

**THE \_\_\_\_\_ FAMILY COMPOUND TRUST**

**Prepared for:  
2007 ACTEC Annual Meeting**

**From Nascar Condominiums to Private Mausoleums**

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**THE \_\_\_\_\_ FAMILY COMPOUND TRUST**

THIS INDENTURE OF TRUST entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between [GRANTOR NAME], residing at [ADDRESS, CITY, STATE] (hereinafter referred to as the "GRANTOR", and [TRUSTEE NAME] residing at [ADDRESS, CITY, STATE] and [TRUSTEE NAME] residing at [ADDRESS, CITY, STATE] (hereinafter referred to collectively as the "TRUSTEES").

**WITNESSETH:**

WHEREAS, the Grantor intends to transfer all of his interests in a certain parcel of real estate in [CITY, STATE] hereinafter referred to as the "Property" and more particularly described in Schedule A attached hereto; together with all the household furniture and furnishings, recreation equipment and similar personal effects as set forth in Schedule B hereof; (collectively referred to as the "Trust Estate"); and

WHEREAS, the Grantor desires to create this trust for the principal purpose of managing, conserving and maintaining the Trust Estate for the benefit of his descendants.

NOW, THEREFORE, the Grantor hereby transfers the Trust Estate to the Trustees described on Schedule A IN TRUST, and the Trustees agree to accept the Trust Estate subject to the uses, conditions and agreements hereinafter set forth.

**Article I  
Trust Name**

- A. This Agreement and the trust hereunder may be referred to as the \_\_\_\_\_ Family Compound Trust.

**Article II  
Trust Purposes**

The purposes of this trust are for the Trustees to receive legal title to the Trust Estate and to protect, conserve and administer the Trust Estate for the use of the beneficiaries and Unit Holders hereof. The initial beneficiaries of the trust and Unit Holders of the trust are the above-named Grantor and his spouse.

**Article III**  
**Additions to Trust Estate**

The Trustees are authorized to accept as additional trust property any real or personal property conveyed either by the Grantor or others, by sale, gift or bequest, which the Trustees shall accept.

**Article IV**  
**Units of Beneficial Ownership**

- A. Interests in this trust are represented by 1,000 Units of Beneficial Ownership ("Units"). \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ currently hold all of the Units.
- B. Units shall be transferable only in accordance with the provisions of Article VIII hereof
- C. The holders of Units ("Unit Holder.") shall be personally liable for all assessments.
- D. The Trustees shall maintain a record of the transfers of Units.
- E. The ownership of Units hereunder shall not entitle the holder to any title in or to the Trust Property whatsoever or any right to call for a partition or division of the same or for an accounting.
- F. To the extent that the Trustees wish to consult with the Unit Holders, or if the consent of the Unit Holders is required for any purpose and cannot be accomplished by use of the mail, the Trustees may at any time or from time to time call meetings of the Unit Holders and except where a vote of a greater proportion of Units is required by this Agreement, a majority of the Units represented in person or by proxy shall control. A quorum for purposes of any such meeting shall consist of a majority of the Units outstanding.

**Article V**  
**Trustees**

- A. At all times there shall be at least three Trustees acting hereunder.
- B. The Trustees shall hold the legal title to all property at any time belonging to this trust and, subject only to the specific limitations herein contained, they shall have the absolute control, management and disposition thereof. The grant of any specific duties and powers by this instrument to the Trustees shall not be construed as in any way limiting the general powers conferred upon them.
- C. The overall management and control of the affairs of the trust and setting of policy, including the setting of rules and regulations on the use and enjoyment of the Property, shall be vested in the Trustees. All decisions by the Trustees concerning the

management and control of the trust and the assets of the trust shall be binding on the trust and each of the Unit Holders of the trust.

