

USING REVOCABLE TRUSTS AS ESTATE PLANNING TOOLS

By:

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About the Author

Christine Butts of Riddle, Butts & Akiens, LLP is a 1993 graduate of the University of Texas where she obtained her B.B.A. in International Business. In 1996, she graduated from the University of Houston Law School and in 2003, she became board certified in Estate Planning and Probate by the Texas Board of Legal Specialization. As a law student, Christine was the Publishing Editor of the Houston Journal of International Law. Christine limits her practice of law to the following areas: probate, estate administration, wealth transfer planning, asset protection, business entities, and charitable organizations. In 2006, 2007, and 2008, H Texas Magazine named Christine one of Houston's Top Lawyers and Top Lawyers for the People. In addition, in 2008, she was named a "Rising Star" in Texas Monthly's Super Lawyer magazine. Christine is an active member of the Junior League of Houston, Mensa, and the Attorneys in Tax and Probate. Christine is married to Donald Butts, has four children.

USING LIVING TRUSTS AND POWERS OF ATTORNEY AS ESTATE PLANNING TOOLS

I. The Function of a Living Trust. The living trust is commonly called a revocable trust. The popularity of the revocable trust as the centerpiece of an estate plan has grown for the following reasons. First, the revocable trust has been marketed to consumers by celebrity self-proclaimed financial experts like Suzie Orman. Second, attorneys who recognize the advantages of the revocable trust have grown more comfortable drafting and recommending the revocable trust to clients. Third, in an environment where personal information is easily accessed and litigation is prevalent, privacy is a growing concern for families who wish to settle their affairs outside of public view; and the revocable trust provides that privacy.

A. What a Living Trust Can Accomplish. The revocable trust is a valuable tool for clients who: 1) have a particular desire for privacy because they have a blended family, are moderately wealthy to wealthy, are professionals and have a heightened degree of liability exposure, or other reasons; 2) have real estate outside the State of Texas; 3) have been diagnosed with a degenerative illness; or 4) are making an unnatural distribution of their assets upon their death and, as a consequence, there is a greater likelihood of a contest.

1. What is a Living Trust? A living trust is a box constructed from a contract relationship between a grantor (the person putting the assets in the box), trustee (the person managing and distributing the assets in the box), and beneficiary (the person entitled to consume the assets in the box). The contract outlines rules related to the box and these rules can change because the contract between the grantor and trustee is revocable so long as the grantor is living. A living trust is created during the lifetime of the grantor. The grantor may serve as trustee and beneficiary, as long as the living trust provides for remainder beneficiaries. As its name suggests, the revocable living trust is revocable during the lifetime of the grantor. Consequently, while the grantor is alive, all income produced by the assets in the trust is taxed at the grantor's tax rate and no separate, additional income tax returns need be filed other than the grantor's personal income tax return. A revocable living trust is often set up along with wills called "pour-over wills." Pour-over wills allow property passing under the will to pass in the same fashion as property held in the name of the trust.

2. History of the Living Trust. The concept of the living trust developed over a thousand years ago in English common law. The legal concept of trust relationships actually predates the modern legal concept of wills, which was first memorialized in English law under the Statute of Wills in 1540. The trust was first used by English nobility as a way to transfer assets from generation to generation without the interference by the government. The living trust has been used by legal practitioners for many years and its use has become more widespread as the public and legal practitioners recognize that the benefits associated with living trusts are not just for the wealthy.

2. How is a Living Trust Created? Typically, a living trust is created by a written agreement signed by the grantor and trustee. In most cases, the grantor, trustee, and beneficiary of a living trust are the client until the client's death. Sometimes, the client will name another person to serve as trustee if the client anticipates that he will experience diminished capacity in the near future or for other reasons. Once the agreement is signed, the trust must be funded. To be valid, a trust needs three things: 1) at least one beneficiary; 2) at least one trustee; and 3) assets.

3. Anatomy of a Living Trust. Although little formality is required to establish a valid trust, a well drafted living trust agreement should:

- Name beneficiaries;
- Set out when the beneficiaries begin receiving distributions;
- State what the beneficiaries are to receive and how they are to receive it (Does it go to them in trust? If the beneficiaries receive assets in trust, under what circumstances do the beneficiaries receive distributions? Do they receive distributions based upon conditions or is it for their health, education, maintenance and support? Do they receive a percentage, a fixed dollar amount, or the remainder?);
- State any special protections from the creditors of beneficiaries;
- Set out any special needs provisions which might come into play in the event a beneficiary becomes incapacitated;
- State contingent or alternate beneficiaries in the event a beneficiary dies;
- Explain the grantor's interest in the trust as a beneficiary and state what amounts of income and/or principal of the trust the grantor is entitled to receive and under what circumstances;
- If appropriate, name individuals or classes of individuals excluded as beneficiaries of the trust;
- Name the trustee(s) and successor trustees and set out under what conditions the successor trustees become trustee;
- Set out the powers of the trustee;
- Include corporate trustee language if appropriate (If a corporate trustee is named as trustee or successor trustee, the corporate trustee

might have standard language they require or like to see in a trust agreement on behalf of which they serve as trustee);

- Include tax planned trusts, if appropriate;
- If tax planned trusts are included, state the manner in which such trusts are funded;
- Include language designed to minimize generation skipping transfer tax, if appropriate;
- Include language necessary to make any trusts “qualified trusts” for income tax purposes to minimize income tax consequences if such trusts are funded with qualified retirement assets; and
- Include the language required to maintain the grantor’s homestead exemption.

4. Choice of Beneficiary. Most living trusts are created for the lifetime benefit of the Grantor. After the death of the Grantor, such trusts often name the Grantor’s spouse as the primary beneficiary or the Grantor’s children as beneficiary if the Grantor is unmarried. A well drafted trust should clearly establish the flow of beneficial interests from one beneficiary to the next.

Drafting Tips:

- Establish the identity of the remainder beneficiaries. Define terms like “children,” “grandchildren,” “descendants,” and “issue.” Consider whether step-children, adopted children, pretermitted children, and persons adopted as adults are intended by the grantor to be beneficiaries.
- Do not rely on state law to govern the distribution of the trust in the event that a beneficiary predeceases the grantor or dies prior to the termination of the trust. Rather, expressly set out how the trust is to be distributed and to whom the trust is to be distributed in such event.
- Define what it means to “survive” the grantor or another beneficiary.
- Clearly state the manner in which a gift or bequest is being made to the beneficiary. If it is to be held in an irrevocable trust, be sure to include language stating such intent.

- Always include a residuary clause so that if the named beneficiaries are not living, the trust property does not pass via intestacy.
- When making distributions to “descendants,” make sure to indicate whether the distributions are *per capita*, *per capita with representation*, or *per stirpes*.
- If making gifts of specific property, be sure to indicate whether such property is distributed subject to the debts of the estate; and if such property is mortgaged, whether the mortgage is satisfied before the distribution is made or the distribution of the specific property is made subject to the mortgage. Also, be sure to state what happens if the specific property is no longer a part of the trust estate at the time distribution is to be made.

a. Individual as Beneficiary. There are few reasons to name an individual as an outright beneficiary under a living trust or a will. Unless the trust estate is too small to be administered in the form of a trust, it is preferable that distributions be made to beneficiaries inside of an irrevocable trust.

b. Trust as Beneficiary. Making distributions to beneficiaries in the form of an irrevocable trust is preferable to making such distributions outright for the following reasons:

(i) The irrevocable trust can protect the assets from the creditors of the beneficiary.

(ii) The irrevocable trust enables the beneficiary to more easily maintain the trust as his or her separate property so that the trust is protected upon the death or divorce of such beneficiary’s spouse.

(iii) If the beneficiary is or becomes the recipient of governmental entitlements and a special needs trust is created for the benefit of the beneficiary, the trust assets may not be included as countable resources of the beneficiary, thereby enabling the beneficiary to continue receiving governmental benefits.

(iv) The trust assets may not become a part of the beneficiary’s taxable estate upon the death of the beneficiary. Therefore, if the beneficiary has a taxable estate, such assets escape being subject to estate tax.

(v) The trust assets may not be considered part of the beneficiary’s probate estate. As a consequence, the trust assets may pass to

remainder beneficiaries according to the trust agreement and without the need for probate.

(vi) In the event the beneficiary dies or becomes incapacitated, the trust provides a plan for who is to manage and/or who is to receive the trust assets.

5. Choice of Trustee. The grantor most often serves as the initial trustee of a living trust. The trust agreement should provide for successor trustees; and most often the successor trustees include a spouse of the grantor, children of the grantor, trusted friends of the grantor, or corporate fiduciary. In the event of the grantor's death, resignation, or incapacity, the successor trustee will administer the trust according to the terms of the trust agreement.

a. Individual as Trustee. Naming an individual as trustee of a living trust enables someone the grantor trusts to manage the grantor's assets in the event of the death or incapacity of the grantor. However, most individuals do not have the financial wherewithal to make the trust whole in the event the trust is mismanaged by the such individual as trustee. Furthermore, most individuals do not have the experience or education necessary to professionally manage trust assets as trustee. Most clients expect individual trustees to do a good job but not a perfect job. So, if an individual is named as a successor trustee of a living trust, consider including provisions in the trust relieving individual fiduciaries from liability so long as their action or inaction was not a result of bad faith or gross negligence.

b. Professional or Corporate Fiduciary as Trustee. In contrast to an individual, corporate fiduciaries normally are held to a higher standard of professionalism with regard to their service as trustees. In addition, corporate fiduciaries inspire confidence because if they fail to manage the trust in accordance with such standard, they have the deep pockets necessary to satisfy judgments against them.

6. Powers of Trustee. Most clients want to give the trustee broad flexibility to manage the assets of the trust with the understanding that the trustee is bound by a duty of loyalty and care to the beneficiaries.

a. Common Trustee Powers. Below is a list of powers commonly granted to trustees of a living trust.

