No successor Trustee is obligated to examine the accounts, records or actions of any previous Trustee or of the Personal Representative of my estate. No successor Trustee

shall be in any way or manner responsible for any act or omission to act on the part of any previous Trustee or the Personal Representative of my estate.

Unless a Trustee has received notice of removal, the Trustee shall not be liable to me or to any beneficiary for the consequences of any action taken by the Trustee that would have been, but for the prior removal of the Trustee, a proper exercise by the Trustee of the authority granted to the Trustee under this agreement.

Any Trustee may request and obtain from the beneficiaries or from their legal representatives, agreements in writing releasing the Trustee from any liability that may have arisen from the Trustee's acts or omissions to act and indemnifying the Trustee from liability for the acts or omissions. An agreement described in this paragraph, if acquired from all the living beneficiaries of the trust or from their legal representatives, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

The Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal and may withhold distribution or allocation pending determination or release of a tax lien or other lien. This refunding agreement provision shall not apply to any distribution that qualifies for the federal estate tax unlimited marital deduction or the federal estate tax charitable deduction.

#### **Section 15.05 Trustee Compensation**

An individual serving as Trustee, other than my wife or me, shall be entitled to fair and reasonable compensation for the services rendered as a fiduciary. A corporate fiduciary serving as Trustee shall be compensated by agreement with an individual Trustee or, in the absence of an individual Trustee or in the absence of an agreement, in accordance with the corporate fiduciary's published schedule of fees in effect at the time the services are rendered.

A Trustee may charge additional fees for services it provides that are not comprised within its duties as Trustee such as fees for legal services, tax return preparation and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out its duties under this agreement.

#### **Section 15.06 Employment of Professionals**

My Trustee may appoint, employ and remove, at any time and from time to time, investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, expert advisers, agents, and employees to advise or assist the Trustee in the performance of its duties. My Trustee may act upon the recommendations of the persons or entities employed with or without independent investigation.

My Trustee may reasonably compensate an individual or entity employed to assist or advise my Trustee regardless of whether the person or entity shall be a Trustee of a trust established under this agreement or a corporate affiliate of a Trustee and regardless of whether the entity shall be one in which a Trustee of a trust created under this agreement is a partner, member, stockholder, officer, director or corporate affiliate or has any other interest.

My Trustee may pay the usual compensation for services contracted for under this Section out of principal or income of the trust as my Trustee may deem advisable. My Trustee may pay compensation to an individual or entity employed to assist or advise my Trustee without diminution of or charging the same against the compensation to which the Trustee is entitled under this agreement. Any Trustee who shall be a partner, stockholder, officer, director or corporate affiliate in any entity employed to assist or advise my Trustee shall nonetheless receive the Trustee's share of the compensation paid to the entity.

#### **Section 15.07 Exercise of Testamentary Power of Appointment**

A testamentary power of appointment granted under this agreement may be exercised by valid will, valid revocable living trust or by any other written instrument that specifically refers to this power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the holder of the power designates. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

My Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this agreement has not been exercised by the beneficiary if my Trustee has no knowledge of the existence of a valid will, valid revocable living trust or by any other written instrument exercising the power within 3 months after the beneficiary's death.

#### **Section 15.08 Determination of Principal and Income**

My Trustee may determine in a fair, equitable and practical manner how all Trustee's fees, disbursements, receipts, and wasting assets shall be credited, charged, and apportioned between principal and income.

My Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and for the equalization of payments to or for the beneficiaries. My Trustee may select appropriate accounting periods with regard to the trust property.

### **Section 15.09 Trust Accounting**

Except to the extent required by law, my Trustees shall not be required to file annual accounts with any court or court official in any jurisdiction.

Upon the written request of a beneficiary, my Trustee shall render an accounting at least annually to the income beneficiaries of the trust during the accounting period that includes the date of the written request. The accounting shall include the receipts, disbursements, and distributions occurring during the accounting period and a balance sheet of the trust property if no tax return is filed, or may consist just of the tax return for the accounting period if a tax return is filed for the trust.

In the absence of fraud or manifest error, the assent by all income beneficiaries to an accounting of an Independent Trustee shall make the matters disclosed in the accounting binding and conclusive upon all persons, both those in existence on the date of this agreement and those to be born in the future who have, or will in the future have, a vested or contingent interest in the trust property. In the case of a minor or incapacitated beneficiary, that beneficiary's natural guardian or legal representative shall give the assent required under this Section.

The failure of any person to object to any accounting by giving written notice to my Trustee within 60 days of the person's receipt of a copy of the accounting shall be deemed to be an assent by such person.

The trust's financial records and documentation shall be available at reasonable times and upon reasonable notice for inspection by trust beneficiaries and their representatives. My Trustee shall not be required to furnish trust information regarding my trust to any individual, corporation, or other entity that is not a beneficiary or the representative of a beneficiary, and is not requesting the information pursuant to a valid court order.

### **Section 15.10 Action of Trustees; Disclaimer**

Unless otherwise provided in this agreement, whenever I am serving as Trustee, I may make all decisions and exercise all powers and discretions granted to my Trustee under this agreement without the consent of any other Trustee.

When I am not serving as a Trustee, if two Trustees are eligible to act with respect to a given matter, the concurrence of both shall be required for action to be taken; if more than two Trustees are eligible to act with respect to a given matter, the concurrence of a majority of my Trustees shall be required for action to be taken.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee shall be absolved from personal liability by registering its dissent or abstention in the records of the trust. After doing so, the dissenting Trustee shall then act with my other Trustees in any way necessary or appropriate to effectuate the decision of the majority.

Notwithstanding any provision of this agreement to the contrary, any Trustee may disclaim or release, in whole or in part, by an instrument in writing, any power it holds as Trustee, irrevocably or for any period of time that the Trustee may specify. The Trustee may make the relinquishment of a power personal to the Trustee or may relinquish the power for all subsequent Trustees.

#### **Section 15.11 Delegation of Trustee Authority; Power of Attorney**

Subject to the limitations set forth in Section 16.24, any Trustee may, by an instrument in writing, delegate to any other Trustee the right to exercise any power (including a discretionary power) granted my Trustee in this agreement. During the time a delegation under this Section is in effect, the Trustee to whom the delegation was made may exercise the power to the same extent as if the delegating Trustee had personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice of revocation to the Trustee to whom the power was delegated.

My Trustee may execute and deliver a revocable or irrevocable power of attorney granting any individual or entity the power to transact any and all business on behalf of my trust or any other trust created under this agreement. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that my Trustee is entitled to exercise under this agreement.

#### **Section 15.12 Additions to Separate Trusts**

If upon the termination of any trust created under this agreement a final distribution is to be made to a person who is the only beneficiary of another trust created under this agreement, my Trustee shall make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, my Trustee shall treat the distribution as though it had been an original part of the second trust.