- D. The Grantor and his spouse and each of his lineal descendants and their respective spouses and issue (if any) may be referred to herein as a "Family Unit." Upon the death or resignation of any initial Trustee, the Family Unit represented by that Trustee shall have the right for a ninety-day period after such resignation, death or incapacity to designate a successor trustee to fill the remaining term of the former Trustee. If offered to and rejected by all members of that Family Unit or if there is no person available to be designated in such Family Unit, the Trustees may select a successor trustee from among another Family Unit. Any Trustee who is not a member of the Family Unit he is representing may be removed at any time by a majority vote of the adult members of such Family Unit and replaced by a member of such Family Unit.
- E. In the event that a Trustee or any successor hereinafter appointed shall resign or be unable to act as Trustee, there shall be a meeting of the Family Unit Holders, who elected the prior Trustee, to elect a Successor Trustee. A Successor Trustee shall be elected by a majority of the Family Unit Holders who elected the prior trustee.
- F. Any Trustee may be removed upon the affirmative vote of a majority of the Family Unit Holders who elected the prior Trustee.
- G. Except as otherwise provided hereinafter, action of the Trustees shall be by majority vote of the Trustees at a meeting of the Trustees. Written approval by a majority of the Trustees shall suffice provided that all Trustees shall have received written notice of the action to be approved.
- H. In the event of any need for approval or other action by the Trustees, the Trustees shall use their best efforts to respond within ten days of the date the Trustees are notified in writing of that need for approval or action; provided, however, that the failure of a Trustee to respond within thirty days of the notice which is delivered as set forth below shall be deemed approval by that Trustee.
- I. There shall be an annual meeting of the Unit Holders to hear the report of the Trustees, to elect a Trustee or Trustees and for such other business as may be required. The annual meeting shall be held at such time and place as designated by the Trustees. Written notice shall be given not less than thirty (30) days prior to the meeting. At any such meeting, voting may be in person or by proxy by holders of voting shares. Unit Holders may participate in a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by these means shall constitute presence in person at a meeting.
- J. Special meetings may be held at the call of a Trustee or holders of one-third of the Units stating the time, place and purpose of such special meeting. Written notice of a special meeting setting forth the time, place and purpose of the meeting shall be mailed to all Unit Holders not less than ten (10) days prior to said meeting.

- K. Any action required or permitted to be taken at an annual meeting of the Unit Holders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Unit Holders entitled to vote with respect to the subject matter thereof.

## **Article VI Dispositive Provisions**

- A. The Trustees may treat each living child of the Grantor who is not incapacitated as the speaker, vote caster, and scheduling contact for his or her Family Unit. On the earlier of the incapacity or death of a child of the Grantor, and thereafter as necessary, the Family Unit must notify the Trustees of its election of a successor Family Unit representative for purposes of this Article.

- B. Use of Vacation Home.

1. **[Alternative 1]** The Trustees will hold the real property that is the primary asset of the Trust for the benefit of the living issue of the Grantor, allowing them to use the Property for vacations and shorter stays. Before [MONTH, DAY] of each year, the trustees will develop, in consultation with each Family Unit, a schedule for use of the Property by all of the Family Units that wish to use the Property over the ensuing year ending [MONTH, DAY]. To the extent required, first choices in scheduling will be rotated each year among the Family Units. The trustees will, in the Trustees' sole and absolute discretion, make and publish rules regarding the scheduling and use of the premises in order to ensure, insofar as it is reasonably possible, that, over time, each Family Unit has equal access to the use of the Property and treats it in an appropriate and caring fashion.

**[Alternative 2]** The Trustees shall allocate the beneficial use of said Property by and among the beneficiaries, in such manner as the Trustees shall determine, in their absolute discretion, to be fair, just and equitable to all concerned. As a mere guideline to the Trustees, it is suggested that the Trustees keep and maintain the Property for the benefit of all of the beneficiaries, insofar as the same is practical, bearing in mind possible changes in economic, political and social conditions, changes in family circumstances, the nearness or distance of those descendants from [surroundings], their degree of relationship to Grantor, their interest in the Property and the [local natural phenomena], and all of the myriad additional factors that could affect the discretion of the Trustees, which discretion is absolute. In addition, should any beneficiary die leaving a spouse surviving, said spouse may, but only upon the approval of and subject to any conditions imposed by the Trustees, be entitled to share in the beneficial use of said Property (not in the proceeds of any sale).

**[Alternative 3]** - All of the assets of the trust shall be administered for the benefit of the Unit Holders and spouse of the Unit Holders, their lineal

descendants and the spouses of such lineal descendants, under rules and procedures adopted by the Trustees. At any time, a majority of the Trustees may enact bylaws pertaining to the use, operating rules, protection, maintenance, development and the financing of the assets of the trust. Such bylaws may further specify remedies and/or procedures to be followed in the event any assessments or other requirements of the trust, or bylaws are not complied with. The bylaws may be amended at any time by a vote of the majority of the Trustees with voting by proxy considered valid.