- To continue to hold and retain all or any property received by the Trustees or subsequently added to the trust estate or acquired pursuant to proper authority and without regard to any law or rule of court concerning diversification, risk, or non-productivity; provided,

however, after the death of either Grantor, the surviving Grantor may direct the Trustees to convert any unproductive property held in Trust A or Trust B into productive property within a reasonable time;

- To invest and reinvest (or leave temporarily uninvested) any funds in any property, real or personal, of any kind or nature, including, without limitation, stocks (whether common, preferred, or otherwise), bonds (secured or unsecured), obligations, mortgages, or securities, and interests in any of the foregoing without regard to any law or rule of any court prescribing or restricting investments for fiduciaries;

- To make any loans, either secured or unsecured, in such amounts, upon such terms, at such rates of interest, and to such persons, firms, or corporations, as deemed advisable;

- To sell, exchange, partition, or otherwise dispose of any property, real or personal, at public or private sale, for such purposes and upon such terms including options and sale on credit, with or without security;

- To execute leases for, or other instruments relating to, the exploration and removal of oil, gas, liquid or gaseous hydrocarbons, sulphur, metals, and any and all other metals, minerals, or natural resources, with or without unitization clauses or pooling provisions, in such a manner or for such terms as the Trustee may deem advisable; and any lease or agreement made with respect thereto shall be binding for the full term thereof even though it may extend beyond the duration of this Trust;

- To mortgage any real property in such amount and on such terms as deemed advisable; to lease any such property for such term or terms, upon such conditions and rentals, and in such manner, as deemed advisable, irrespective of whether the term of any lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to renew or modify any such leases; and to make repairs, replacements, and improvements, structural or otherwise, of any such property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper;

- To borrow money for any purpose in connection with the administration of any trust created hereby; to execute promissory notes or other obligations for amounts so borrowed; and to secure the payment of any amounts so borrowed by mortgage or pledge of any real or personal property;

- To renew or extend the time of payment of any obligation, secured or unsecured, payable to or by this trust, for as long a period or periods of time and on such terms as deemed advisable; and to adjust, settle, compromise and arbitrate claims or demands upon such terms as deemed advisable;
- In respect of any stock or other securities forming part of this trust, to vote upon any proposition or election at any meeting, and to grant proxies, discretionary or otherwise, to vote at any such meeting; to join in or become a party to any reorganization, readjustment, merger, voting trust, consolidation, or exchange, and to deposit such securities with any committee, depository, trustee, or otherwise, and to pay out fees, expenses, and assessments incurred in connection therewith, and to charge the same to principal or income as deemed proper; to exercise conversion, subscription, or other rights, or to sell or abandon such rights, and to receive and hold any new securities issued as a result of any such reorganization, readjustment, merger, voting trust, consolidation, exchange, or exercise of conversion, subscription, or other rights; and, generally to take all action in respect to any such securities as could be done by an absolute owner;
- Whenever required or permitted, to divide or distribute any property, and to make such division or distribution in kind or in money, or in part kind and in part money, and without regard to the income tax basis of any such property;
- To apportion extraordinary stock and liquidating dividends between income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries; and, to determine what constitutes such dividends;
- In connection with making investments, to determine whether to amortize premiums in whole or in part;
- To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the trusts may have divided interests;
- To engage attorneys, accountants, agents, custodians, clerks, investments counsel, and such other persons as deemed advisable, to make such payments therefor as deemed reasonable, and to charge the expense thereof to income and principal as equitably determined, and to delegate to such persons any discretion deemed proper;

- To enter into any transaction on behalf of any trust despite the fact that another party to any such transaction may be (i) a trust of which any trustee under the Trust Agreement is also a trustee, including any trust established by this Trust Agreement; (ii) an estate of which any trustee under this trust Agreement is also an executor or administrator; (iii) a business or trust controlled by any trustee under this Trust Agreement or of which any such trustee or any director, officer, or employee of any such Trust is also a director, officer, or employee; or (iv) any beneficiary or trustee under this Trust Agreement acting individually;
- To exercise all power and authority, including any discretion, conferred in this instrument after the termination of any trust created herein and until the same is fully distributed;
- To do all acts, to take all proceedings, and to exercise all the rights, powers, and privileges which an absolute owner of the property would have, subject always to the discharge of its fiduciary obligations; the enumeration of certain powers in this Trust Agreement shall not limit the general or implied powers of the Trustees; the Trustees shall have all additional powers that may now or hereafter be conferred on it by law or that may be necessary to enable the Trustees to administer the trust in accordance with the provisions of this Trust Agreement, subject to any limitations specified in this Trust Agreement;
- To deposit and remove funds from any depository accounts in a bank, savings and loan, credit union, or money market mutual fund, with only one Trustee's signature when the Grantors are serving as Co-Trustees;

b. Special Trustee Powers. Myriad other trustee powers exist and may be appropriate depending on the desires of the grantor. However, the following provisions are commonly used when the trust owns or may own stock in an S corporation or in the event the grantor or trustee is a sophisticated investor and market trader, the following provisions may be appropriate.

- To hold stock in any one or more corporations which has elected to be taxed as an S Corporation pursuant to Subchapter S of the Internal Revenue Code and which would otherwise be distributed to a trust not described in Section 1361(c)(2) of the Internal Revenue Code in a parallel, separate trust for the benefit of the primary beneficiary of such trust which parallel separate trust shall, by its terms require that: a) during the life of the primary beneficiary, such

beneficiary shall be the only income beneficiary of the trust; b) any principal distributed during the life of the primary beneficiary shall be made only to such beneficiary; c) the income interest of the primary beneficiary of the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust; d) upon any termination of the trust during the life of the primary beneficiary, the trust shall distribute all of its assets to such beneficiary; and e) all of the income (as defined in Section 643(b) of the IRS code) of the trust shall be distributed currently to the primary beneficiary. Such parallel, separate trust shall be established and maintained, if at all, only as long as the primary beneficiary is a citizen or resident of the U.S. and only if the beneficiary (or legal representative of the beneficiary) makes the election described in Section 1361(d)(2) of the IRS code; and

- To enter into margin transactions, the buying and selling of stock, stock options, puts and calls.

7. Special Provisions.

a. Estate Tax Planning. Generally, estate tax planning via bypass and marital trusts is appropriate for couples when the value of their joint taxable estate totals more than the exemption equivalent for estate tax purposes (currently \$2,000,000 in 2008). Be aware that the tax planning discussed below is equally as effective when used in a will and such planning is not unique to the living trust.

(i) Traditional Tax Planning. If estate tax planning is incorporated into a trust, then upon the death of the first spouse ("Deceased Spouse"), the revocable trust creates either one or two irrevocable trusts.

(A) Bypass Trust. The first trust created is called a bypass trust (also called a "credit shelter trust" and "family trust"). It holds the Deceased Spouse's separate property and one-half interest in community property to the extent the value of such assets does not exceed the exemption equivalent available to the Deceased Spouse's estate. The surviving spouse is often the sole trustee and primary beneficiary of the bypass trust. When the surviving spouse dies, the bypass trust is excluded from the surviving spouse's estate. Unfortunately, the assets inside bypass trusts do not receive a step-up in basis on the death of the surviving spouse.

(B) Marital Deduction Trust. Upon the death of the first spouse, if the value of the assets governed by the living trust exceeds the exemption amount available to the Deceased Spouse's estate (\$2,000,000 in 2008), another trust is created and it is called a QTIP or marital deduction trust. The marital deduction trust holds the Deceased Spouse's assets which are governed by the revocable living trust and in excess of the exemption amount. The surviving spouse is the sole beneficiary and often the trustee of the marital deduction trust. Unlike the bypass trust, when the surviving spouse dies, the assets in the marital deduction trust are included in his or her taxable estate. The purpose of marital deduction trust is not normally to reduce estate taxes, rather, the purpose is normally to insure that whatever remains in the marital deduction trust after the death of the surviving spouse passes to the beneficiaries chosen by the Deceased spouse. Sometimes, the marital deduction trust may save estate taxes if the surviving spouse is not a citizen of the United States and the marital deduction trust has special provisions qualifying it as a qualified domestic trust. The marital deduction trust may also enable a family to maximize the use of both spouse's generation skipping transfer exemption. Finally, the marital trust can be used as an asset protection tool if the surviving spouse is concerned about protecting assets from her creditors.

(ii) Tax Planning Via Disclaimer. Considering the uncertainty surrounding estate tax laws and the frequent changes in the estate tax exemption equivalent, many practitioners build a great deal of flexibility into the living trust by anticipating disclaimers. Often, a revocable trust will make an outright distribution of assets to the surviving spouse but provide that if the surviving spouse disclaims all or any part of such assets, such disclaimed assets pass to a bypass trust and/or marital deduction trust.

b. Income Tax Planning. If a trust for beneficiary is to receive an interest in a qualified plan, it is important that such trust be a "qualified trust" for income tax purposes so that minimum required distributions may be based upon the life expectancy of the beneficiary of such trust. In order for the trust to be a qualified trust for income tax purposes, the following provisions should be incorporated into the trust agreement:

- The trust is a valid trust under state law, or would be but for the fact that there is no corpus.

- The trust is irrevocable or will, by its terms, become irrevocable upon the death of the participant.
- The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument; and
- The required documentation has been provided to the plan administrator.

c. Generation Skipping Transfer Tax Planning. Generally, individuals and married couples with taxable estates totaling more than the generation skipping transfer tax exemption (\$2,000,000 in 2008) should incorporate planning in their living trust to minimize generation skipping transfer tax. Basic generation skipping transfer tax planning usually incorporates two goals.

(i) Separate Assets Into Separate Trusts. If assets having a total value of more than a person's generation skipping transfer tax exemption are being transferred in trust to a second generation beneficiary, two trusts should be formed so that one trust, the "exempt trust" is sheltered from generation skipping transfer tax and the other trust "non-exempt trust" is wholly subject to generation skipping transfer tax. If the trusts are separated, the trustee will make distributions to the second generation beneficiary first from the non-exempt trust so that when the trusts ultimately pass to the third generation beneficiaries, the value of the exempt trust is maximized and the value of the non-exempt trust is minimized.

(ii) Grant General Power. Often, a grantor will grant to a beneficiary a general testamentary power of appointment over assets which would otherwise be subject to generation skipping transfer tax upon the death of such beneficiary.

d. Special Powers of Appointment. Most clients are inclined to leave their wealth ultimately to children and grandchildren. However, in an effort to build flexibility into the trust agreement, the special power of appointment is a useful tool which may give a beneficiary the ability to leave the assets in the trust created for the benefit of such beneficiary to any person(s) related to such beneficiary by blood, adoption, or marriage, or to any charity or charities. The special power of appointment is usually testamentary in nature and requires that the beneficiary incorporate specific references to the trust and the special power of appointment in such beneficiary's will.

e. Special Needs Provisions. When a grantor has or anticipates having a beneficiary with special needs, it may be important that such beneficiary not lose government benefits as a result of becoming a beneficiary of a trust. Consequently, trusts created for the benefit of such special needs beneficiary might incorporate language to insure that the trustee may not make distributions from the trust for goods and services that would otherwise be provided as a result of a government benefit.

f. Spendthrift Provisions. In order to protect an irrevocable trust from the creditors of a beneficiary, the trust must have provisions which prevent the trustee from making distributions to a beneficiary of a trust which will discharge a legal obligation, including any obligation of support of such beneficiary when funds for such support are otherwise available. Further, the trust should provide that the interests of beneficiaries in the principal or income of any trust created pursuant to the trust agreement shall not be subject to the claims of their creditors or creditors of others, including creditors of a spouse of a married beneficiary, nor to legal process and may not be voluntarily or involuntarily alienated or encumbered.

g. Removal and Replacement of Trustees. Consider granting to beneficiaries and/or other persons the power to remove and replace trustees.

h. Trust Protector. Naming a trust protector can increase the flexibility of the living trust in the event of the grantor's death or incapacity. A trust protector is a person named in the trust agreement or elected pursuant to a process set out in the trust agreement who has powers over the trust, often in a non-fiduciary capacity. These powers may include:

- Making administrative modifications to the trust agreement to bring the trust in conformity with new laws or for other purposes;
- Making modifications to the trust agreement to address ambiguities in the trust agreement;
- Removal and replacement of trustees; and
- Naming a trustee in the event a vacancy in the trusteeship of a trust occurs.

i. Homestead Language. If a living trust is funded with the grantor's homestead, in order for the grantor to maintain his or her homestead and/or other exemptions with the county appraisal district in the State of Texas, the following language must be set out in the trust agreement.