#### **Section 15.13 Authority to Merge or Sever Trusts**

My Trustee may merge and consolidate a trust created under this agreement with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and at least one Trustee in common.

My Trustee may administer the merged and consolidated trust as a single trust or unit. If, however, a merger or consolidation does not appear feasible, my Trustee may consolidate the assets of the trusts for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

My Trustee may sever any trust on a fractional basis into two or more separate and identical trusts or may segregate a specific amount or asset from the trust property by allocation to a separate account or trust. The separate trusts may be funded on a non *pro rata* basis provided that funding is based on the total fair market value of the assets on the



date of funding. Income earned on a segregated amount or specific asset after the segregation passes with the amount or asset segregated. My Trustee shall hold and administer each separate trust upon terms and conditions substantially identical to those of the trust from which it was severed.

Subject to the terms of the trust, my Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections, and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective; however, the effective date of severance may be retroactive to a date before the date on which my Trustee exercises the power.

#### **Section 15.14 Authority to Terminate Trusts**

If, at any time, my Trust Advisor determines that a trust created under this agreement is no longer economical or is otherwise inadvisable to administer as a trust, or if my Trust Advisor deems it to be in the best interest of my beneficiaries, my Trust Advisor, without further responsibility, may terminate the trust and distribute the trust property, including any undistributed net income, in the following order of priority:

To me, if I am then living;

If I am not then living, to my wife, if then a beneficiary of the trust;

If I am not then living and my wife is not then a beneficiary of the trust, to the beneficiaries then entitled to mandatory distributions of net income of the trust and in the same proportions; and

If none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of net income of the trust, in such amounts and shares as my Trust Advisor may determine.

This Section shall not apply to the Armstrong Family Charitable Foundation.

#### **Section 15.15 Merger of Corporate Fiduciary**

If any corporate fiduciary acting as my Trustee under this agreement is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the trusteeship as if originally named a Trustee. No document of acceptance of trusteeship shall be required.

### **Section 15.16 Beneficiary's Status**

Until a Trustee receives notice of the incapacity, birth, marriage, death or other event upon which a beneficiary's right to receive payments may depend, the Trustee shall not be liable for acting or failing to act with respect to the event or for disbursements made in good faith to persons whose interest may have been affected by such event. Unless otherwise provided in this agreement, the parent or legal representative may act on behalf of a beneficiary who is a minor or is incapacitated.

A Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. A Trustee shall have no independent duty to investigate the status of any beneficiary and shall not incur any liability for failure to do so.

### **Section 15.17 Discharge of Third Persons**

Persons dealing in good faith with my Trustee shall not be required to see to the proper application of money paid or property delivered to my Trustee, or to inquire into the authority of my Trustee as to any transaction. The receipt from my Trustee for any money or property paid, transferred or delivered to my Trustee shall be a sufficient discharge to the person or persons paying, transferring or delivering the money or property from all liability in connection with its application.

### **Section 15.18 Certificate by Trustee**

A written statement of my Trustee may always be relied upon by, and shall always be conclusive evidence in favor of, any transfer agent or any other person dealing in good faith with my Trustee in reliance upon the statement.

### **Section 15.19 Funeral and Other Expenses of Beneficiary**

Upon the death of an income beneficiary my Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts and other expenses incurred due to the death of the beneficiary from trust property. This Section shall only apply to the extent the income beneficiary has not exercised any testamentary power of appointment granted to him under this agreement.

My Trustee may rely upon any request by the Personal Representative or members of the family of the deceased beneficiary for payment without verifying the validity or the amounts and without being required to see to the application of the amounts so paid. My Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or rule of court and may be made without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary's estate.

## **Section 15.20 Marital Deduction Qualification**

I intend that the marital gift as described in Article Seven of this agreement qualify for the federal estate tax marital deduction, and the provisions of this agreement shall be construed to reflect this intent. To the extent that giving effect to a provision of this agreement would result in the marital gift not qualifying for the federal estate tax unlimited marital deduction, that provision shall be ineffective except to the extent my Trustee or Personal Representative elects that all or a portion of the marital gift not qualify for the unlimited marital deduction.

## **Section 15.21 Generation-Skipping Transfer Tax Provisions**

Notwithstanding any other provision of this agreement to the contrary, if a trust created under this agreement would be partially exempt from generation-skipping transfer tax after the intended allocation of GST exemption as defined in Section 2631 of the Internal Revenue Code to the trust then:

### **(a) Division into Exempt and Nonexempt Trusts**

My Trustee may divide the property of the trust into two separate trusts so that the allocation of GST exemption can be made to a trust that will be entirely exempt from generation-skipping transfer tax (the "exempt trust"). The exempt trust shall consist of the largest fractional share of the total trust assets that will permit the exempt trust to be entirely exempt from generation-skipping transfer tax. The "nonexempt trust" shall consist of the balance of the total trust assets. For purposes of computing the fractional share, asset values as finally determined for federal estate tax purposes shall be used. The fraction shall be applied to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of such fraction will include fluctuations in the value of the trust property.

### **(b) Administration of the Trusts**

The trusts created under this Section shall have the same terms as the original trust. To the extent possible, distributions to a non-skip person as defined by Section 2613 of the Internal Revenue Code shall be made from a nonexempt trust and distributions to a skip person as defined by Section 2613 shall be made from an exempt trust.

My Trustee shall administer each exempt and nonexempt trust as a separate and independent trust.

Any exempt or nonexempt trust established under this agreement may be referred to by the name designated by my Trustee.

If an exempt trust and a nonexempt trust are further divided under the terms of this agreement, my Trustee may allocate property from the exempt trust first to the trust from which a generation skipping transfer is more likely to occur.

**(c) My Intent; Trust Additions**

My intent is to minimize the application of the generation-skipping transfer tax to the trust property but not to affect the total amount of trust property to which any beneficiary may be entitled under this agreement. This agreement shall be so construed and interpreted to give effect to this intent.

If at any time any property that has an inclusion ratio greater than zero for generation-skipping transfer tax purposes would be added to a trust with property that has an inclusion ratio of zero, then my Trustee shall instead hold such property in a separate trust on the same terms and conditions as the original trust.

**(d) Independent Trustee May Confer Testamentary Power of Appointment**

In the event a trust has an inclusion ratio of greater than zero for generation-skipping transfer tax purposes, my Trustee, excluding any Interested Trustee, may during the lifetime of the beneficiary of the trust, grant the beneficiary a testamentary power to appoint all or part of such beneficiary's trust or trust share to the creditors of the beneficiary's estate. The Trustee granting the power of appointment may require, as a condition for the beneficiary's exercise of such power, that the beneficiary obtain the consent of such Trustee. Any testamentary power of appointment granted by the Trustee shall be in writing and may be revoked at any time during the lifetime of the beneficiary to whom the power was given.