**[Alternative 4]**

- a. The Property shall be used for recreational and residential purposes and for no other purposes, including without limitation, business commercial purposes, or storage purposes.
- b. There shall be 52 use periods in each calendar year, each period being of equal duration. The term of each use period shall consist of seven consecutive days, commencing at 4:00 pm on Wednesday of each week and ending at 4:00 pm on Wednesday of the following week.
- c. Each Unit Holder shall be entitled to one use period out of each four consecutive use periods, beginning with the first use period of each calendar year.
- d. Each Unit Holder shall be entitled to two use periods in each calendar year each of which contains one of the following holidays: New Year's Eve/Day, President's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, [insert applicable school and religious holidays]. No Unit Holder shall be entitled to consecutive use periods encompassing Christmas Day and New Year's Day/Eve without the prior consent of the remaining parties.
- e. At the conclusion of the occupancy of each Unit Holder, such party shall be responsible for fully and thoroughly cleaning the Property in preparation for occupancy by the next Unit Holder.
- f. If all of the use period of a Unit Holder is not used during any calendar year or years, the unused portion may be accrued, up to a maximum period of six months, and used in subsequent calendar years provided the unanimous consent of all Unit Holders is obtained for the specific use of same.
- g. If all Unit Holders consent, a Unit Holder may occupy the Property for a period in excess of the use period at a previously agreed rental. The agreed rental shall be determined by considering all of the following factors: market value rent; property expenses; benefits to the co-tenancy resulting from occupancy such as security, maintenance and repairs which would discount the market value rent.

- h. Use of the Property by a Unit Holder may include invited guests and spouses if accompanied by a Unit Holder.
- C. In view of the very well known fact, one observed by the Grantor frequently, that the equitable sharing of the use and the burden of a [vacation] home is a delicate thing, frequently the source of intrafamily bickering and even bitterness, the Grantor admonishes all persons interested in this trust to be unselfish and cooperative; to treat the other beneficiaries hereof as he or she would, in turn, like to be treated by them; and to remember that the purpose of the attempted retention of the Property within the family, for the benefit of the family, is partly to bring the family closer together and not to cause dissention and separation. The Grantor therefore earnestly solicits love and consideration of all members of the family for all the other members of the family who have an interest herein. The Trustees are empowered in their absolute discretion to take any actions they deem appropriate against any beneficiary ignoring this admonition, including temporary or permanent exclusion from the premises.
- D. The rights of any Unit Holder to use the Property or to vote its sale or retention (but not his or her rights to share in any net proceeds of any possible sale thereof) may be suspended for any period of time or revoked entirely by the Trustees acting in their absolute discretion, if in their opinion:
  - 1. Such Unit Holder fails to take reasonably good care of the premises and intentionally or through gross carelessness damages or destroys or permits any of his or her guests to damage or destroy the improvements or the natural habitat thereof to an extent that the Trustees decide such person is substantially injuring the Property or does not show proper appreciation of the privilege of its use, hence is unworthy of so doing; or
  - 2. Such person fails to pay his or her appropriate share of dues, taxes, insurance, maintenance and other expenses of the Property for sixty (60) days after a final written demand therefor, specifying the amount and the fact that failure to pay will cause the invoking of the sanctions of this paragraph; or
  - 3. Such person grossly disregards the admonition of Paragraph C above.
- E. The Trustees shall pay the income (less any reasonable reserves deemed necessary in the Trustees' absolute discretion), if any, of this Trust to the Unit Holders in proportion to the number of Units held by each Unit Holder at least annually. Where Units are transferred during a taxable year, income shall be allocated between the transferor and transferee on a per diem basis.

**Article VII**  
**Funding, Management, and Maintenance.**

- A. The Trust is also funded with other assets to provide an initial source of funds for maintaining the Property, including taxes, insurance, utilities, repairs, and upkeep, and as a reserve for these items. It is anticipated that these funds will have to be supplemented by charges to Family Units that use the Property as the Trustees, in their sole and absolute discretion, determine and that may be required to be paid in advance. To the extent necessary or as is appropriate under the circumstances, the Trustees may:
1. Rent the Property to persons other than members of Family Units;
  2. Assess all Unit Holders, or all Unit Holders that use the Property, for the upkeep expenses of the Property.
- B. The taxes, insurance, dues, utilities, and other expenses of the Property (but excluding capital improvements which shall be assessed against all Unit Holders) shall be allocated by the Trustees and charged to the Unit Holders hereof in the approximate proportion that said Unit Holders made use of the Property and, in so doing, the discretion of the Trustees shall be absolutely conclusive and binding upon all persons whomsoever interested in the trust estate.
- C. The Trustees may designate a Managing Trustee to manage the Property with the following duties:
1. Maintain the Property in its current condition, including maintenance of roof, plumbing, electrical, and HVAC systems; floor, wall and window coverings; lighting; appliances; and landscaping (capital improvements to be made only with authorization unless urgent or to protect the Property).
  2. Maintain insurance (property and casualty) with specified coverage and limits (and additional insurance if the Property is to be rented to non-owners) at a minimum as follows:
    - a. Fire and extended coverage insurance on the improvements to the extent of 90% of replacement.
    - b. Liability insurance in amounts of not less than \$\_\_\_\_\_ with respect to injuries or death of one person, \$\_\_\_\_\_ with respect of any one accident, and \$\_\_\_\_\_ with respect of property damage.
  3. Pay taxes, encumbrances, and other specified charges.
  4. Lease the Property, with specific authorization, to tenants.
  5. Take reasonable compensation and reimbursement for reasonable expenses.