The Trustor (also known as the grantor) has the right to use the principal residence rent free and without charge. Pursuant to the 1993 Property Tax Code, Section 11.13, Subsection (j), this is intended to be a qualifying trust, any provisions or interpretations to the contrary shall be disregarded.

1) “Trustor” means a person who transfers an interest in residential property to a qualifying trust, whether by deed or by will, or the person's spouse.

2) “Qualifying trust” means a trust:

(a) in which the agreement or will creating the trust provides that the Trustor of the trust has the right to use and occupy the property as the Trustor's principal residential property rent free and without charge except for taxes and other costs and expenses specified in the instrument;

(i) for life;

(ii) for the lesser of life or a term of years;
or

(iii) until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located.

j. Provisions Related to the Health Information Portability and Accountability Act. Problems may occur if an individual serving as a trustee becomes incapacitated but does not resign. If such person were under the mistaken impression that they could fulfill their duties as trustee and were not under a guardianship, it would be important that either the trust protector or a successor trustee had the authority to access the medical records and/or information of such incapacitated trustee. Some trust agreements provide that a trustee must sign a release of medical records and information in favor of the trust protector or the successor trustee.

8. Funding of the Living Trust. In order for the grantor and the grantor's beneficiaries to enjoy many of the benefits of the living trust, proper funding of the living trust must take place. Some practitioners prepare a declaration whereby a grantor declares that all of his assets are to be held by the Trustee of the living trust. Making such declaration is sometimes referred to as “magic wand” funding of the living trust. Unfortunately, legal title remains with the grantor and only an equitable interest transfers to the trust. Consequently, magic wand funding does not eliminate

the need to probate the estate of the grantor or avoid guardianship if the grantor becomes incapacitated.

a. Restyle Title to Assets. Title to grantor's assets should be restyled in the name of the grantor's living trust.

b. Coordinate Beneficiary Designations. If a grantor desires that qualified plans, annuities, or life insurance (or other assets that are governed by beneficiary designation) be governed by the provisions of the living trust, the grantor should name the living trust as a beneficiary of such asset.

c. Name Trust as Payee on Death. When a client owns certificates of deposit or bonds which will suffer penalty if the title to such certificates must be changed, it is recommended that the grantor name the living trust as a payee on death until the certificate of deposit matures and title can be transferred without penalty.

B. Advantages of a Living Trust. There are numerous advantages associated with revocable living trusts.

1. Privacy in the Settlement of Grantor's Estate or In the Event of Grantor's Incapacity. If ownership of all of a grantor's property is styled in the name of the grantor's revocable living trust and no probate is necessary, the grantor's estate planning documents will not be a matter of public record. When a decedent's estate is probated, the will and the inventory of the estate are made of public record. In short, avoiding probate allows a grantor's estate to be administered and distributed privately.

2. Plan of Distribution Not Easily Attacked. In contrast to a will, a revocable living trust is difficult to contest. Since the trust is formed as a contractual relationship between the grantor and trustee and since the trust requires funding and management, a person contesting the validity of a living trust based upon lack of capacity, or other reason related to the state of mind of the grantor, has a more onerous burden of proof, as compared to the contestant of a will. This follows because each time the grantor interacts with the living trust either to manage assets or fund the living trust, the grantor is confirming the validity of such living trust. A contestant of a will must prove only that a testator lacked the capacity to sign a will at the moment it was signed.

3. Avoid Ancillary Probate in Other States and Countries. Unlike most of the other states in the United States, Texas does not follow the model probate code. Most attorneys in Texas view the Texas Probate Code to be superior to the model probate code as it provides for the independent administration of estates. Independent administration is not available in most other jurisdictions.

Consequently, it is often preferable to avoid the cost and time associated with the administration of estates in other jurisdictions. By placing title to real property located in most other jurisdictions in the name of a living trust, administration in such jurisdictions can be avoided.

4. Protects the Incapacitated. The revocable living trust provides for the disability of the grantor. If a person without a revocable living trust was incapacitated, and assuming such person did not have a durable power of attorney, or did have a durable power of attorney but it was not effective or accepted authority over such incapacitated person's assets, a guardian would have to be appointed by the court to manage the incapacitated person's affairs. Guardianship proceedings are costly, troublesome, inconvenient, and awkward. If the incapacitated person's property were held in a revocable living trust, guardianship of the estate would not be necessary, rather whoever is designated as successor trustee would simply step in and carry on trust business without court control or delay.

5. Avoids Expenses of Probate (but not necessarily expenses associated with administration). Property passing under a revocable living trust will not have to go through probate upon the grantor's death. Probate is required to prove the validity of a will, to appoint someone to settle the estate, to account for all of the property of the estate and to assign a value to it, and to effect ultimate distribution of the assets of the estate. Probate usually involves expense, delay, and inconvenience.

C. Disadvantages of a Living Trust.

1. Funding of the Trust Requires Diligence and Maintenance. Too often clients will create a living trust and fail to fully fund the trust. Funding requires diligence, proper instruction, and maintenance. To help clients with the funding of their revocable trust, consider creating a "funding packet" to assist the client via specific instructions.

2. More Expensive than a Will. Generally, the revocable trust can cost more than twice as much as an estate plan wherein a will is the centerpiece of the estate plan. The cost involved in creating a revocable trust relates to the fact that the trust must be funded, the attorney must instruct the client regarding the funding, and the attorney usually prepares documents like deeds and assignments necessary to complete the funding of the revocable trust.

3. Mortgage Lenders Prefer that Real Property be Owned Individually. Whenever a client is seeking to finance the purchase of or refinance real property, lenders often require that the real property be styled in the name of the individual(s) rather than the name of the trust. As our usual practice, we advise our clients to deed or take title to the property in their individual names and then deed the property to the trust at a later date. Most lending agreements contain "due on sale" or "due on

transfer” clauses which cause the acceleration of the note in the event the real property changes hands. In my practice, I have never seen a mortgage lender accelerate the payments on a mortgage because the real property was transferred to a revocable trust.

Appendix A
Sample Pour Over Will

LAST WILL AND TESTAMENT
OF
JOHN DOE

THE STATE OF TEXAS §

 § KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS §

I, **JOHN DOE**, a resident of **HARRIS** County, Texas, do make and publish this my LAST WILL AND TESTAMENT, and I revoke all Wills and Codicils previously made by me.

ARTICLE I.

Identification

1.01 My spouse’s name is **JANE DOE**. All references in this Will to “my spouse” are to her.

1.02 My spouse and I have two children from our marriage whose names and dates of birth are: **CHILD ONE**, born _____, ____; and **CHILD TWO**, born _____. All references to “my children” in this Will are to all the children named above.

ARTICLE II.

Property Being Disposed

It is my intention to dispose of all of the property which I may own and have the right to dispose of.

ARTICLE III.

Personal Effects and Specific Bequests

I give and bequeath all of my interest in any automobiles and other motor vehicles, club memberships, clothing, jewelry, household goods, furniture and furnishings, other articles of personal use or ornament and other personal effects of a nature, use or classification similar to the foregoing, together with any insurance thereon, to my spouse provided she survives me by thirty (30) days, otherwise to my children, in separate, equal shares. I may express my desires as to the disposition of some of my personal effects bequeathed under this Article in a letter to my executor. It is my expectation that these desires will be carried out, and my executor shall be fully protected in relying upon any such letter. Absent such a letter, or to the extent that such a letter does not dispose of all of my property described in this Article, in making up the respective shares, the executor shall have sole discretion to divide these items among the beneficiaries, taking into account my desires and the desires of the beneficiaries. All expenses of packing, shipping, insuring, and delivering any of these items to a beneficiary shall be paid by my executor as an administration expense of my estate.

ARTICLE IV.

Residue of Estate

4.01 I give, devise and bequeath the rest, residue and remainder of my estate, real, personal and mixed, separate and community, wheresoever situated, to the Trustee of the **JOHN DOE AND JANE DOE REVOCABLE LIVING TRUST** established by that certain Trust Agreement executed earlier this day by myself as Grantor to be administered and disposed of as part of the aforesaid Trust.

4.02 If for any reason the foregoing devise and bequest lapses or fails, then I give, devise, and bequeath all of the residue of my estate, real, personal, and mixed, wherever situated, to the Trustee named in the trust agreement referred to in Section 4.01 above to be held, administered, and distributed pursuant to the terms and provisions of that trust agreement in the same manner as if such terms and provisions, as presently existing, had been set forth herein in full.

ARTICLE V.

Fiduciary Appointments

5.01 I appoint **JANE DOE** to be Independent Executrix of my Will and estate. If **JANE DOE** dies, resigns, becomes incapacitated or otherwise ceases to act, I appoint **CHILD ONE and CHILD TWO** to be Independent Co-Executors of my Will and estate. If **CHILD ONE or CHILD TWO** dies, resigns, becomes incapacitated or otherwise ceases to act, I appoint the other to be Independent Executor of my Will and estate.

5.02 I direct that no bond or other security shall be required of my Executor in any jurisdiction, and that no other action shall be required in any court in relation to the settlement of

my estate other than the probating and recording of my Will and the return of an inventory, appraisal and list of claims of my estate.

5.03 In the administration of my estate, my Executor shall act independently and free from control by any court and shall have all of the powers conferred upon trustees by the Texas Trust Code, and by any future amendments to the Texas Trust Code or any corresponding statute.

5.04 Any share of my estate that is to be distributed to a person who is under the age of twenty-five (25) years or who is, in the discretion of my Executor, incapacitated by reason of legal incapacity or physical or mental illness or infirmity (such person is referred to as the "Ward,") shall be held by my Executor as Trustee in a separate trust for the benefit of such Ward. My Trustee shall utilize such amounts of income and principal of the Ward's trust as my Trustee, in my Trustee's discretion, deems desirable from time to time to provide for the Ward's health, education, maintenance or support, directly and without the interposition of any guardian; provided, however, my Trustee may distribute to the Ward all or any part of the income of such trust as my Trustee deems desirable, without regard to any standard or other source of support. A trust created by this section for a Ward who is under the age of twenty-five (25) years shall terminate when such Ward attains that age. Every other trust created by this section shall terminate when the Ward of such trust, in the discretion of my Trustee, is legally, mentally and physically capable of receiving the outright ownership of the property of such trust. Upon the termination of a trust created by this section the remaining property of such trust shall be distributed to the Ward of such trust, but if a Ward dies before the termination of such Ward's trust, then upon such Ward's death the remaining property of such trust shall be distributed to such Ward's estate.

5.05 The Trustee may, in its discretion, merge the assets of any trust created hereunder with those of any other trust for which it serves as Trustee; provided, however, that such property shall only be added to a trust which has the same inclusion ratio for generation skipping tax purposes as the trust from which such property is being distributed, and if no trust with the same inclusion is then in existence, a new trust shall be created for such descendant and shall be administered pursuant to the provisions of this article.

5.06 Individual and corporate fiduciaries may receive compensation for serving under this Will. Any fiduciary shall be reimbursed for reasonable costs and expenses incurred in connection with such fiduciary's duties hereunder.

5.07 Any individual fiduciary of mine appointed under this Will shall be saved harmless from any liability for any action such fiduciary may take, or for failure to take any action, if done in good faith and without gross negligence, and no person dealing with any fiduciary of mine shall be required to inquire into the propriety of any such fiduciary's actions.