## **Article Sixteen**

### **My Trustee's Powers**

#### **Section 16.01 Introduction to Trustee's Powers**

Except as otherwise specifically provided in this agreement, my Trustee may exercise, without prior approval from any court, all the powers conferred by this agreement and any powers conferred by law, including, without limitation, those powers set forth under the common law or statutory law of the United States Virgin Islands or any other jurisdiction whose law applies to this trust. The powers set forth in Title 15 of the Virgin Islands Code Annotated are specifically incorporated into this trust agreement. The powers conferred upon my Trustee by law, including those powers conferred by Title 15 of the Virgin Islands Code Annotated, shall be subject to any express limitations or contrary directions contained in this agreement.

My Trustee shall exercise these powers in the manner my Trustee determines to be in the best interests of the beneficiaries. My Trustee shall not exercise any of its powers in a manner that is inconsistent with the right of the beneficiaries to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee of a trust may have duties and responsibilities in addition to those described in this agreement. I encourage my Trustee to obtain appropriate legal advice if my Trustee has any questions concerning its duties and responsibilities as Trustee.

#### **Section 16.02 Execution of Documents by My Trustee**

My Trustee may execute and deliver any and all instruments in writing that my Trustee considers necessary to carry out any of the powers granted in this agreement.

#### **Section 16.03 Investment Powers in General**

My Trustee may invest in any type of investment that my Trustee determines is consistent with the investment goals of my trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account my trust's overall investment portfolio.

Without limiting my Trustee's investment authority in any way, I request that my Trustee exercise reasonable care and skill in selecting and retaining trust investments. I also request that my Trustee take into account the following factors in choosing investments for my trust:

The potential return from the investment, both in the form of income and appreciation;

The potential income tax consequences of the investment;

The investment's potential for volatility; and

The role the investment will play in the trust's portfolio.

I request that my Trustee, in arranging the investment portfolio of the trust, also consider the possible effects of inflation or deflation, changes in global and U.S. economic conditions, transaction expenses, and the trust's need for liquidity.

My Trustee may delegate its discretion to manage trust investments to any registered investment adviser or corporate fiduciary.

#### **Section 16.04 Banking Powers**

My Trustee may establish bank accounts of any type in one or more banking institutions that my Trustee may choose. My Trustee may open accounts in the name of my Trustee (with or without disclosing fiduciary capacity) or in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the fiduciary nature of the account or refer to any trust or Trustee.

An account from which my Trustee makes frequent disbursements need not be an interest bearing account. My Trustee may authorize withdrawals from an account by check, draft or other instrument or in any other manner.

#### **Section 16.05 Business Powers**

My Trustee is authorized to serve as an officer, director, manager, or in any other capacity of any proprietorship, partnership, joint venture, corporation, or other enterprise in which the trust has an interest (whether or not such interest is total or controlling). My Trustee may receive compensation for services.

My Trustee may contract with and otherwise deal with any such enterprise in the same manner as it would with any enterprise in which the trust has no interest, and may use any voting power my Trustee may have to implement its authority (whether as Trustee or as an officer, director, or other official of the enterprise).

With respect to any units in a limited liability company, limited partnership, or stock in a closely-held corporation ("closely-held company") that are contributed to the trust, the powers granted to my Trustee in this Article shall not disqualify my Trustee from acting personally and independently, and not in a fiduciary capacity, with respect to any closely held company, from holding office in the closely-held company, from accepting remuneration from the closely-held company, from voting any units or stock in favor of the Trustee as a director or officer of the closely-held company, or from purchasing or selling units or stock of the closely-held company.

If the trust owns or acquires an interest in a business as a shareholder, partner, sole proprietor, member, participant in a joint venture or otherwise, my Trustee may exercise the authority and discretion provided for in this Section. The powers granted in this Section are in addition to and not in limitation of all other powers granted to my Trustee in this agreement.

**(a) No Duty to Diversify**

Notwithstanding any duty to diversify imposed by law, my Trustee may retain any business in which the trust has an ownership interest even though the interest may constitute all or a substantial portion of the trust property. I recognize that the value of a non-controlling interest in a business entity may be less than the underlying value of the net assets of the entity. Nonetheless, I authorize my Trustee to retain non-controlling business interests owned by the trust.

**(b) Specific Management Powers**

My Trustee shall have all power and authority necessary to manage and operate any business owned by the trust, whether directly or indirectly, including, without limitation, the express powers set forth in this subsection.

My Trustee may participate directly in the conduct of the business, by serving as a general partner of a limited partnership, a member, manager or managing member of a limited liability company, or a shareholder of a corporation, or may employ others to serve in that capacity.

My Trustee may take part in the management of the business and delegate duties with respect to management, together with the requisite powers, to any employee, manager, partner or associate of the business, without incurring any liability for the delegation. To the extent that the business interest held by the trust is not one that includes management powers (such as a minority stock interest, limited partnership interest, or a membership interest in a limited liability company), my Trustee shall have no obligation to supervise the management of the underlying assets, and no liability for the actions of those who do manage the business.

My Trustee may enter into management agreements and nominee agreements whereby my Trustee and the trust may serve as the exclusive manager or nominee of property or property interests on behalf of any limited partnership, limited liability company or corporation.

My Trustee, individually or if my Trustee is a corporate fiduciary or an employee of the Trustee, may act as a director, general or limited partner, associate or officer of the business.

My Trustee may participate with any other person or entity in the formation or continuation of a partnership either as a general or limited partner, or in any joint venture. My Trustee shall have and exercise all the powers of management necessary and incidental to a membership in the partnership, limited partnership, or joint venture, including the making of charitable contributions.

My Trustee may reduce, expand, limit or otherwise adjust the operation or policy of the business. My Trustee may subject the principal and income of the trust to the risks of the business for such term or period as my Trustee may determine.

My Trustee may advance money or other property to any business in which the trust has an interest, make loans (subordinated or otherwise) of cash or securities to the business and guarantee the loans of others made to the business. My Trustee may borrow money for the business, either alone or with other persons interested in the business, and secure any such loan or loans by a pledge or mortgage of any part of any trust property.

My Trustee may select and vote for directors, partners, associates and officers of the business. My Trustee may enter into owners' agreements with a business in which the trust has an interest or with the other owners of the business.

My Trustee may execute agreements and amendments to agreements that are necessary to the operation of the business including, but not limited to, stockholder agreements, partnership agreements, buy-sell agreements and operating agreements for limited liability companies.