6. Keep records regarding expenses, assessments and budgeting as indicated in greater detail below.
- D. The Managing Trustee may assign reasonable projects to be accomplished by each owner to maintain the Property (i.e. painting, yard work, minor repair, etc.). The performance of these projects by Unit Holders will help keep the annual assessments to a minimum. If a Unit Holder does not fulfill his or her project goals, the Managing Trustee shall have the right to hire outside firms or individuals to do that work and include the expense in that Unit Holders assessment the next year.
- E. The Managing Trustee shall by April 1 of each year prepare a budget estimating the funds needed for general maintenance of the Property, its repairs, necessary capital expenditures, payments of taxes, insurance, utilities, fees, etc., plus the maintenance of a reasonable reserve fund for the payment of such expenses. This reserve fund shall be in the amount of one-half of the prior year's total expenditures. By April 1 of each year, the Managing Trustee shall provide a copy of the budget and a list of income and disbursements for the previous year to all Unit Holders.
- F. Assessments
  1. Based upon the proposed budget and projected income, the Managing Trustee shall by April 1 of each year, either determine that no assessment for the current calendar year is necessary or assess to each Unit Holder a prorated amount of the anticipated additional needed income for the current calendar year, said payment to be due on April 1 of that year. In the event of failure of the Managing Trustee to make an assessment in a year or determine that no assessment is necessary, the assessment for that year shall be the same as the previous year plus ten percent (10%). Each Unit Holder shall decide among his or her Family Unit how the assessment is to be satisfied.
  2. The Trustees may recommend assessments for capital purposes. Upon written notification of and approval of the holders of a majority of Unit Holders of the capital assessments, the assessment shall become a binding obligation on the Unit Holders and shall constitute a lien on the Units. Interest at the applicable federal rate determined monthly by the Internal Revenue Service pursuant to Section 1274(d) of the Internal Revenue Code of 1986, as it may be amended, and the regulations thereunder, shall be charged on all assessments remaining unpaid for thirty (30) days. Any lien remaining unpaid shall be deducted from any proceeds due such Unit Holder or his/her successors.
- G. Obligation of Unit Holders to Managing Trustee:
  1. All Unit Holders shall, at all times, provide reasonable assistance to the Managing Trustee with respect to the Managing Trustee's functions.
  2. Upon reasonable notice to the Unit Holder by the Managing Trustee, each Unit Holder shall provide sufficient funds to the Managing Trustee to allow the Managing Trustee to make, on a timely basis, all payments reasonably

required for the operation and maintenance of the Property, and to maintain a contingency reserve balance of cash on hand in an amount determined by the Managing Trustee to be reasonable and appropriate under the circumstances, which amount shall in no case be less than [ ] Dollars (\$ ). The Managing Trustee shall incur no liability with respect to other Unit Holder or non-Unit Holder relating to the performance of his/her functions as Managing Trustee.

3. If a Unit Holder fails to meet its full assessment within 30 days of receipt of notice of assessment, a late payment fee of ten percent (10%) of the amount of the assessment plus interest on the amount of the assessment at the rate of \_\_\_\_\_ percent ( % ) per annum shall be charged to the Unit Holder, unless the Managing Trustee decides otherwise.
4. If a Unit Holder fails to meet its full assessment within 60 days of the date of the assessment, that Unit Holder and his or her Family Unit forfeits its rights to the use of the Property for the rest of that given year unless the Managing Trustee decides otherwise. If the forfeiture is enforced the other Unit Holders may obtain the forfeited rights of the nonpaying Unit Holder by contributing the funds not paid by the nonpaying Unit Holder; provided, however, the interest and late fee shall be waived.
5. Notwithstanding the foregoing, if there is a bona fide dispute regarding the amount due no interest shall accrue, use rights shall not be forfeited as otherwise provided above, until such dispute is settled pursuant to the dispute resolution provisions provided for herein, or by mutual agreement of the Unit Holder.

#### H. Limitations on Managing Trustee.

1. The following limitations on the Managing Trustee shall apply:
  - a. Any sale or borrowing against the Property, or any improvement of the Property requiring the expenditure of \$1,000 or more may be made only upon the [unanimous] [majority], written consent of all Unit Holder.
  - b. Unit Holders have the right to call a meeting to review the decisions of the Managing Trustee and generally to provide a safeguard against arbitrary management.