ARTICLE VI.

Restraint Against Alienation or Attachment

Prior to the actual receipt of such property by any beneficiary, no property (income or principal) distributable under this Will or under any trust shall be subject to anticipation or assignment by any beneficiary, or to attachment by or to the interference or control of any creditor or assignee of any beneficiary, or taken or reached by any legal or equitable process in satisfaction of any debt or liability of any beneficiary, and any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder prior to distribution shall be absolutely and wholly void.

ARTICLE VII.

Miscellaneous Provisions

7.01 I direct that all of my legal debts, the expenses of my last illness and funeral, unpaid charitable pledges (whether or not the same are enforceable obligations of my estate) and the expenses of administering my estate shall be charged against my residuary estate and may be paid in the order and out of those assets of my residuary estate (including the income of my residuary estate) that my Executor may deem best. My Executor is specifically given the right to renew, refinance and extend, in any form that he deems best, any secured or unsecured debt or charge existing at the time of my death. Under no circumstances shall my Executor be required to prepay any debt of mine. Further, my Executor may, in his or her sole discretion, pay from my domiciliary estate all or any portion of the costs of ancillary administration and similar proceedings in other jurisdictions.

7.02 My Executor, without incurring any liability, may expend funds from my estate within thirty (30) days of my death to the extent necessary to provide for the support of my spouse and those beneficiaries of mine who are entitled to the residue of my estate under ARTICLE IV above.

7.03 If any provision of this Will or of any Codicil hereto is held to be inoperative, invalid, or illegal, it is my intention that all of the remaining provisions thereof shall continue to be fully operative and effective so far as is possible and reasonable.

7.04 The headings above the various provisions of this Will have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Will or in ascertaining my intentions.

7.05 Where context and circumstances require, the gender of all words used in this Will shall include the masculine, feminine and neuter, and the singular of all words shall include the plural and the singular.

7.06 The validity and administration of the Trusts established under this Will and all questions relating to the construction or interpretation of the Trusts shall be governed by the laws of the State of Texas.

7.07 If any beneficiary shall contest the probate or validity of this Will or any provision thereof, or shall institute or join in (except as a party defendant) any proceeding to contest the validity of this Will or to prevent any provision hereof from being carried out in accordance with its terms (regardless of whether or not such proceedings are instituted in good faith and with probable cause), then all benefits provided for such beneficiary are revoked and such benefits shall pass to the residuary beneficiaries of this Will (other than such beneficiary) in the proportion that the share of each such residuary beneficiary bears to the aggregate of the effective shares of the residuary. If all of the residuary beneficiaries join in such contest or proceedings, then such benefits shall pass to those persons (other than the persons joining in such contest) who are living at my death and who would have been my distributees had I died intestate a resident of the State of Texas and had the person or persons contesting my Will died immediately before me. Each benefit conferred herein is made on the condition precedent that the beneficiary shall accept and agree to all of the provisions of this Will and provisions of this Article are an essential part of each and every benefit.

7.08 References in this Will to "heirs-at-law" are to those persons who take upon intestacy under the statutes of descent and distribution of the State of Texas in effect at the date of distribution relating to separate personalty.

7.09 References in this trust to "child" or "children" mean lawful blood descendants in the first degree of the parent designated or adopted children, and references to "descendant" or "descendants" or to "issue" mean lawful lineal blood descendants of the first, second, or any other degree of the ancestor as designated; provided, however, that such references shall include, with respect to any provision of this trust, children or other descendants who have been conceived at any specific point in time relevant to such provision and who thereafter survive birth; and provided further that a legally adopted child, and such adopted child's lawful lineal descendants by blood or adoption, shall be considered under this trust as lawful lineal blood descendants of the adopting parent or parents and of anyone who is by blood or adoption a lineal ancestor of the adopting parent or of either of the adopting parents.

IN TESTIMONY WHEREOF, I have placed my initials on each of the foregoing pages of this, my LAST WILL AND TESTAMENT, and in the presence of two witnesses, who are acting as witnesses at my request, in my presence and in the presence of each other, I hereunto sign my name on this the ____ day of _____, 2008.

JOHN DOE
Testator

The foregoing instrument was signed by the Testator, **JOHN DOE**, in our presence and declared by him to be his LAST WILL AND TESTAMENT, and we the undersigned witnesses, sign our names hereunto as witnesses at the request and in the presence of the said Testator and in the presence of each other, on this the ____ day of _____, 2008.

Signature of Witness

PRINTED NAME of Witness

Signature of Witness

PRINTED NAME of Witness

Address

Address

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared **JOHN DOE**, _____ and _____ known to me to be the Testator and the Witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, **JOHN DOE**, Testator, declared to me and to the said Witnesses in my presence that the said instrument is his LAST WILL AND TESTAMENT, and that he had willingly made and executed it as his free act and deed for the purposes therein expressed; and the said Witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testator, that the said Testator had declared to them that said instrument is his LAST WILL AND TESTAMENT, and that he executed the same as such and wanted each of them to sign it as a Witness; and upon their oaths each Witness stated further that they did sign the same as Witnesses in the presence of the said Testator and at his request; that he was at that time 18 years of age or over and was of sound mind; and that each of said Witnesses was then at least 14 years of age.

JOHN DOE
Testator

Witness

Witness

SUBSCRIBED AND ACKNOWLEDGED before me by the said **JOHN DOE**, Testator, and subscribed and sworn to before me by the said _____ and _____ Witnesses, this the ____ day of _____, 2008.

NOTARY PUBLIC, STATE OF TEXAS

(Notary Stamp or Seal)

Appendix B

Sample Revocable Trust with Tax Planning via Disclaimer

**JOHN DOE AND JANE DOE
REVOCABLE LIVING TRUST
(the "TRUST")**

CERTIFICATE OF TRUST

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

AFFIDAVIT OF TRUSTEES

THE UNDERSIGNED, of lawful age, being first duly sworn, upon oath and under penalty of perjury deposes and states as follows:

- 1) We, **JOHN DOE** and **JANE DOE**, the Co-Trustees named below (the "Co-Trustees"), are the currently acting Co-Trustees of the above named Trust ("the Trust"). We have accepted our appointment as Co-Trustees and are the duly acting Co-Trustees of the Trust.
- 2) This Certificate of Trust is given by the Co-Trustees, voluntarily, pursuant to the Laws of Texas, intending that the facts set forth herein be relied upon by the reader as true and correct.
- 3) The complete and correct name of the Trust is the **JOHN DOE AND JANE DOE REVOCABLE LIVING TRUST**. The Trust is in existence as of this date and is evidenced by a Trust instrument executed on _____, 2008.
- 4) The names and address of the currently acting Co-Trustees are as follows:

**JOHN DOE and JANE DOE
123 Happily Ever After Dr.
Houston, Texas 77024**
- 5) The powers of the Co-Trustees include the power to do or perform all of the acts and things on behalf of the Trust as set forth in the Trust Agreement.
- 6) As designed by the Trust instrument, the names of the successor Trustee(s) are as follows:

First Alternate: **The remaining one of JOHN DOE and JANE DOE**
Second Alternate: **CHILD ONE**

Third Alternate: **CHILD TWO**

- 7) Title to Trust assets is to be taken in the name of the Trust indicated above with the Trustee being the authorized signer.
- 8) The Co-Trustees hereby certify that the Trust has not been revoked, modified, or amended in any manner which would cause the representations contained in this Certificate of Trust to be incorrect, and this Certificate of Trust is being signed by the currently acting Co-Trustees of the Trust. The Co-Trustees agree to indemnify and hold harmless any individuals from any loss suffered or any liability incurred by such individuals acting in accordance with this Certificate of Trust. The Co-Trustees acknowledge and agree that any individuals may require the Co-Trustees to provide copies of excerpts from the Trust instrument and amendments which designate the Co-Trustees and confer upon the Co-Trustees the power to act in any transactions, and any individuals may further require such further identification or legal opinion supporting the Co-Trustees' authority and power as any persons shall deem necessary and prudent.

FURTHER AFFIANT SAYETH NOT.

JOHN DOE
Co-Trustee

JANE DOE
Co-Trustee

Subscribed and sworn to before me by **JOHN DOE** and **JANE DOE** this _____ day of _____, 2008, known to me to be the Co-Trustees of the **JOHN DOE AND JANE DOE REVOCABLE LIVING TRUST**.

Notary Public, State of Texas

(Notary stamp with seal)

THE STATE OF TEXAS §

COUNTY OF HARRIS §

JOHN DOE AND JANE DOE
REVOCABLE LIVING TRUST

THIS TRUST AGREEMENT is entered into by **JOHN DOE** and **JANE DOE**, husband and wife, residents of HARRIS County, Texas (hereinafter referred to as the “Grantors”) and **JOHN DOE** and **JANE DOE**, as Co-Trustees (hereinafter referred to collectively as “Trustees”).

ARTICLE I.

Trust Estate and Beneficiaries

1.01 The Grantors are desirous of creating a trust for the purpose and upon the terms and provisions hereinafter set forth. Accordingly, the Grantors have herewith transferred to the Trustees, and the Trustees do, by the execution of this agreement, acknowledge receipt from the Grantors the sum of TEN DOLLARS IN CASH and the property listed and described in Schedule “A.” This property, together with any other property which may hereafter be conveyed to the Trustees subject to the trust hereby created, shall be held, administered and distributed by the Trustees, upon the trusts and for the purposes and uses herein set forth. The trust shall be known as the “**JOHN DOE AND JANE DOE REVOCABLE LIVING TRUST.**”

1.02 The Grantors, and any other person, shall have the right at any time to add to the trust established hereunder property which is acceptable to the Trustees, which shall become part of the trust estate.

1.03 All property that a Grantor transfers to the Trustees pursuant to this instrument which was community property, quasi-community property, or separate property at the time of the transfer

shall remain, respectively community property, quasi-community property, or the separate property of the Grantor transferring such property to the Trustees. Community and quasi-community property transferred to the Trustees by the Grantors shall be their community property, and treated as such. This property, as invested and reinvested, together with the rents, issues, and profits therefrom shall retain its character as community property during the joint lifetimes of the Grantors in spite of any change in the situs of the trust, subject, however to the provisions of this Agreement.

ARTICLE II.

Power of Revocation

2.01 During the joint lives of the Grantors, this trust may be amended, altered, revoked, or terminated, in whole or in part, or any provision hereof, by an instrument in writing signed by the Grantors and delivered to the Trustees; provided, however, that the trust may not be amended to change the obligations, duties, or rights of the Trustees without the written consent of the Trustees to such amendment.

2.02 If the entire trust is revoked by the Grantors, the Trustees shall pay or transfer to the Grantors all of the trust estate and shall execute and deliver to the Grantors all instruments which are necessary or appropriate to release all interest of the Trustees in the trust estate.

2.03 If there has not been executed and placed of record, in the real property records of the County Clerk or Recorder of the county in which the Grantors have as a primary residence, a written Revocation of this Trust, signed and recorded within thirty (30) days of a Grantor's death, it shall be conclusively presumed for all purposes that this trust has not been revoked. Any subsequently discovered attempt by a Grantor to revoke this trust shall be ineffective and void ab initio.

ARTICLE III.