My Trustee may generally exercise any and all powers necessary for the continuation, management, sale or dissolution of the business. My Trustee may participate in the sale, reorganization, merger, consolidation, recapitalization, or liquidation of the business. My Trustee may sell or liquidate the business or business interest on such price and on such terms as my Trustee deems advisable and in the best interests of the trust and the beneficiaries. My Trustee may sell any business interest held by the trust to one or more of the beneficiaries of this trust or to any trust in which a majority of the beneficiaries are one or more of the beneficiaries of this trust. The sale may be made in exchange for cash, a private annuity, an installment note or any combination thereof.

My Trustee may exercise all of the business powers granted in this agreement even though my Trustee may be personally invested in or otherwise involved with the business.



**(c) Business Liabilities**

If any tort or contract liability arises in connection with the business, and if the trust is a responsible party with regard to the liability, my Trustee shall satisfy the liability first from the assets of the business, and only then from other trust property.

**(d) Trustee Compensation**

In addition to the Trustee compensation set forth in Section 15.05, my Trustee may receive additional reasonable compensation for services in connection with the operation of the business. My Trustee may receive this compensation directly from the business, from the trust or partly from both.

**(e) Conflicts of Interest**

My Trustee may exercise all of the powers granted in this trust agreement even though my Trustee may be involved with or have a personal interest in the business.

**Section 16.06 Contract Powers**

My Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that my Trustee deems advisable. My Trustee may grant options of any duration for any such sales, exchanges, or transfers of trust property.

My Trustee may enter into contracts, and may deliver deeds or other instruments, that my Trustee deems appropriate.

**Section 16.07 Common Investments**

For purposes of convenience with regard to the administration and investment of the trust property, my Trustee may invest part or all of the trust property jointly with trust property of other trusts for which my Trustee is also serving as a Trustee. For this purpose, a corporate fiduciary acting as my Trustee may use common funds for investment.

When trust property is managed and invested in this manner, my Trustee shall maintain records that sufficiently identify that portion of the jointly invested assets that constitute the trust property of this trust.

**Section 16.08 Environmental Powers**

My Trustee shall have the right to inspect trust property to determine compliance with or to respond to any environmental law affecting the trust property. "Environmental law"

shall mean any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or of human health.

My Trustee may refuse to accept property if my Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to my Trustee.

My Trustee may use and expend trust property to (i) conduct environmental assessments, audits or site monitoring; (ii) take remedial action to contain, clean up or remove any hazardous substance including a spill, discharge or contamination; (iii) institute, contest or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance; (iv) comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement or clean-up of any hazardous substance; and (v) employ agents, consultants and legal counsel to assist my Trustee in these actions.

My Trustee shall not be liable for any loss or reduction in value sustained by my trust as a result of my Trustee's retention of property on which hazardous materials or substances requiring remedial action are discovered unless my Trustee contributed to the resulting loss or reduction in value through willful misconduct or gross negligence.

My Trustee shall not be liable to any beneficiary or to any other party for any decrease in the value of trust property as a result of my Trustee's compliance with any environmental law, including any reporting requirement.

My Trustee may release, relinquish or disclaim any power held by my Trustee that my Trustee determines may cause my Trustee to incur individual liability under any environmental law.

### **Section 16.09 Farming and Ranching Operations**

If the trust owns or acquires an interest in a farm, ranch or other agricultural property or business, my Trustee may exercise the authority and discretion provided for in this Section. The powers granted in this Section are in addition to and not in limitation of all other powers granted to my Trustee in this agreement.

#### **(a) Authority to Operate the Farm or Ranch**

Notwithstanding any duty to diversify imposed by law, my Trustee may retain and continue to operate a farm or ranch even though the interest may constitute all or a substantial portion of the trust property.

My Trustee may take part in the management of the farm or ranch or hire a farm manager or a professional farm management service. My Trustee may delegate any of the powers authorized by this Section to a hired farm manager or professional farm management service.

My Trustee may purchase, sell, hold, manage, operate, lease, improve and maintain the farm or ranch, or any interests in the farm or ranch, and in general deal with and do all things necessary to operate the farm or ranch as my Trustee deems advisable.

My Trustee may buy, sell and raise livestock; plant, cultivate, harvest and sell cash crops; produce timber or forest products for sale; or lease or rent all or part of the farm or ranch for cash or a share of the crops. My Trustee may contract with hired labor, tenants or sharecroppers.

My Trustee may construct, repair and improve farm buildings, fences and other farm or ranch structures including drainage facilities, dig and maintain wells, ponds and lagoons, and participate in cooperative agreements concerning water rights and ditch rights.

My Trustee may purchase or rent any kind of farm machinery, equipment, feed and seed necessary for the operation of the farm or ranch.

My Trustee may use approved soil conservation practices in order to conserve, improve and maintain the productivity of the soil, and may engage in timber or forest conservation practices.

My Trustee may engage and participate in any farm program sponsored by any federal, state, local or territorial governmental agency.

**(b) Business Liabilities**

If any tort or contract liability arises in connection with the farm or ranch, and if the trust is a responsible party with regard to the liability, my Trustee shall satisfy the liability first from the assets of the farm or ranch, and only then from other trust property.

**(c) Trustee Compensation**

In addition to the Trustee compensation set forth in Section 15.05, my Trustee may receive additional reasonable compensation for services in connection with the operation of a farm or ranch. My Trustee may receive this compensation directly from the farm or ranch, from the trust or partly from both.

**(d) Conflicts of Interest**

My Trustee may exercise all of the powers granted in this trust agreement even though my Trustee may be involved with or have a personal interest in the farm or ranch.

### **Section 16.10 Insurance Powers**

My Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on my life, the life of any beneficiary, or on the life of any person in whom any beneficiary has an insurable interest.

My Trustee may purchase disability, medical, liability, long-term health care and other insurance on behalf of and for the benefit of any beneficiary. My Trustee may purchase annuities and similar investments for any beneficiary.

My Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy. My Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company issuing the policy or from another source. My Trustee may assign the policy as security for the loan.

My Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

My Trustee may elect any paid-up insurance or extended term insurance nonforfeiture option contained in a policy.

My Trustee shall have the power to sell any policy at its fair market value to anyone having an insurable interest in the policies including the insured.

My Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing the policy.

Upon termination of the trust, my Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

### **Section 16.11 Loans and Borrowing Powers**

My Trustee may make secured or unsecured loans to any person (including a beneficiary), entity, trust or estate, for any term or payable on demand, with or without interest. My Trustee may enter into or modify the terms of any mortgage or security agreement granted in connection with any loan and may release or foreclose on the mortgage or security.