#### I. Managing Agent.

- a. The Trustees shall have power and authority to appoint one or more Managing Agent(s) of the trust.
- b. If appointed, the Managing Agent or Agents, at the expense of and on behalf of the trust, shall implement or cause to be implemented all

decisions approved by the Trustees, and shall conduct or cause to be conducted the ordinary and usual business and affairs of the trust under this agreement.

- c. The Managing Agent or Agents shall maintain one or more bank accounts for the trust. All checks shall require the signature of both Managing Agents, if two are appointed, and if only one is appointed, by such Managing Agent and one of the Trustees.
- d. The Managing Agent shall be responsible to maintain the books and records of the trust and cause any applicable tax returns or governmental reports to be filed.
- e. A Managing Agent may be a Trustee, a Unit Holder or any other adult individual. The Managing Agent or Agents shall continue to serve until removed or replaced by the Trustees, acting by a majority vote.

## **Article VIII Transfer of Units**

### **A Transfer of Units.**

1. Except as provided in this Agreement, no Unit Holder may directly or indirectly sell, lease, sublease, transfer, assign or otherwise transfer, mortgage, pledge or otherwise encumber any part of his or her interest in the trust without the prior written consent of the Trustees.
2. A Unit Holder, however, may, without the consent of the Trustees, transfer his or her beneficial interest in the trust during the lifetime of the Unit Holder or at the death of such Unit Holder to one or more of his or her lineal descendants or to his personal representatives or Trustees, for the benefit of one or more of his lineal descendants. A Unit Holder shall have the power to exclude one or more of his or her lineal descendants from such a transfer. In the case of any such transfer at death, the transferee or transferees shall receive and hold the beneficial interest of the Unit Holder in such trust, subject to the terms of this Agreement and there shall be no further transfer of Unit Holdership interest between members of such family except in accordance with the terms of this Agreement.
3. If a Unit Holder dies and makes no provision in his or her will or other testamentary document for the transfer of his or her beneficial interest in the trust or for the benefit of his or her lineal descendants, the beneficial interest of such owner shall pass to lineal descendants of such deceased Unit Holder by right of representation, and if there are no then living lineal descendants, then to the siblings of such deceased Unit Holder by right of representation, and if there are no then living siblings, then to the descendants of the Grantor by right of representation.

4. If a Unit Holder desires to sell his interest in the trust to any existing Unit Holder or any lineal family member of an existing Unit Holder, he or she shall first offer to sell such interest pro rata to those other Unit Holders in his or her Family Unit who desire to acquire such interest at the same price and on the same terms as any bona fide offer received by such Unit Holder from such proposed purchaser. In the event no Unit Holder in such Family Unit desires to purchase the interest, the Unit Holder who desires to sell must then offer to sell such interest pro rata to those of the other remaining Unit Holders who desire to acquire such interest at the same price and on the same terms as any bona fide offer received by such Unit Holder from such proposed purchaser.

**B. Right of First Refusal.**

1. If the Trustees decide to sell the Property, any person or persons who are members of a Family Unit have the right to purchase the Property for cash at the appraisal price. Any person wishing to exercise the right to purchase the Property must give written notice to each Family Unit and communicate that desire to the Trustees within 30 days of mailing notice. The person receiving notice for each Family Unit must communicate to other members of the Family Unit the existence of the notice. If more than one person wishes to buy the Property, the Trustees will conduct an auction among the various persons and sell the Property to the highest bidder. The terms of the sale, other than the fact that it will be for cash, are within the Trustees' sole and absolute discretion.
2. If no family member elects to purchase the Property within the 30-day period prescribed for the election, the Trustees may offer the Property for sale through a licensed real estate broker. If the Trustees intend to accept an offer from a nonfamily member that is less than the appraisal price [by more than, e.g., ten percent], the Trustees must notify the Family Units. Any member of a Family Unit will have 10 days from the date notice is mailed to match the offer.

**Article IX  
Termination**

- A. While it is hoped that said Property be conserved as a whole for the benefit of the lineal descendants, the Grantor nevertheless recognizes the fact that altered and changed circumstances may make it necessary or advisable partially or totally to sell or give said Property, to convey it in trust, to convey it in lieu of condemnation, or in some other way to dispose of it.
- B. The Property may be sold by the Trustees and the Trust terminated under the following conditions:
  1. A majority of the Family Units (with each Family Unit having one vote) vote to sell the Property;

2. The Trustees, in the Trustees' sole and absolute discretion, determine that the Property is not being used to the extent that continuation of the Trust is justified; or
3. The Trustees, in the Trustees' sole and absolute direction, determine that it has become economically unsound to continue the Trust.
4. If the majority of the Family Units elect, the Trust will terminate and the trust assets will be distributed to the then living issue of the Grantor, per stirpes. Any transfer may, but need not, be in connection with the formation of an LLC or other entity to replace in whole or in part the Trust.
5. If the Property is sold, the Trust will terminate and the trust assets will be distributed to the then living issue of the Grantor, per stirpes.