Distributions During the Life of Grantors

3.01 During the life of the Grantors, the Trustees shall at least annually, unless otherwise directed by the Grantors in writing, pay to or apply for the benefit of the Grantors all of the net income from the trust estate.

3.02 In addition to the distributions provided in Section 3.01 above, upon the written request of Grantor, the Trustees shall distribute to or for the benefit of the Grantors all or any part of the principal of the trust.

3.03 If either Grantor becomes incapacitated through illness, age, or other cause then such portion of the net income or principal of the trust estate as the Trustee shall determine shall be applied towards the health, education, maintenance, and support of the incapacitated Grantor as the Trustee shall determine without regard to the incapacitated Grantor's other means of support. The successor Trustee shall be the sole judge as to when this Section 3.03 shall be applicable; no judicial determination shall be required and such Trustee shall incur no liability to any person whomever for making such distributions.

ARTICLE IV.

Taxes and Expenses

4.01 Upon the death of a Grantor, if the Grantor has no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of the probate estate are insufficient, the Trustee shall pay from the principal of the trust estate (a) all expenses of Grantor's last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering legacies, claims allowable against Grantor's estate (excluding debts secured by real

property or life insurance) and pre-residuary legacies under Grantor's will if Grantor's will contains a residuary legacy to this trust and (b) the estate, inheritance and generation skipping transfer taxes on direct skips assessed by reason of Grantor's death, except that the amounts, if any;

(i) by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which the Grantor may have a qualifying interest for life or over which Grantor has a power of appointment;

(ii) of generation skipping transfer taxes caused by a disclaimer or by a direct skip from a trust not established hereunder,

shall be paid pro rata by the person holding or receiving that property unless otherwise provided for hereinafter. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. The Trustee may make payment directly or to the legal representative of Grantor's estate, as the Trustee deems advisable. The Trustee is directed to exercise any right and to discharge any duty, whether the right or the duty is granted under federal or state law, to apportion or seek reimbursement for payments made pursuant to this article.

4.02 The Trustee shall make such elections under the tax laws as the Trustee deems advisable. If no legal representative of Grantor's estate is acting, the Trustee shall allocate Grantor's generation skipping transfer tax exemption as it deems advisable, except that the exemption shall be allocated (a) first to property given by Grantor rather than by another or appointed by Grantor and (b) to a direct skip caused by a disclaimer only if no other allocation is possible. Elections and allocations shall be made without regard to the relative interests of the beneficiaries and shall not be subject to question by any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by the legal representative of Grantor's estate or by the Trustee.

4.03 The preceding articles of this instrument shall be subject to the Trustee's making or providing for the foregoing payments.

ARTICLE V.

Distributions After the Death of a Grantor

5.01 On the death of the first Grantor to die, the entire trust estate shall be governed by the provisions of Trust A, as set forth in Section 5.02, and such trust shall remain revocable until the death of the surviving Grantor. However, if the surviving Grantor disclaims his or her interest in trust property, such disclaimed interest in trust property of the trust estate shall be distributed into a separate, irrevocable trust, hereinafter referred to as Trust B.

5.02 Trust A shall be held, administered, and distributed as follows:

(1) During the life of the surviving Grantor, Trust A shall continue to be a revocable trust. After the death of one Grantor, assets owned by the **JOHN DOE AND JANE DOE REVOCABLE LIVING TRUST** shall be considered to be owned by Trust A, irrespective of whether the title to such assets indicates such assets are owned by Trust A, unless such assets are titled in the name of Trust B.

(2) The Trustees shall pay to or apply for the benefit of the surviving Grantor, during his or her lifetime, all of the net income of Trust A in monthly or in other convenient installments, but in no event less often than annually.

(3) The surviving Grantor shall have the general power, alone and in all events, to appoint (outright, IN TRUST, or otherwise) all or any part of the principal of Trust A to himself or herself, his or her estate or to any other person or persons. This power shall be exercisable by the surviving Grantor by acknowledged instruments delivered to the Trustee during the surviving Grantor's lifetime or by specific reference in such Grantor's Will.

(4) If at any time in the discretion of the Trustee the surviving Grantor should be in need of additional funds for his or her health, education, maintenance, and support herein above provided, the Trustees shall pay to or apply for the benefit of the surviving Grantor such amount from the principal of Trust A, up to the whole thereof, as the Trustee shall from time to time deem advisable.

(5) On the death of the surviving Grantor, the Trustee shall distribute the balance of the unappointed principal of Trust A, but not including undistributed income, to Trust B to be

distributed as therein provided. Any income earned by Trust A prior to the death of the surviving Grantor, but not distributed, shall be paid to his or her estate prior to distributing the remaining balance of the trust estate of Trust A. The Trustee shall also deduct from the trust estate of Trust A before distribution, any estate taxes due in the estate of Trust A unless payment of such tax is otherwise directed in the surviving Grantor's Will.

5.03 Trust B shall be held, administered, and distributed as follows:

(1) During the lifetime of the surviving Grantor, the Trustees shall distribute to him or her, or the descendants of the Grantors, such amounts from the income and principal of Trust B, up to the whole thereof, as the Trustees, in their discretion, shall deem necessary or advisable to provide for his or her health, education, maintenance and support. The surviving Grantor shall be the primary beneficiary and the descendants of the Grantors shall be the secondary beneficiaries. No distributions shall be made to the descendants of the Grantors if such distributions would threaten the financial security of the surviving Grantor or in any way compromise the standard of living to which the surviving Grantor had grown accustomed.

(2) On the death of the surviving Grantor, the remaining trust principal and accumulated income shall continue to be held IN TRUST for the benefit of the Grantors' children, **CHILD ONE and CHILD TWO** (hereinafter referred to individually as "beneficiary" and collectively as "beneficiaries") in separate, equal shares. If a named beneficiary is not living at the time his or her trust is to be funded, then the trust estate of such deceased beneficiary shall continue to be held IN TRUST for the benefit of the then living descendants of such deceased beneficiary, per stirpes and not per capita (with each such descendant becoming the "beneficiary" of his or her own trust). If a named beneficiary is not living at the time his or her trust is to be funded and has failed to leave descendants who are then living, then such deceased beneficiary's share of the trust estate shall be added to the trust created for the benefit of the other named beneficiary or the descendants of such deceased named beneficiary, per stirpes and not per capita, if such other named beneficiary is not then living. The trust estates created for the benefit of the beneficiaries shall be administered and distributed as follows:

(a) Each trust shall be known by the name of the beneficiary for whom it was created. The Trustees may distribute to or on behalf of a beneficiary all or part of the net income of the trust from the trust and the Trustee may pay to or apply for the benefit of a beneficiary all or any part of the principal of the trust estate as the Trustees shall deem desirable, in the Trustees's sole discretion, for the health, education, maintenance, and support of each beneficiary. While it is Grantors' wish to grant the Trustee broad discretion, for purposes of this section, it is also Grantors' wish that such discretion be exercised in a manner which encourages a thrifty and productive lifestyle, and not one of indolence.

(b) A separate account shall be kept by the Trustee of each of the separate trusts created by this agreement, but joint investments or joint interests in investments may

be assigned to said separate accounts, each trust being credited with an undivided interest in all joint investments in the proportion which is assigned to it or in the proportion which its contribution to such investment bears to the whole.

(c) The Trustee, in exercising discretionary authority with respect to the payment of income and principal of the trust estate to a beneficiary, shall take into consideration any income or other resources available to a beneficiary from sources outside of each beneficiary's trust that may be known to the Trustee. The determination of the Trustee with respect to the advisability of making payments out of income or principal to a beneficiary shall be conclusive on all persons howsoever interested in such beneficiary's trust.

(d) Upon the death of a beneficiary, the interest of such deceased beneficiary shall cease; except that, if such deceased beneficiary is survived by any living descendants, then the Trustee shall divide the accumulated income and principal into shares for the benefit of such descendants, per stirpes and not per capita. Each share or portion so allotted to a descendant shall be held by the Trustee in a separate trust for the benefit of such descendant (who will then become the "beneficiary" of his or her trust) and shall be administered and distributed in accordance with the other provisions of this Article.

(e) If a beneficiary of the Grantors dies without leaving surviving descendants, then all remaining unappointed income and principal of such deceased beneficiary's trust shall continue to be held IN TRUST for the benefit of the living descendants of the nearest lineal ancestor of such deceased beneficiary who is also a descendant of the Grantors and who has living descendants, or, if no such descendants are then living, then for the benefit of the Grantors' living descendants, per stirpes and not per capita, except that any such distribution to any descendant of the Grantors for whom assets are then being held IN TRUST pursuant to the provisions of this trust instrument shall only be added to the principal of the trust arising pursuant to the terms of this trust instrument which is known by such descendant's name and be administered as a part of such trust. However, such property shall only be added to a trust which has the same inclusion ratio for generation skipping tax purposes as the trust from which such property is being distributed, and if no trust with the same inclusion ratio is then in existence, a new trust shall be created for such descendant and administered pursuant to this Article; and further provided that if no descendant of the Grantors is living at the death of such deceased beneficiary, then all remaining unappointed income and principal shall be divided in half and distributed one-half to the heirs-at-law of each Grantor as if each Grantor had died unmarried and intestate.

(3) Each beneficiary, save and except the surviving Grantor, shall have the special testamentary power to appoint (outright, IN TRUST, or otherwise) all or any part of the income and principal remaining in his or her account to any person or persons related to such beneficiary by blood; provided, however, that no beneficiary shall have the power pursuant

to this section to appoint trust property to himself or herself, his or her creditors, his or her estate, or the creditors of his or her estate. Such special power shall be exercisable by such beneficiary only by specific reference thereto in such beneficiary's Will.

(4) Notwithstanding anything to the contrary herein, if any part of a non-exempt GST trust would be subject to the imposition of a generation skipping transfer tax upon the death of a beneficiary thereof, then the beneficiary of such non-exempt GST trust shall have the general testamentary power to appoint all or any part of such beneficiary's trust to any person or persons, or to any charity or charities, or to such beneficiary's estate; provided that such general power of appointment shall not apply to more than the largest amount, if any, of such beneficiary's trust where the marginal estate tax (after taking into account all available credits) that would be attributable to the inclusion of such trust in the beneficiary's gross estate would be less than the marginal generation skipping transfer tax (after taking into account all available credits) that would be attributable to such trust if taxed as a taxable termination. If any estate, inheritance or other death taxes are payable by reason of such beneficiary's death as a result of the inclusion of all or any portion of the unappointed property of such beneficiary's trust in such beneficiary's gross estate because of this general power of appointment, then the Trustee of such trust shall pay to the executors or administrators of such beneficiary's estate from the remaining unappointed property of such beneficiary's trust the difference between the amount of such taxes that are payable and the amount of such taxes that would be payable if such beneficiary did not possess this general power of appointment over any portion of such beneficiary's non-exempt trust unless such beneficiary shall direct otherwise in such beneficiary's Will.