My Trustee may borrow money at interest rates and on other terms that it deems advisable from any person, institution or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

My Trustee may encumber trust property by mortgages, pledges and other hypothecation and shall have the power to enter into any mortgage, whether as a mortgagee or mortgagor even though the term may extend beyond the termination of the trust and beyond the period that is required for an interest created under this agreement to vest in order to be valid under the rule against perpetuities.

My Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. My Trustee may accept deeds in lieu of foreclosure.

#### **Section 16.12 Nominee Powers**

My Trustee may hold real estate, securities and any other trust property in the name of a nominee or in any other form without disclosing the existence of any trust or fiduciary capacity.

#### **Section 16.13 Oil, Gas and Mineral Interests**

My Trustee may acquire, maintain, develop and exploit, either alone or jointly with others, any oil, gas, coal, minerals or other natural resource rights or interests.

My Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell and exchange any of such rights and interests on terms and for a price that my Trustee deems advisable.

My Trustee may execute leases, pooling and unitization agreements and other types of agreements in connection with such oil, gas, coal, mineral and other natural resource rights and interests even though such arrangements may extend beyond the termination of the trust.

My Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it deems proper.

My Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the principal and income of the trust property.

#### **Section 16.14 Payment of Taxes and Expenses**

Except as otherwise provided in this agreement, my Trustee is authorized to pay all property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments shall be a charge against the trust property and shall be paid by my Trustee out of the income, or to the extent that the income is insufficient, then out of the principal of the trust property. The determination of my Trustee with respect to the payment of expenses shall be conclusive upon the beneficiaries.

### **Section 16.15 Qualified Family Owned Business Interests Deduction**

My Trustee, other than an Interested Trustee, shall have the power to amend the terms of a trust holding “qualified family-owned business interests” as defined in Section 2057 of the Internal Revenue Code, in order to permit trust property to qualify for the “family owned business deduction,” even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

### **Section 16.16 Qualified Real Property Valuation**

My Trustee, other than an Interested Trustee, shall have the power to amend the terms of a trust holding “qualified real property” as defined in Section 2032A of the Internal Revenue Code, in order to permit the qualified real property to qualify or continue to qualify for special use valuation permitted under Section 2032A, even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

### **Section 16.17 Qualified Tuition Programs**

My Trustee may purchase tuition credits or certificates or make contributions to an account in one or more qualified tuition programs as defined under Section 529 of the Internal Revenue Code on behalf of a beneficiary for the purpose of meeting the qualified higher education expenses of the beneficiary. With respect to an interest in any qualified tuition program, my Trustee is authorized to act as contributor (or similar designation given to the person who maintains control of an interest in the qualified tuition program) and take any and all actions to administer the interest, including, without limitation, the following:

To designate and change the designated beneficiary of the interest in the qualified tuition program;

To request withdrawals, both qualified and nonqualified;

To select among investment options and to reallocate funds in the interest in the qualified tuition program among different investment options;

To make rollovers to another qualified tuition program; and

To determine the allocation of any tax benefits or penalties to the beneficiaries of the trust.

Notwithstanding anything in this paragraph to the contrary, the designated beneficiary at all times must be a beneficiary of the trust from which the funds were distributed to establish the interest in the qualified tuition program. A Trustee’s investment in a qualified tuition program shall not be considered a delegation of investment responsibility under any applicable statute or other law.

### **Section 16.18 Real Estate Powers**

My Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve and in general deal in and with real property in such manner and on such terms and conditions as my Trustee deems appropriate.

My Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements, and abandon, any real property.

My Trustee may manage real estate in any manner that my Trustee deems best and shall have all other real estate powers necessary for this purpose.

My Trustee may enter into contracts to sell real estate. My Trustee may enter into leases and grant options to lease trust property even though the term of the agreement extends beyond the termination of the trust and beyond the period that is required for an interest created under this agreement to vest in order to be valid under the rule against perpetuities. For such purposes, my Trustee may enter into any contracts, covenants and warranty agreements that my Trustee deems appropriate.

### **Section 16.19 Residences and Tangible Personal Property**

My Trustee may acquire, maintain and invest in any residence for the use and benefit of the beneficiaries, whether or not the residence is income producing and without regard to the proportion that the value of the residence may bear to the total value of the trust property and even if retaining the residence involves financial risks that trustees would not ordinarily incur. My Trustee may pay or make arrangements for others to pay all carrying costs of the residence, including, but not limited to, taxes, assessments, insurance, expenses of maintaining the residence in suitable repair, and other expenses relating to the operation of the residence for the benefit of the beneficiaries.

My Trustee may acquire, maintain and invest in articles of tangible personal property, whether or not the property is income producing, and may pay the expenses of the repair and maintenance of the property.

My Trustee shall have no duty to convert the property referred to in this Section to productive property except as required by other provisions of this agreement.

My Trustee may permit any income beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that my Trustee may determine, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

My Trustee shall have no liability for any depreciation or loss as a result of the retention of any property retained or acquired under the authority of this Section.

## **Section 16.20 Retention and Abandonment of Trust Property**

My Trustee may retain, without liability for depreciation or loss resulting from retention, any property constituting the trust at the time of its creation, at the time of my death or as the result of the exercise of a stock option. My Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

My Trustee may hold property that is non-income producing or is otherwise nonproductive if holding the property is, in the sole and absolute discretion of my Trustee, in the best interests of the beneficiaries. On the other hand, except when I am serving as a Trustee, my Trustee shall invest contributions of cash and cash equivalents as soon as reasonably practical after the assets have been acquired by the trust. My Trustee is permitted to retain a reasonable amount in cash or money market accounts in order to pay anticipated expenses and other costs and to provide for anticipated distributions to or for the benefit of a beneficiary. But my Trustee shall convert any nonproductive property held in any trust qualifying for the federal estate tax marital deduction as qualified terminable interest property under Section 2056(b)(7) of the Internal Revenue Code and for any state or territorial death tax marital deduction under the law of any state or territory to productive property upon the written request of my wife.

My Trustee may abandon any trust property that my Trustee deems to be of insignificant value.

## **Section 16.21 Securities, Brokerage and Margin Powers**

My Trustee may buy, sell, trade and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, options and other securities of any kind and in any amount, including short sales. My Trustee may write and purchase call or put options, and other derivative securities. My Trustee may maintain margin accounts with brokerage firms and may pledge securities to secure loans and advances made to my Trustee or to or for the benefit of a beneficiary.

My Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. My Trustee may have all securities registered in the name of the bank or trust company or in the name of its nominee. My Trustee may appoint the bank or trust company as the agent or attorney in fact to collect, receive, receipt for and disburse any income and generally to perform the duties and services incident to a custodian of accounts.