**Article X**  
**Powers of Trustee.**

- A. Except as limited herein, the Trustees shall have all powers conferred upon Trustees by applicable state law, all powers appropriate to the orderly and effective administration of trusts, and the following enumerated powers.
1. To manage, control and conserve the Trust Estate as may be deemed in the best interest of the beneficiaries as fully as though the Trustee were the sole, legal and equitable owner of the Trust Estate, except as hereinafter limited.
  2. To borrow funds for operating expenses or for capital purposes, mortgage or remortgage the Trust Property, but only with the approval of a majority of Unit Holders.
  3. To fix rents; determine assessments subject to the limitations hereinafter set forth; prepare operating and capital budgets; expend Trust property for the preservation and improvement of the Trust Estate.
  4. To promulgate rules and regulations for the use of the Trust Property, which rules shall be binding on all persons using such Property consistent with the provisions set forth in Article VI hereinabove.
  5. To compromise and settle claims made against the Trust.
  6. To delegate all or part of their authority to any one or more Trustees.
  7. To determine to whom any legal or equitable interest in the Trust Estate may be sold or transferred, and upon what conditions, provided that such determinations and conditions are fair and reasonable to the beneficiaries and to subsequent generations. The determination of the Trustee in this regard shall be final. The Trustee is specifically allowed to sell any legal or equitable interest in the Trust Estate to one or more of the Trustees; provided the sale is

in the best interest of the beneficiaries, the Trustee obtains the consent of a majority of Unit Holders, and the price is fixed at the fair market value of the Property as determined by an independent appraisal.

8. To sell (for cash or on credit), exchange, improve, alter, lease (including for terms beyond the period of trust administration), and otherwise deal with and manage any assets.
9. To retain any assets notwithstanding the duty of fiduciaries to diversify investments, and to invest and reinvest in preferred or common stock, bonds, mortgages, investment company shares, money market and mutual (including index) funds, common trust funds maintained by the fiduciary (if any), and any other Property, real or personal, foreign or domestic, without being bound by any legal restrictions upon investments by fiduciaries.
10. To receive additional property from any source and to acquire or hold properties jointly or in undivided interests with other persons or entities, including beneficiaries of this Trust and the estate of and trusts established by any of the beneficiaries.
11. To acquire, exercise, grant, or dispose of privileges or rights with respect to securities and other property including, but not limited to, rights to vote, grant proxies, subscribe, convert or assent to, or participate in compromises, releases, renewals or extensions, modifications, reorganizations, recapitalizations, consolidations, liquidations, and the like, and to abandon or otherwise deal with any property or interests in any manner deemed to be in the best interests of the Trust.
12. To borrow funds, guarantee, or indemnify in the name of the Trust and to secure any such obligation by mortgage, pledge, or other encumbrance or security interest, including for a term extending beyond the period of administration, and to renew, extend, or modify any such obligation, all without personal liability of the fiduciary or Trustee.
13. To purchase properties from, sell to, or exchange with, and borrow funds from or make loans to any beneficiaries and to their trusts and estates, even though the executor or Trustee may also be serving as fiduciary for such trusts or estates, on such terms appropriate to fiduciary responsibility.
14. To prosecute, defend, contest, or otherwise litigate legal actions or other proceedings for the protection or benefit of the Trust or Trustee; to pay, compromise, release, adjust, or submit to arbitration any debt, claim, or controversy; and to insure the Trust against any risk, and the Trustee against liability with respect to third persons.
15. To employ and compensate accountants, lawyers, investment and tax advisors, agents, and others.

16. To hold property in the name of a nominee, or unregistered, or without disclosure of fiduciary capacity, or in a manner that will allow title to pass by delivery or will otherwise facilitate proper administration.
17. To merge, without court action, the Trust established under this Agreement into or with any other share or trust created under this or any other document, wherein the beneficiaries, distribution of income and principal, ultimate method of distribution, and all other administrative terms and provisions are substantially similar, taking into account the effect of the rule against perpetuities savings clause in the trust instrument under which the resulting trust will be administered.
18. To make divisions, allocations (including to independent shares), or distributions in cash or in kind, including any undivided interests, by pro rata or non-pro rata division, or in any combination of these ways (with no obligation to take account of the tax basis of the assets) in the discretion of the Trustee; and there need be no physical division or segregation of various properties, trusts, or trust estates or shares, except as required for purposes of terminations, withdrawals, or distributions, although separate records and accounts shall be maintained for undivided interests any for separate trusts and shares.
19. To make distributions directly to the beneficiary, to a lawful guardian of the beneficiary, or to a custodian selected by the Trustee for the beneficiary under a Uniform Transfers to Minors Act or similar applicable law, or otherwise expend the amounts to be distributed for the benefit of the beneficiary in such manner as the Trustee considers advisable if at any time a beneficiary eligible to receive net income or principal distributions is under legal disability, or in the opinion of the Trustee is incapable of properly managing her or his financial affairs. The term "lawful guardian" shall mean successively in the order named (A) the court-appointed guardian or conservator; (B) either parent; or (C) the individual having personal custody where no guardian or conservator has been appointed. from time to time amended.