5.04 Notwithstanding any provision in this trust to the contrary, the Trustee shall hold the benefits and distributions from any qualified retirement plan (referred to in this Section as "retirement benefits") which are payable to the Trustee of any trust created under this trust in a separate trust (referred to in this Article as a "retirement benefits trust") created under this Article. Each such separate retirement benefits trust shall have identical terms as the trust from which such retirement benefits were set aside, except as follows: (i) distributions shall not be made to or for the benefit of a Grantor's estate, any heir older than the oldest named beneficiary in a trust, any charity, or any other non-individual beneficiary from any benefits which are payable to such trust under any retirement benefits and which are subject to the "minimum distributions rules" of Section 401(a)(9) of the Code, or other comparable provisions of law; (ii) each special power of appointment shall be

limited such that each such power of appointment shall only be exercisable in favor of the descendants of such power holder who are younger than such power holder; (iii) each general power of appointment granted a beneficiary because the trust would be subject to the imposition of a generation skipping transfer tax upon the death of such beneficiary shall be exercisable only in favor of those creditors of such beneficiary's estate who are descendants of such beneficiary and younger than such beneficiary; and (iv) if a Grantor is a beneficiary of the trust from which such retirement benefits were set aside, then during such Grantor's lifetime, such Grantor shall be the sole beneficiary of such retirement benefits trust, and all retirement benefits distributed to the Trustee shall be paid directly to such Grantor upon receipt by the Trustee, and further, such Grantor shall have the power, exercisable annually, to compel the Trustee to withdraw from any qualified plan held in such retirement benefits trust an amount equal to the income earned during the calendar year and to distribute that amount through such retirement benefits trust to such Grantor. Any provisions of this trust which may conflict with or fail to satisfy the intentions specified in this Section 5.04 shall be disregarded, reconciled, or amplified to accomplish this objective. Further, if a retirement benefits trust is not considered a qualifying trust for purposes of the "minimum distribution rules" of Section 401(a)(9) of the Code, the Trustee shall have the power to amend such retirement benefits trust (by acknowledged instrument and without the requirement of a court order approving such amendment) so that the trust will achieve those ends. The term "qualified retirement plan" as used in this Section shall mean any pension plan, profit sharing plan, thrift plan, stock bonus plan, tax sheltered annuity, individual retirement account, or other plan, arrangement or account which is qualified for favorable income tax treatment under Sections 401-409 of the Code.

5.05 If, upon the termination of the trust any share of the trust would otherwise be distributed to a person who has not attained the age of twenty-five (25) years or to a person who is incapacitated either by reason of physical or mental illness or infirmity which, in the judgment of the Trustees, impairs his or her ability to prudently and judiciously manage money or property (such minor or other person is referred to as the “Ward”), then the Trustees shall hold such share in a separate trust for the benefit of such Ward. The Trustee shall utilize such amounts of income and principal of the Ward's trust as the Trustee, in the discretion of the Trustee shall deem desirable from time to time to provide for the Ward's health, education, maintenance or support, directly and without the interposition of any guardian; provided, however, the Trustee may distribute to the Ward all or any part of the income of such trust as the Trustee shall deem desirable, without regard to any standard or other source of support. When any such minor Ward attains the age of twenty-five (25) years or when such other Ward becomes capable of receiving such share, such trust shall terminate and be distributed to such Ward.

5.06 Notwithstanding anything to the contrary, the trusts under this instrument shall terminate on the date preceding the twenty-first (21st) anniversary of the death of the last survivor of all the descendants of the Grantors in being at the time of the first Grantor's death. At that time, the Trustee shall distribute such remaining portion of the trust property to the current beneficiary or beneficiaries, and, if there is more than one beneficiary, in the proportions in which they are beneficiaries.

5.07 Notwithstanding anything to the contrary in this trust instrument, the Trustee may not distribute funds to a beneficiary of a trust which will discharge a legal obligation, including any obligation of support when funds for such support are otherwise available.

ARTICLE VI.

Powers of Trustee

6.01 In addition to any powers given by law under the Texas Trust Code as it exists or is hereafter amended or otherwise, and not by way of limitation of any such powers, the Trustees shall be authorized and empowered, at any time and from time to time, in their absolute discretion:

- (a) To continue to hold and retain all or any property received by the Trustees or subsequently added to the trust estate or acquired pursuant to proper authority and without regard to any law or rule of court concerning diversification, risk, or non-productivity; provided, however, after the death of either Grantor, the surviving Grantor may direct the Trustees to convert any unproductive property held in Trust A or Trust B into productive property within a reasonable time;
- (b) To invest and reinvest (or leave temporarily uninvested) any funds in any property, real or personal, of any kind or nature, including, without limitation, stocks (whether common, preferred, or otherwise), bonds (secured or unsecured), obligations, mortgages, or securities, and interests in any of the foregoing without regard to any law or rule of any court prescribing or restricting investments for fiduciaries;
- (c) To make any loans, either secured or unsecured, in such amounts, upon such terms, at such rates of interest, and to such persons, firms, or corporations, as deemed advisable;
- (d) To sell, exchange, partition, or otherwise dispose of any property, real or personal, at public or private sale, for such purposes and upon such terms including options and sale on credit, with or without security;
- (e) To execute leases for, or other instruments relating to, the exploration and removal of oil, gas, liquid or gaseous hydrocarbons, sulphur, metals, and any and all other metals, minerals, or natural resources, with or without unitization clauses or pooling provisions in such a manner or for such terms as the Trustee may deem advisable; and any lease or agreement made with respect thereto shall be binding for the full term thereof even though it may extend beyond the duration of this Trust;
- (f) To mortgage any real property in such amount and on such terms as deemed advisable; to lease any such property for such term or terms, upon such conditions and rentals, and in such manner, as deemed advisable, irrespective of whether the term of any lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to renew or modify any such leases; and to make repairs, replacements, and improvements, structural or otherwise, of any such property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper;

- (g) To borrow money for any purpose in connection with the administration of any trust created hereby; to execute promissory notes or other obligations for amounts so borrowed; and to secure the payment of any amounts so borrowed by mortgage or pledge of any real or personal property;
- (h) To renew or extend the time of payment of any obligation, secured or unsecured, payable to or by this trust, for as long a period or periods of time and on such terms as deemed advisable; and to adjust, settle, compromise and arbitrate claims or demands upon such terms as deemed advisable;
- (i) In respect of any stock or other securities forming part of this trust, to vote upon any proposition or election at any meeting, and to grant proxies, discretionary or otherwise, to vote at any such meeting; to join in or become a party to any reorganization, readjustment, merger, voting trust, consolidation, or exchange, and to deposit such securities with any committee, depository, trustee, or otherwise, and to pay out fees, expenses, and assessments incurred in connection therewith, and to charge the same to principal or income as deemed proper; to exercise conversion, subscription, or other rights, or to sell or abandon such rights, and to receive and hold any new securities issued as a result of any such reorganization, readjustment, merger, voting trust, consolidation, exchange, or exercise of conversion, subscription, or other rights; and, generally to take all action in respect to any such securities as could be done by an absolute owner;
- (j) Whenever required or permitted, to divide or distribute any property, and to make such division or distribution in kind or in money, or in part kind and in part money, and without regard to the income tax basis of any such property;
- (k) To apportion extraordinary stock and liquidating dividends between income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries; and, to determine what constitutes such dividends;
- (l) In connection with making investments, to determine whether to amortize premiums in whole or in part;
- (m) To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the trusts may have divided interests;
- (n) To engage attorneys, accountants, agents, custodians, clerks, investments counsel, and such other persons as deemed advisable, to make such payments therefore as deemed reasonable, and to charge the expense thereof to income and principal as equitably determined, and to delegate to such persons any discretion deemed proper;
- (o) To enter into any transaction on behalf of any trust despite the fact that another party to any such transaction may be (i) a trust of which any trustee under this Trust Agreement is

also a trustee, including any trust established by this Trust Agreement; (ii) an estate of which any trustee under this Trust Agreement is also an executor or administrator; (iii) a business or trust controlled by any trustee under this Trust Agreement or of which any such trustee or any director, officer, or employee of any such Trust is also a director, officer, or employee; or (iv) any beneficiary or trustee under this Trust Agreement acting individually;

(p) To exercise all power and authority, including any discretion, conferred in this instrument after the termination of any trust created herein and until the same is fully distributed;

(q) To do all acts, to take all proceedings, and to exercise all the rights, powers, and privileges which an absolute owner of the property would have, subject always to the discharge of its fiduciary obligations; the enumeration of certain powers in this Trust Agreement shall not limit the general or implied powers of the Trustees; the Trustees shall have all additional powers that may now or hereafter be conferred on it by law or that may be necessary to enable the Trustees to administer the trust in accordance with the provisions of this Trust Agreement, subject to any limitations specified in this Trust Agreement;

(r) To deposit and remove funds from any depository accounts in a bank, savings and loan, credit union, or money market mutual fund, with only one Trustee's signature when the Grantors are serving as Co-Trustees;

(s) To hold stock in any one or more corporations which has elected to be taxed as an S Corporation pursuant to Subchapter S of the Internal Revenue Code and which would otherwise be distributed to a trust not described in Section 1361(c)(2) of the Internal Revenue Code in a parallel, separate trust for the benefit of the primary beneficiary of such trust which parallel separate trust shall, by its terms require that: a) during the life of the primary beneficiary, such beneficiary shall be the only income beneficiary of the trust; b) any principal distributed during the life of the primary beneficiary shall be made only to such beneficiary; c) the income interest of the primary beneficiary of the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust; d) upon any termination of the trust during the life of the primary beneficiary, the trust shall distribute all of its assets to such beneficiary; and e) all of the income (as defined in Section 643(b) of the IRS code) of the trust shall be distributed currently to the primary beneficiary. Such parallel, separate trust shall be established and maintained, if at all, only as long as the primary beneficiary is a citizen or resident of the U.S. and only if the beneficiary (or legal representative of the beneficiary) makes the election described in Section 1361(d)(2) of the IRS code; and

(t) To enter into margin transactions, the buying and selling of stock, stock options, puts and calls, with only one Trustee's signature when the Grantors are serving as Co-Trustees.

6.02 In the Trustee's absolute discretion, the Trustee may make any distribution required or permitted to be made to any beneficiary under this trust, in any of the following ways: (a) to such

beneficiary directly, (b) to any parent of such beneficiary, (c) to the guardian of such beneficiary's estate, (d) to a person or financial institution serving as custodian for such beneficiary under the Uniform Transfers to Minor Act of Texas or any other similar statute, or (e) by reimbursing the person who is actually taking care of such beneficiary (even though such person is not the legal guardian) for expenditures made by such person for the benefit of such beneficiary.

6.03 Upon the death of either Grantor, the Trustee may, within his or her discretion, purchase assets of the estate of such deceased Grantor at a fair value. The propriety of the purchase, the nature and amount of such assets purchased, and the ascertainment of fair value shall be solely within the discretion of the Trustee, and the Trustee shall incur no liability as a result of such purchase or purchases even though such assets are not investments in which Trustee may be authorized by law or by any rule of court to invest trust funds. The Trustee shall have the right to retain any such assets as an investment of the trust estate without regard to the portion which such asset or assets of a similar character, so held, may bear to the entire amount of the trust.

6.04 Life insurance proceeds and employee or self-employed benefit plan payments payable to the Trustees which are not includible in the gross estate for federal estate tax purposes shall not be liable or used to pay (but may be loaned for such purposes) any taxes, liabilities, debts, or any other claims against the estate; provided, however, such proceeds or payments may be used to pay federal estate and state inheritance or similar taxes assessed with respect to such proceeds or payments.