My Trustee may employ a broker-dealer as a custodian for securities held by the trust and may register the securities in the name of the broker-dealer or in the name of a nominee with or without the addition of words indicating that the securities are held in a fiduciary capacity. My Trustee may hold securities in bearer or uncertificated form and may use a



central depository, clearing agency or book-entry system, such as The Depository Trust Company, Euroclear or the Federal Reserve Bank of New York.

My Trustee may participate in any reorganization, recapitalization, merger or similar transaction. My Trustee may exercise or sell conversion or subscription rights for securities of all kinds and description.

My Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution. My Trustee may vote or refrain from voting as to any matter.

### **Section 16.22 Settlement Powers**

My Trustee may settle, by compromise, adjustment, arbitration or otherwise any and all claims and demands in favor of or against the trust. My Trustee may release or abandon any claim in favor of the trust.

### **Section 16.23 Sub-Chapter S Corporation Stock Provisions**

After my death and during any period when the trust is not treated for tax purposes as a grantor trust under Section 671 of the Internal Revenue Code, my Trustee may elect to hold any S corporation stock held by the trust as a separate "electing small business trust" as defined in Section 1361(e)(1) or as a separate "qualified subchapter S trust," as defined in Section 1361(d)(3).

In making this determination, my Trustee may consider any changes to the terms and conditions of the trust that will be required as a result of either election.

For purposes of this Section, "S corporation stock" shall mean all capital stock issued by a corporation (or other entity taxable as a corporation for federal income tax purposes) that is treated, or intends to be treated under Section 1361(a), as an "S corporation" for federal income tax purposes.

#### **(a) Electing Treatment as an Electing Small Business Trust**

If my Trustee elects under Section 1361(e)(3) of the Internal Revenue Code to qualify the trust or portion thereof as an "electing small business trust," my Trustee shall:

Apportion to the electing small business trust a reasonable share of the unallocated expenses of all trusts created under this agreement, in accordance with the applicable provisions of the Internal Revenue Code and Treasury Regulations; and

Administer the trust as an electing small business trust, under Section 1361(e) of the Internal Revenue Code.

**(b) Electing Treatment as a Qualified Subchapter S Trust**

If my Trustee elects to treat the trust or portion thereof as a "qualified subchapter S trust," my Trustee shall:

Refer to the qualified subchapter S trust using the same name as the trust to which the stock was originally allocated, plus the name of the current income beneficiary of the trust, followed by the letters "QSST;"

Administer the qualified subchapter S trust in accordance with the same provisions contained in the trust to which the S corporation stock was originally allocated; provided, however, that the provisions of this subsection shall control the administration of the trust to the extent that they are inconsistent with the provisions of the original trust;

Maintain the qualified subchapter S trust as a separate trust held for the benefit of one beneficiary as required in Section 1361(d)(3); and

Request that the current income beneficiary of the trust, with the assistance of my Trustee, make an election in accordance with Section 1361(d)(2) to qualify the trust as a qualified subchapter S trust within the meaning of Section 1361(d)(3).

**(1) Current Income Beneficiary**

The "current income beneficiary" of a qualified subchapter S trust is the person who has a present right to receive income distributions from the trust to which the S corporation stock is allocated. A qualified subchapter S trust shall have only one current income beneficiary.

If under the terms of the agreement, there is more than one person who has a present right to receive income distributions from the trust originally holding the S corporation stock, my Trustee shall cause the S corporation stock to be segregated into separate qualified subchapter S trusts for each person who has a present right to receive income distributions.

**(2) Distributions**

Until the first to occur of (a) the death of the current income beneficiary and (b) the date on which the qualified

subchapter S trust no longer holds any S corporation stock (the "QSST termination date"), my Trustee shall distribute to the current income beneficiary, at least annually, all of the trust's "net income," as that term is defined in Section 643(b) of the Internal Revenue Code.

The terms of the trust to which the S corporation stock was originally allocated shall govern distributions of principal from the qualified subchapter S trust; provided, however, that my Trustee may only distribute principal to the current income beneficiary of the qualified subchapter S trust.

Upon the QSST termination date, my Trustee shall distribute the remaining trust assets to the current income beneficiary.

**(3) Allocation of Income and Expenses**

My Trustee shall characterize receipts and expenses of any qualified subchapter S trust in a manner consistent with Section 643(b) of the Internal Revenue Code.

**(4) Trust Merger or Consolidation**

My Trustee may not merge or consolidate any qualified subchapter S trust with the assets of another trust if doing so would jeopardize the qualification of either trust as a qualified subchapter S trust.

**(c) Governance of the Trusts**

The following additional provisions shall apply to any separate trust created under this Section.

**(1) Protection of S Corporation Status**

My Trustee shall not administer a trust holding S corporation stock in a manner that would cause the termination of the S corporation status of the entity whose stock is held as part of the trust. Therefore during any period that the trust holds S corporation stock, the terms of this agreement shall be construed in a manner that is consistent with the trust qualifying as an electing small business trust or as a qualified subchapter S trust. Any provision of this agreement that cannot be so construed or applied shall be disregarded.

**(2) Methods of Distribution**

No method of distribution permitted under this Section may be used in a manner that would jeopardize the qualification of the trust as an electing small business trust or as a qualified subchapter S trust.

**(3) Election**

Any reference in this agreement to any person acting in an individual or fiduciary capacity, making an election for himself or for or on behalf of any other person, shall include, but not be limited to, an election made in accordance with Section 1361(e)(3), Section 1361(d)(2) or any other applicable subsection of Section 1361 of the Internal Revenue Code.

**(4) Disposition of S Corporation Stock**

If the continuation of any trust would, in my Trustee's opinion, result in the termination of the S corporation status of any entity whose stock is held as a part of the trust property, my Trustee, other than an Interested Trustee, shall have, in addition to the power to sell or otherwise dispose of the stock, the power to distribute the stock to the person who is then entitled to receive the income from the trust.

**Section 16.24 Limitation on My Trustee's Powers**

All powers granted to my Trustee under this agreement or by applicable law shall be limited as set forth in this Section, unless explicitly excepted by reference to this Section. The limitations set forth in this Section shall not apply to me.

**(a) An Interested Trustee Limited to Ascertainable Standards**

An Interested Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal, or the termination of the trust to or for the benefit of a beneficiary, to the extent that the exercise of such discretion is other than for the health, education, maintenance or support of a beneficiary as described under Sections 2041 and 2514 of the Internal Revenue Code.

**(b) No Distributions in Discharge of Support Obligation of My Trustee**

My Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal to any person my Trustee is legally obligated to support, to the extent the distribution discharges the support obligation of my Trustee.

If a beneficiary has the power to remove a Trustee, the Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal to any person the beneficiary having the power to remove is legally obligated to support, to the extent such distribution discharges the support obligation of the beneficiary.