#### B. Liability of Trustees.

The Trustees shall not be liable for any error of judgment or for any loss arising out of any act of commission or omission in the execution of the Trust so long as they act in good faith, nor shall the Trustees personally be liable for any such acts or omissions by any officer, agent, servant or employee provided reasonable care is used in their selection. The Trustees shall not be required to give any bond to secure the performance of the Trust and shall not be subject to any obligations to the beneficiaries other than those expressly assumed hereunder. Whenever hereunder any Trustee is obligated to pay money to the Unit Holders, it is understood that such obligations are undertaken by the Trustees in their Trust capacity only and not personally and that such payments are to be made only out of such funds as the Trustees have in their hands available therefor.

C. Indemnity.

1. No Trustee shall be liable, responsible, or accountable for any act or omission of any other Trustee, except for such Trustee's own willful misconduct or failure to exercise reasonable care, diligence and prudence.
2. The Trustees shall be entitled to indemnification from the Trust Estate for any personal liability and related expenses incurred by them in the proper administration of the Trust. The Trustees may secure advice from legal counsel and shall be protected as to any action taken in good faith and consistent with such advice; the Trustees shall also be protected in acting on any written document signed by the proper party and believed to be genuine.

**Article XI**  
**Back-Up Perpetuities Provision**

The trust created hereunder shall be perpetual to the fullest extent permitted by [STATE] law. If any trust created hereunder is deemed to be subject to the law of a jurisdiction that has a rule against perpetuities or a similar rule which limits the period during which property can be held in trust, then such trust (other than a trust created by the exercise of a power of appointment conferred hereunder which exercise commences a new rule against perpetuities period under the law of such jurisdiction) shall terminate in all events upon the expiration of the longest period that property may be held in trust under this Agreement under the law of such jurisdiction (including any applicable period in gross such as 21 years, 90 years or 110 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this Article shall apply only to such property. If under the law of such jurisdiction the longest period that property may be held in trust may be determined (or alternatively determined), with reference to the death of the last survivor of a group of individuals in being upon the date of this Agreement, those individuals shall consist of the Grantor, the Grantor's Wife and all of the Grantor's descendants who were in being on the date of this Agreement. Upon termination of a trust pursuant to the provisions of this Article, the trust property shall be transferred, conveyed and paid over to such one or more of the class consisting of those persons who are eligible or entitled to receive the income of such trust, in such amounts and proportions, including all to one to the exclusion of the others, as the Trustees, in the exercise of sole and absolute discretion, may determine prior to such time or, to the extent the Trustees do not so effectively determine, to the eldest principal beneficiary then living, or if no principal beneficiaries are then living [.....]

**Article XII**  
**General**

- A. All notices under this Agreement shall be given by personal delivery or by mail to the addresses of the Trustees or Unit Holders as noted on the records of the trust.

- B. This Agreement shall inure to the benefit of and be binding upon the Trustees and Unit Holders and their respective successors and assigns.
- C. To the extent permitted under law, the Trust shall be spendthrift and no principal or income payable under the Trust shall be subject to anticipation or assignment by any Unit Holder, or attachment by, or to the interference or control of, any creditor of a Unit Holder in satisfaction of any debt or liability of such Unit Holder, prior to its receipt by the Unit Holder.
- D. Upon a reasonable request by any person having an interest hereunder (including, but not limited to, another Trustee acting hereunder) (herein "Information Recipient"), any individual named herein or appointed pursuant to the provisions hereof as Trustee shall execute and deliver a written statement (a) authorizing and directing all of his or her health care providers to release to the Information Recipient any and all Protected Health Information (including, but not limited to, the results of any medical examination) for purposes of allowing a determination of whether the individual lacks the required capacity to continue to so serve hereunder and (b) in a form sufficient to permit such release pursuant to 45 CFR 164.508 (or any successor thereto). Any individual Trustee who refuses to comply with the foregoing sentence shall thereupon be treated as resigning as Trustee hereunder. Any third party acting in reliance on a representation by an Information Recipient that an individual Trustee refused to comply with the foregoing and is therefore treated as having resigned shall be indemnified and held harmless from and against any and all claims that may arise against such third party by reason of such reliance, unless and until actual notice or knowledge of compliance has been received by such third party.