6.05 After the death of the first Grantor to die, the Trustee shall be authorized to retain IN TRUST for the personal use of the surviving Grantor any property occupied by the Grantors as a principal place of residence at the time of the death of the first Grantor to die for so long as the

surviving Grantor may desire to occupy such residential property. During such retention, the Trustee shall pay, from either the income or principal of Trust A or B, as the Trustees may deem advisable, all taxes or assessments levied or assessed against such property and all costs of keeping such property properly insured, maintained, and repaired. On the written request of the surviving Grantor, the Trustees may sell such property and replace it with other property, as the Trustees shall deems suitable as a residence for the surviving Grantor.

6.06 Trustee shall pay any tax imposed under Chapter 13 of the Internal Revenue Code of 1986, as amended, or any corresponding provisions of future law, as a result of a taxable termination, as defined in such chapter, attributable to any trust created hereunder from the principal of such trust, charging such payments against portions of the trust into which the same may then be divisible, in the same ratio in which the portions gave rise to such tax, taking into account any exclusions, deductions or postponements of such tax attributable to such portions and available for the purposes of calculating such tax. As soon as possible after such taxable termination and prior to the due date for paying any such tax (including extension), Trustee shall apply to the Secretary of the Treasury, or his delegate, for (i) the rate to be applied in computing the amount of such tax, and (ii) the amount, if any, of any exclusions and credits which may then be available for the purposes of calculating such tax.

6.07 All powers given to the Trustee by this Trust Agreement are exercisable by the Trustee only in a fiduciary capacity. No power given to the Trustee hereunder shall be construed to enable the Trustee or any other person to purchase, exchange or otherwise deal with or dispose of the principal or income therefrom for less than an adequate consideration in money or money's worth; to permit the Trustee or any other contributor to the trust to borrow income or principal; or

to authorize loans to a person other than the Trustee or any other contributor to the trust except on the basis of an adequate interest charge and with adequate security. No person, other than the Trustee, shall have or exercise the power to vote or direct the voting of any corporate shares or other securities of this trust, to control the investment of this trust either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, or to reacquire or exchange any property of this trust by substituting other property of equivalent value.

6.08 So long as the Grantors are serving as Co-Trustees of this Trust, the Trust may be bound by the authority and signature of only one Grantor who is acting as Co-Trustee; and such Grantor shall have all of the powers to act alone as Co-Trustee as such Grantor would have if such Grantor were sole Trustee, including but not limited to the power to buy and sell real property.

ARTICLE VII.

Trustee Provisions

7.01 No bond shall be required of the original Trustees hereunder or of any successor Trustee; or, if a bond is required by law, no surety shall be required on such bond.

7.02 **JOHN DOE** and **JANE DOE** shall serve as Co-Trustees of all trusts created herein. If either **JOHN DOE** or **JANE DOE** does not qualify, or having qualified, dies, resigns, or becomes incapacitated, then the other shall serve as sole Trustee of all trusts created hereunder. If both Grantors do not qualify, or having qualified, die, resign, or become incapacitated, then **CHILD ONE** shall serve as sole Trustee of all trusts created hereunder. If **CHILD ONE** does not qualify, or having qualified, dies, resigns, or becomes incapacitated, then **CHILD TWO** shall serve as sole Trustee of all trusts created hereunder. For purposes of this trust, the term “Trustee” or “Trustees”

shall refer to these trustees, and any co-trustees, alternates, or successors while serving in such fiduciary capacity under this trust.

7.03 Notwithstanding anything to the contrary in this Article VII, and after the death of both Grantors, upon attaining the age of eighteen (18), each beneficiary of a trust created for the benefit of a descendant of the Grantors may elect at any time to be appointed as a Co-Trustee of the trust created for his or her benefit, and upon attaining the age of twenty-five (25), such beneficiary of a trust created for the benefit of a descendant of the Grantors may elect at any time to be appointed sole Trustee of the trust created for his or her benefit. Furthermore, upon attaining the age of twenty-five (25), any beneficiary of a trust created for the benefit of a descendant of the Grantors may designate any individual or any corporate fiduciary to become Trustee of the trust created for his or her benefit, or to become Trustee of any trust for the benefit of any of his or her descendants, thereby replacing any other Trustee of such trust. Any such designation shall be made by acknowledged instrument delivered to the Trustee and filed in the permanent records of the trust or by specific reference in the beneficiary's Will, with the last such instrument taking precedence (the effective date of a Will being the date of the testator's death).

7.04 Any Trustee may resign as to any trust created hereunder by giving at least thirty days written notice (unless waived by the person receiving the notice) to the Grantors, or, if the Grantors are not living, to each beneficiary who might then be entitled to receive a distribution from the trust or to the Ward of such trust; provided, however, that, if the person entitled to receive notice is a minor or an incapacitated, such notice shall be delivered to such minor's parents or guardian or to such incapacitated person's guardian. The Grantors may at any time or from time to time remove any Trustee of any trust created hereunder, with or without cause, on at least forty-five days notice

(unless waived) and shall appoint a successor individual or corporate Trustee. After the death of either Grantor, the surviving Grantor (or his or her guardian if the surviving Grantor is incapacitated) and, after the death of both Grantors, a beneficiary (or his or her guardian if such beneficiary is incapacitated) may at any time or from time to time remove any Trustee of any trust created hereunder, with or without cause, on at least forty-five days written notice (unless waived) and shall appoint a successor corporate Trustee. Any removal notice must be by acknowledged instrument actually received by the Trustee being removed and must contain the acceptance of the successor Trustee endorsed on it.

7.05 Upon the failure of any Trustee of any trust to act or continue to act or upon the submission of a notice of resignation of any Trustee, the power to appoint a successor shall be exercisable by either Grantor for a period of thirty days. If no successor Trustee has otherwise been appointed within thirty days of such vacancy or such notice of resignation, then upon written request of any interested party, any Probate Judge of HARRIS County, Texas, acting as an individual and not in any judicial capacity, shall have the power to appoint a successor. Subject to any express provisions in other sections of this Trust Agreement, any successor Trustee appointed to act pursuant to this Agreement shall be a bank with trust powers or a trust company, either state or national, with a combined capital and surplus of at least ten million dollars.

7.06 If, in the opinion of a bank or trust company named as Trustee, it should ever become uneconomical for a corporate fiduciary to act or to continue to act as Trustee of any trust created hereunder because of the small size of such trust, then notwithstanding any other provision herein, such bank or trust company may: (a) if a Co-Trustee is serving it may resign or refuse to serve; or (b) if no Co-Trustee is serving, it may resign or refuse to serve and appoint an individual as alternate

or successor Trustee; or (c) terminate such trust by complete distribution to the Grantors, if living, otherwise to the beneficiaries of such trust or to the Ward of such trust.

7.07 No successor Trustee shall be liable or responsible in any manner whatsoever on account of anything done or omitted to be done by any prior fiduciary and the successor shall have the right to conclusively presume that anything done or omitted to be done by any prior fiduciary was proper and correct in all respects. The successor Trustee is further authorized to accept without question those assets which are actually delivered to it, upon assuming its duties as Trustee hereunder, as being the full amount of all assets entitled to be in the trust.

7.08 The Trustee shall keep complete and accurate books of account respecting all property and all transactions pertaining thereto. Such records shall be available for inspection at all times during business hours by a beneficiary, or by the Trustee and shall make annual statements showing the itemized receipts and disbursements of income and principal of each account, and otherwise reflecting the condition thereof; and shall furnish copies of such statements to all beneficiaries currently entitled to receive income or principal under the trust, or to their parents or guardians if they are minors.

7.09 No Trustee shall be required to obtain the order of or approval of any court in the exercise of any power or discretion hereunder. The Trustee shall not be required to file accountings with any Court.

7.10 No person dealing with the Trustee shall be obligated to inquire into a Trustee's powers or authority or into the validity of any act of such Trustee, or be liable for the application of any money paid to the Trustee in the management of the trust funds.

7.11 A corporate and individual Trustee shall be entitled to receive fair and reasonable compensation for its services in any amount not exceeding the customary and prevailing charges for services of a similar character at the time and place such services are performed and any Trustee shall be reimbursed for reasonable costs and expenses incurred in connection with their duties hereunder.

7.12 None of the powers or discretions granted anywhere in this Trust Agreement to the Trustee shall be exercised in a manner inconsistent with the allowance of the full federal estate tax marital deduction, to which the estate of the first Grantor to die would otherwise be entitled, notwithstanding any other provision of this Trust Agreement to the contrary.

7.13 All transfer taxes arising in connection with any generation skipping transfers hereunder shall be paid as provided in Chapter 13 of Subtitle B of the Internal Revenue Code. Accordingly, any transfer taxes arising in connection with a taxable distribution shall be paid by the distributee, and any transfer taxes arising in connection with a taxable termination shall be paid from the corpus of the applicable trust account. Whenever used in this trust instrument, the words, “generation skipping transfer,” “taxable distribution,” and “taxable termination” shall have the same meanings as said words have pursuant to Chapter 13 of Subtitle B of the Internal Revenue Code. If as a result of the allocation of the generation skipping tax exemption provided by Section 2631 of the Internal Revenue Code, any trust created hereunder would otherwise be only partially subject to the generation skipping tax, then the Trustee shall create two separate trusts so that one trust is not subject to the generation skipping tax (i.e., such trust has an inclusion ratio of zero) and one trust is fully subject to the generation skipping tax (i.e., such trust has an inclusion ratio of one). The Trustee shall administer such separate trusts as provided herein, except that to the extent possible

without adjusting the interest of any trust beneficiary, the Trustee shall make distributions from such separate trusts in a manner that the Trustee reasonably anticipate will reduce the total generation skipping tax payable.

7.14 For purposes of Section 3.03, the successor Trustee named herein shall be the sole judge of a Grantor's or a Trustee's incapacity. No judicial determination shall be required and the successor Trustees shall incur no liability to any person for making distributions to or for the benefit of a Grantor. Before the successor Trustee makes any changes in distributions of income or principal that have been directed by a Grantor, the successor Trustee shall obtain a letter from such Grantor's physician designated in writing by such Grantor as authorized to act pursuant to this Section 7.14. The physician shall state, in writing, that the physician has examined such Grantor and that it is the physician's medical opinion that such Grantor is unable to manage his or her own affairs.

7.15 Any individual fiduciary appointed under this Trust shall be saved harmless from any liability for any action such fiduciary may take, or for failure to take any action, if done in good faith and without gross negligence, and no person dealing with any fiduciary shall be required to inquire into the propriety of any such fiduciary's actions.

7.16 Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustee (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only

for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement). The terms of such release of information are as follows:

(a) If said successor is already acting in the capacity of Trustee (or Co-Trustees) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

(b) "Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

(c) The Trustee (or next successor Trustee, even if not yet acting) is empowered to request, receive and review any information, verbal or written, regarding the Grantors' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Grantors authorize each Trustee to have access to any and all protected health information from any and all covered entities pursuant to 45 C.F.R. 164.502(g)(1) Health Insurance Portability and Accountability Act (HIPAA). This release authority applies to any and all information governed by HIPAA and should be complied with by any and all health-care providers and insurance companies that have provided treatment, testing or services.