**(c) Insurance Policy on the Life of My Trustee**

If the trust holds a policy that insures the life of my Trustee, my Trustee shall have no right to exercise any powers or rights with respect to the policy. A Cotrustee serving under this agreement shall exercise the powers and rights with respect to the policy.

If the insured Trustee is the only Trustee, then an Independent Special Trustee designated under Section 3.08 shall exercise the powers and rights with respect to the policy.

If any rule of law or court decision construes the ability of the insured Trustee to name an Independent Special Trustee as an incident of ownership of the policy, then a majority of the then current mandatory and discretionary income beneficiaries (excluding the insured Trustee if he or she is a beneficiary) shall select the Independent Special Trustee.

**(d) Insurance Policy on a Beneficiary's Life**

If the trust holds a policy that insures the life of a beneficiary, the beneficiary (acting individually or as Trustee) shall have no power over the policy, the cash value of the policy, or the proceeds of the policy. The intent of this denial of power is to prevent an insured beneficiary from having a power that would constitute an incident of ownership of the policy.

In addition, no distribution of income or principal to the insured beneficiary shall be satisfied out of the proceeds of the policy, the cash value of the policy or any other economic benefit of the policy.

The limitations of this subsection shall not apply if the proceeds of the policy would, upon the death of the beneficiary, otherwise be included in the gross estate of the beneficiary for federal estate tax purposes.

## **Article Seventeen General Provisions**

### **Section 17.01 Maximum Term for Trusts**

Notwithstanding any other provision of this agreement, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities.

If the applicable rule against perpetuities for trusts is determined by reference to the death of the last to die among a group of individuals living on the date of my death, the group of individuals shall consist of the descendants of my paternal and maternal grandparents, the descendants of my wife's paternal and maternal grandparents and the descendants of his late Majesty King George VI, who are living at the date of my death.

At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If none of the beneficiaries is entitled to mandatory distributions of net income, the remaining trust property shall vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares *per stirpes*.

### **Section 17.02 Spendthrift Provision**

Neither the income nor the principal of the trust property may be assigned, anticipated or alienated in any manner by any beneficiary, nor shall it be subject to attachment, bankruptcy proceedings or any other legal process, or to the interference or control of creditors or others.

Nothing contained in this Section shall restrict in any way the exercise of any power of appointment granted in this agreement.

### **Section 17.03 Contest Provision**

If, after receiving a copy of this Section, any person shall, in any manner, directly or indirectly, attempt to contest or oppose the validity of this agreement, (including any amendment to this agreement), or commences, continues or prosecutes any legal proceedings to set this agreement aside, then such person shall forfeit his or her share, cease to have any right or interest in the trust property, and shall, for purposes of this agreement be deemed to have predeceased me.

This Section may not be applied so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax marital deduction or charitable deduction.

#### **Section 17.04 Survivorship Presumption**

If my wife and I die under circumstances in which the order of our deaths cannot be established, I will be deemed to have survived my wife.

If any other beneficiary is living at my death, but dies within 30 days after my death, then the beneficiary will be deemed to have predeceased me for purposes of this agreement.

#### **Section 17.05 Divorce or Annulment**

If my marriage to my wife ends by divorce or annulment, my wife shall cease to be a beneficiary under this agreement and shall be treated for purposes of this agreement as though she predeceased me. If my wife is serving as my Trustee at the time that my marriage to my wife ends, she shall cease to be a Trustee.

#### **Section 17.06 Changing the Situs of Administration**

My Trust Advisor may, at any time, remove all or any part of the property or the situs of administration of the trust from one jurisdiction to another. My Trust Advisor may elect, by filing an instrument with the trust records, that the trust shall thereafter be construed, regulated and governed as to administration by the laws of the new jurisdiction. My Trust Advisor may take action under this Section for any purpose my Trust Advisor deems appropriate, including the minimization of any taxes in respect of the trust or any beneficiary of such trust.

If necessary, the beneficiaries entitled to receive distributions of net income under the trust may, by majority consent, appoint a corporate fiduciary in the new situs. If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

#### **Section 17.07 Definitions**

For purposes of this agreement, the following terms have the following meanings:

##### **(a) Adopted and Afterborn Persons**

A legally adopted person in any generation and his or her descendants, including adopted descendants, has the same rights and be treated in the same manner under this agreement as natural children of the adopting parent, provided such person is legally adopted prior to attaining the age of 18 years. A person is deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

A fetus in utero that is later born alive shall be considered a person in being during the period of gestation.

**(b) Agreement**

The term "this agreement" means this trust agreement and includes all trusts created under the terms of this agreement.

**(c) Charitable Organization**

The terms "charitable organization," "qualified charitable organization," or "charity" means any charitable organization of a type described in Sections 170(c), 2055(a), and 2522(a) of the Internal Revenue Code.

For purposes of the Armstrong Family Charitable Foundation, the term "charitable organization," "qualified charitable organization" or "charity" shall also mean any such corporations, trusts, funds, foundations or community chests created or organized in the United States or any of its possessions, whether under the laws of the United States, any state or territory, the District of Columbia or any possession of the United States, organized and operated exclusively for charitable purposes, no part of the net earnings of which inures or is payable to or for the benefit of any private person or organization, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which do not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office. It is intended that the organization described in this sub-section shall be entitled to exemption of federal income tax under Section 501(c)(3) of the Internal Revenue Code. The term "charitable purposes" shall be limited to and shall include only charitable, religious, scientific, literary or educational purposes within the meaning of those terms as used in Section 501(c)(3) of the Internal Revenue Code, but only such purposes as also constitute charitable purposes under the laws of the United States Virgin Islands.

**(d) Descendants**

The term "descendants" shall include a person's lineal descendants of all generations.

**(e) Education**

The term "education" is intended to be an ascertainable standard in accordance with Section 2041 and Section 2514 of the Internal Revenue Code and shall include, but not be limited to:

Enrollment at private elementary, junior and senior high school including boarding school;



Undergraduate and graduate study in any field at a college or university;

Specialized, vocational or professional training or instruction at any institution, including private instruction; and

Any other curriculum or activity that my Trustee may deem useful for developing the abilities and interests of a beneficiary including, without limitation, athletic training, musical instruction, theatrical training, the arts and travel.

The term "education" shall also include distributions made by my Trustee for expenses such as tuition, room and board, fees, books and supplies, tutoring and transportation and a reasonable allowance for living expenses.

**(f) Incapacity**

Except as otherwise provided in this agreement, a person is deemed incapacitated in any one of the following circumstances.

**(1) The Opinion of Two Licensed Physicians**

An individual is deemed incapacitated whenever, in the opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual is deemed restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

**(2) Court Determination**

An individual is deemed incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

**(3) Detention, Disappearance or Absence**

An individual is deemed incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance or absence or detention under duress may be established by an affidavit of my Trustee, or, if no Trustee is serving, by the affidavit of any beneficiary. The affidavit shall describe the circumstances of the individual's disappearance, absence or detention and may be relied upon by any third party dealing in good faith with my Trustee in reliance upon the affidavit.

**(g) Income Beneficiary**

The term "income beneficiary" means any beneficiary who is then entitled to receive distributions of the net income of the trust, whether mandatory or discretionary.

Unless otherwise provided in this agreement, the phrase "majority of the income beneficiaries" means any combination of income beneficiaries who, if all accrued net income were distributed on the day of a vote by the beneficiaries, would receive more than 50% of the accrued net income. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income are deemed to receive the income in equal shares.

References to a "majority" refer to a majority of the entire trust collectively until my Trustee allocates property to separate trusts or trust shares. After the allocation of property to separate trusts or trust shares, references to a "majority" refer to a majority of each separate trust or trust share.

**(h) Income in Respect of a Decedent (IRD)**

The term "income in respect of a decedent" or "IRD" means income received after a decedent's death that would have been taxable to the decedent if the income had been received by the decedent during the decedent's lifetime. For example, payments under qualified retirement plans and other deferred compensation arrangements are IRD. For purposes of this agreement, IRD means any income that would be classified as IRD under Section 691(a) of the Internal Revenue Code.

**(i) Independent Trustee**

The term "Independent Trustee" means a Trustee who is not an Interested Trustee as defined in subsection (j) and includes an Independent Special Trustee appointed under the provisions of Section 3.08. Only an Independent Trustee may exercise those powers granted exclusively to an Independent Trustee and when the phrase "other than an Interested Trustee" is used. Whenever this agreement specifically prohibits an Interested Trustee from exercising discretion or performing an act, then

only an Independent Trustee may exercise that discretion or perform that act. An Independent Trustee shall not be liable to any person for any good faith exercise or nonexercise of its discretion under this agreement.

**(j) Interested Trustee**

The term "Interested Trustee" means (1) a Trustee who is a transferor of property to the trust (including a person whose qualified disclaimer resulted in property passing to the trust); (2) a Trustee who is a beneficiary of the trust; or (3) a Trustee whom a beneficiary of the trust can remove and replace by appointing a Trustee that is related or subordinate to the beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

For purposes of this subsection "a beneficiary of the trust" means a person who is or in the future may be eligible to receive income or principal from the trust pursuant to the terms of the trust. A person shall be considered a beneficiary of a trust even if he or she has only a remote contingent remainder interest in the trust; however, a person shall not be considered a beneficiary of a trust if the person's only interest is as a potential appointee under a testamentary power of appointment.

**(k) Internal Revenue Code and Treasury Regulations**

References to the "Internal Revenue Code" or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the "Treasury Regulations," are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this agreement. The same rule shall apply to references to the Treasury Regulations.

**(l) Legal Representative or Personal Representative**

As used in this agreement, the term "legal representative" or "Personal Representative" means a person's guardian, conservator, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

**(m) Per Stirpes**

Whenever a distribution is to be made to a person's descendants "per stirpes," the distribution shall be divided into as many shares as there are

then living children of the person and deceased children of the person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among the child's then living descendants in the same manner.

**(n) Qualified Retirement Plan**

The term "qualified retirement plan" means a plan qualified under Section 401 of the Internal Revenue Code, an individual retirement arrangement under Section 408 or Section 408A or a tax-sheltered annuity under Section 403. The term "qualified retirement benefits" means the amounts held in or distributed pursuant to a plan qualified under Section 401, an individual retirement arrangement under Section 408 or Section 408A, a tax-sheltered annuity under Section 403 or any other benefit subject to the distribution rules of Section 401(a)(9).

**(o) Shall and May**

Unless otherwise specifically provided in this agreement or by the context in which used, I use the word "shall" in this agreement to command, direct or require, and the word "may" to allow or permit, but not require. In the context of my Trustee, when I use the word "may" I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in this agreement.

**(p) Trust**

The terms "this trust" or "this trust agreement" shall refer to this agreement and all trusts created under the terms of this agreement.

**(q) Trustee**

The term "my Trustee" or "Trustee" refers to the Trustee named in Article One and to any successor, substitute, replacement or additional person, corporation or other entity that is from time to time acting as the Trustee of any trust created under the terms of this agreement. The term "Trustee" refers to singular or plural as the context may require.

**(r) Trustmaker**

The term "Trustmaker" has the same legal meaning as "Grantor," "Settlor," "Trustor" or any other term referring to the maker of a trust.

**(s) Trust Property**

The phrase "trust property" shall be construed to mean all property held by my Trustee under this agreement, including all property that my Trustee may acquire from any source.

## **Section 17.08 General Provisions and Rules of Construction**

The following general provisions and rules of construction shall apply to this agreement:

### **(a) Duplicate Originals**

This agreement may be executed in any number of counterparts, each of which is deemed to be an original. Any person may rely upon a copy of this agreement certified under oath by my Trustee to be a true copy, to the same effect as if it were an original.

### **(b) Singular and Plural; Gender**

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word "or" when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

### **(c) Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and subsections used within this agreement are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of this agreement.

### **(d) Governing Law**

This agreement is governed, construed and administered according to the laws of the United States Virgin Islands as from time to time amended, except as to trust property required by law to be governed by the laws of another jurisdiction and unless the Situs of Administration is changed as provided in Section 17.06.

### **(e) Notices**

Unless otherwise stated, whenever this agreement calls for notice, the notice must be in writing and must be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice is effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice is effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice must be given to the parent or legal representative of the minor or incapacitated individual.

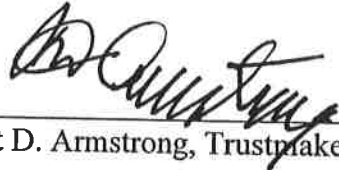
**(f) Plans Not Reciprocal**

The fact that my wife and I are executing our estate plans concurrently shall not be construed to create any contractual or reciprocal obligations between us.

**(g) Severability**

The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this agreement are to be interpreted and construed as if the invalid provision had never been included in this agreement.

I have executed this agreement on the day and year first above written. This agreement shall be effective when signed by me, whether or not now signed by a Trustee. I certify to the officer taking my acknowledgment that I have read this trust agreement, that I understand it, and that it correctly states the provisions under which my trust property is to be administered and distributed by my Trustee.



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Robert D. Armstrong, Trustmaker and Trustee



# Schedule A

Ten Dollars cash