(d) "Protected Health Information" regarding each Grantor's records is to be given the most liberal interpretation by the Grantor's health care providers and is to include any and everything regarding each Grantor's health condition. This authority allows each Trustee to request and obtain copies of any of the protected health information, including any chemical dependency records, AIDS/HIV testing, results or treatment, and all other treatment, testing, or records that the Trustee deems necessary.

(e) This authority shall supercede any prior agreements the Grantors may have executed with each Grantor's providers regarding access or disclosure or lack thereof of each Grantor's protected health information. This authorization only expires upon a written revocation by the Grantor delivered to the health care provider.

(f) In the event this authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each Grantor hereby grants to the Trustee (or next successor Trustee, even if not yet acting) the power and authority as such Grantor's legal representative to execute a new authorization on such Grantor's behalf immediately authorizing the release of any and all health and medical information for the purpose of determining such Grantor's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), which authorization shall name the Trustee (or next successor Trustee even if not yet acting) as each such Grantor's "Authorized Representative" and "Authorized Recipient."

7.17 In addition to any "Authorization for Release of Protected Health Information" executed by the Grantors, the Grantors hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if a Trustee does so, the expense of any such inquiry may be paid from the trust estate of said person's trust or, if no such trust exists, the trust estate of the Trust.

7.18 It is the Grantors' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Grantor's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Grantor, or an appointed successor Trustee (even if not

yet acting), or by an “authorized representative” on behalf of a Grantor or such appointed successor Trustee, is not honored in whole or in part by a third party such that physicians’ writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Grantor or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing such Grantor or such appointed successor Trustee to be incapacitated.; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians’ writings described above regarding determination of competency or capacity.

7.19 In the event this Trust does not provide for a Trust Protector as set forth in the above paragraph, a Trust Protector shall be elected by a majority vote of the remainder beneficiaries of this trust (or by the legal guardians of all minor or disabled current remainder beneficiaries) and such Trust Protector shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) such beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint a Trust Protector who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

ARTICLE VIII.

Restraint Against Alienation or Attachment

Except as to either Grantor's interest in any trust created herein over which such Grantor has retained the right to revoke either alone or in conjunction with the other Grantor, the interests of

beneficiaries in the principal or income of any trust created hereunder shall not be subject to the claims of their creditors or creditors of others, including creditors of a spouse of a married beneficiary, nor to legal process and may not be voluntarily or involuntarily alienated or encumbered.

ARTICLE IX.

Residential Homestead Exemption

The Trustor has the right to use the principal residence rent free and without charge. Pursuant to the 1993 Property Tax Code, Section 11.13, Subsection (j), this is intended to be a qualifying trust, any provisions or interpretations to the contrary shall be disregarded.

1) "Trustor" means a person who transfers an interest in residential property to a qualifying trust, whether by deed or by will or the person's spouse.

2) "Qualifying trust" means a trust:

(a) in which the agreement or will creating the trust provides that the Trustor of the trust has the right to use and occupy the property as the Trustor's principal residential property rent free and without charge except for taxes and other costs and expenses specified in the instrument;

(i) for life;

(ii) for the lesser of life or a term of years; or

(iii) until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located.

ARTICLE X.

General Provisions

10.01 This Trust Agreement shall be governed by the laws of the State of Texas.

10.02 If any part, clause, provision, or condition of this Trust Agreement is held to be void, invalid, or inoperative, such voidness, invalidity, or inoperativeness shall not affect any other clause,

provision, or condition hereof, but the remainder of this Trust Agreement shall be effective as though such clause, provision, or condition had not been contained herein.

10.03 As used in this Trust Agreement, the masculine, feminine, or neuter gender, and the singular or plural number shall each be deemed to include the others wherever the context so indicates.

10.04 To the same extent as if it were the original, anyone may rely on a copy of this Trust Agreement certified by a notary public to be a true copy of this Trust Agreement. Anyone may rely on any statement of fact certified by anyone who appears from the original Trust Agreement or a certified copy thereof to be a Trustee hereunder.

10.05 References in this trust to “child” or “children” mean lawful blood descendants in the first degree of the parent designated or their adopted children, and references to “descendant” or “descendants” or to “issue” mean lawful lineal blood descendants of the first, second, or any other degree of the ancestor as designated; provided, however, that such references shall include, with respect to any provision of this trust, children or other descendants who have been conceived at any specific point in time relevant to such provision and who thereafter survive birth; and provided further that a legally adopted child, and such adopted child's lawful lineal descendants by blood or adoption, shall be considered under this trust as lawful lineal blood descendants of the adopting parent or parents and of anyone who is by blood or adoption a lineal ancestor of the adopting parent or of either of the adopting parents.

10.06 If In any beneficiary shall contest the validity of this trust or any provision thereof, or shall institute or join in (except as a party defendant) any proceeding to contest the validity of this trust or to prevent any provision hereof from being carried out in accordance with its terms

(regardless of whether or not such proceedings are instituted in good faith and with probable cause), then all benefits provided for such beneficiary are revoked and such benefits shall pass to the residuary beneficiaries of this trust (other than such beneficiary) in the proportion that the share of each such residuary beneficiary bears to the aggregate of the effective shares of the residuary. If all of the residuary beneficiaries join in such contest or proceedings, then such benefits shall pass to those persons (other than the persons joining in such contest) who are living at the Grantors death and who would have been the Grantors distributees had the Grantors died intestate a resident of the State of Texas and had the person or persons contesting this trust died immediately before both Grantors. Each benefit conferred herein is made on the condition precedent that the beneficiary shall accept and agree to all of the provisions of this trust and provisions of this Article are an essential part of each and every benefit.

ARTICLE XI.

Trust Protectors

11.01 Grantors appoint **TRUSTED RELATIVE ONE AND TRUSTED RELATIVE TWO** to serve as Trust Protectors. A Trust Protector may resign by giving notice to each beneficiary of the affected trust. Notice of such resignation shall also be given to each remaining Trust Protector. A Trust Protector who has resigned shall not be liable or responsible for the acts of any successor Trust Protector. In addition, when two Trust Protectors are serving, they may appoint one additional Trust Protector, and when only one Trust Protector is serving, such Trust Protector may appoint one or two additional Trust Protectors. At all times, there shall be at least two but not more than five Trust Protectors. When there are two Trust Protectors, they shall act jointly and when there are three or more Trust Protectors, they shall act by majority. Any Trust Protector

shall have the right to appoint a successor Trust Protector, such appointment to take effect when the appointing Trust Protector dies, resigns, or becomes incapacitated. If there are no Trust Protectors serving, and no successors have been appointed pursuant to the terms of this Section, the power to appoint successors shall be exercisable by a majority of the Trustees of the trusts created hereunder for a period of 60 days (with Co-Trustees of a single trust having only one vote), or if no successors have been appointed within such 60 day period, then upon written request of any interested party, any judge of Harris County, Texas, acting as an individual and not in any judicial capacity, shall have the power to appoint as many as three successor Trust Protectors. A Trust Protector may not serve as both a Trust Protector and as a Trustee of an affected trust. The Trust Protectors shall have the following powers:

- (1) The power to modify or amend the administrative and technical provisions of the trusts created hereunder to achieve favorable tax status, to respond to changes in the Code and state law or the rulings and regulations thereunder, and to ensure that my intentions and desires are carried out;
- (2) The power to remove any Trustee of a trust created under this Will, and if the trusteeship of the trust becomes vacant as a result thereof, the appointment of a successor Trustee shall be governed by the relevant provisions of this Article, provided that such power shall not interfere with the surviving Grantor's right or a beneficiary's right to serve as, remove, or appoint a successor trustee, as set out in Article VII;
- (3) The power to designate the laws of another jurisdiction as the controlling law with respect to the administration of a particular trust, in which event the laws of such designated jurisdiction shall apply to such trust as of the date specified in such designation;
- (4) The power to modify the terms of a power of appointment granted under this Will (except that any such modification may not grant a beneficial interest to any individual or class of individuals not specifically provided for hereunder) and the power to grant to a beneficiary of a trust a general testamentary power to appoint all or any part of such beneficiary's trust to the creditors of such beneficiary's estate;

(5) The power to modify or amend the purposes for which the income and principal of a trust may be distributed, as well as the factors the Trustee may consider in making such distributions;

(6) The power to change the termination date of a trust created under this Will, either by shortening or lengthening the term thereof, except that the term chosen shall not violate other provisions in this Will regarding the maximum duration of trusts;

(7) The power to direct the Trustee to distribute or not to distribute trust income or principal to the beneficiary of a trust created hereunder as long as such distribution or such withholding of a distribution is within the discretionary powers granted to such Trustee, and in such case, the Trustee shall not be responsible for reviewing, approving, or disapproving any such direction to distribute or not to distribute trust property;

(8) The power to direct the Trustee to invest or not to invest all or a portion of the property of a trust created under this Will in a particular type or kind of investment;

(9) The power to correct ambiguities, including scrivener errors, that might otherwise require court reformation or construction;

(10) The power to convert any trust created under this Will to a purely discretionary supplemental needs trust designed to preserve the public benefits eligibility of the primary beneficiary of such trust, the terms and provisions of which shall be determined by the Trust Protectors; and

(11) The power to irrevocably release, renounce, suspend, or limit any or all of the powers conferred by this Section.

11.02 No Trust Protector shall: (i) be required to post bond or other security; (ii) have the duty to monitor the conduct of the Trustee; (iii) be liable for any exercise or non-exercise of the powers granted under this Section; (iv) exercise a power granted in this Section in a manner that would directly or indirectly benefit a Trust Protector, any family member of a Trust Protector, the estate of a Trust Protector, the creditors of the estate of a Trust Protector, or the creditors of a Trust Protector, or that would in any other way cause a Trust Protector to possess a general power of appointment within the meaning of Sections 2041 and 2514 of the Code; or (v) exercise a power

granted in this Section in a manner that would reduce or discharge a legal or contractual obligation of a Trust Protector to support any other person. All properties, books of account and records of each trust shall be made available by the Trustee to each Trust Protector for inspection at all times during normal business hours. Each Trust Protector shall be entitled to reasonable compensation and shall be reimbursed for all expenses incurred in the performance of the duties as a Trust Protector, including travel related expenses. Each Trust Protector shall serve in a fiduciary capacity and shall not be liable for any act or omission taken in good faith.

THIS INSTRUMENT IS SIGNED AND SEALED ON THIS THE _____ DAY OF _____, 2008.

Grantors:

Trustees:

JOHN DOE

JOHN DOE

JANE DOE

JANE DOE

Witness

4201 FM 1960 W., Ste. 550
Address

Printed Name of Witness

Houston, Texas 77068

Witness

4201 FM 1960 W., Ste. 550
Address

Printed Name of Witness

Houston, Texas 77068

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared **JOHN DOE and JANE DOE**, known to me to be the persons whose names are subscribed to the foregoing instrument as Grantors and Trustees, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this _____ day of _____, 2008.

Notary Public, State of Texas

(Notary stamp with seal)

SCHEDULE A

The property transferred by Grantors, to Trustees, under the foregoing Trust Agreement dated the _____ day of _____, 2008, consists of the following:

JOHN DOE
Grantor

JANE DOE
Grantor

JOHN DOE
Co-Trustee

JANE DOE
Co-Trustee