### **Article XIII**

#### **Various Provisions Regarding Fiduciaries**

- A. Any Trustee may, by written notice, delegate to a co-Trustee any power held by the delegating Trustee, but only if the co-Trustee is authorized to exercise the power delegated and consents to such delegation. A delegation may be revocable, but while it is in effect the delegating Trustee shall have no responsibility concerning the exercise of the delegated power.
- B. Any Trustee may resign at any time without court approval and whether or not a successor has been appointed. Any such resignation shall be made by an acknowledged instrument in writing delivered to the other Trustees, or if there are no other Trustees then in office, to the competent adult beneficiaries and the parents or guardians of the minor or incompetent beneficiaries. If a successor Trustee is not appointed within a reasonable time after the resignation of the last acting Trustee, the last acting Trustee may deposit the trust property with the court having jurisdiction over the administration of the trust.
- C. No Trustee is required to question any actions, omissions, accountings or other records of any prior Trustee, or of the fiduciary of any other estate or trust from which assets are given or devised to any trust created hereunder. Any beneficiary

who requests such an examination shall pay all fiduciary and legal charges and expenses incurred in such examination, and the Trustees may offset those costs directly against any payment otherwise to be made to that beneficiary hereunder.

D. While two or more Trustees are acting, the following provisions shall apply where the context admits:

1. Provided that a majority of the Trustees have authorized such act or acts, any Trustee alone may perform on behalf of the Trustees all such acts necessary for the acquisition, sale and transfer of personal and real property, including the giving of directions and the signing and endorsing of checks and other negotiable instruments, stocks and bond certificates and powers, deeds of real estate and related transfer documents, applications, tax forms and other forms or documents; and no person dealing with the Trustees need inquire into the propriety of any such act if such Trustee certifies in writing to that person that a majority of the Trustees have approved that act;
2. A Trustee shall be presumed to have approved a proposed act or decision to refrain from acting if that Trustee fails to indicate approval or disapproval thereof within thirty days after a written request for approval, and a Trustee shall not be required to continue to make a proposal which has been disapproved on at least two occasions if that Trustee has informed each disapproving co-Trustee that continued disapproval will be assumed until notice to the contrary has been received; and
3. The Trustees may execute documents by jointly signing one document or separately signing concurrent counterpart documents.

#### **Article XIV Governing Law and Situs**

The Grantor and Trustees declare that this Indenture of Trust shall be construed and administered under the laws of the State of [                      ], that the validity and effect of this Agreement and of this Trust shall be determined in accordance with the laws of that State and the Trustees shall voluntarily enter a general appearance in any legal action relating to an accounting of the Trust or a declaratory judgment interpreting this Trust Agreement

#### **Article XV Definitions**

- A. Whenever used in this Trust Agreement, the words "child", "children", or "issue" are intended to include not only persons who are descendants by blood, but also persons and issue of persons who have been adopted according to law or over whom adoption proceedings have been commenced in a court of competent jurisdiction of any of the Unit Holders.

- B. Masculine, feminine and neuter pronouns shall each include all genders, and the singular shall include the plural, and vice versa, where the context or facts so admit.
- C. The captions and section headings of this trust declaration are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope or intent neither of this declaration, nor in any way affect this declaration.

**Article XVI**  
**Amendment and Revocation**

At any time, and from time to time, during the Grantor's lifetime, the Grantor may alter, amend or revoke in whole or in part this trust. The interests of all beneficiaries shall vest on the date this Trust Agreement is executed and shall remain vested until the Grantor in such manner alters, amends or revokes this trust. Upon any effective revocation, the Trustees shall distribute pursuant to the written directions of the Grantor. No person other than the Grantor may alter, amend or revoke in whole or in part this trust after the death of the Grantor, or during any incompetency of the Grantor, except as otherwise provided herein.

The Trustees are authorized, at any time and from time to time, with the consent of a majority of Unit Holders, to modify or amend the trust hereby created, in whole or in part, by an instrument in writing, signed by all of the then Trustees; provided, however, that no such modification or amendment shall increase the number of Units as hereinabove provided, or affect the rights of Unit Holders, without the consent of every Unit Holder.

As an inducement to the Trustees to exercise the powers granted hereunder, the Grantor hereby directs that the Trustees' decisions under this Article shall be absolutely binding on all beneficiaries and the respective beneficiary's estate and that the Trustees shall incur no liability by reason of any adverse consequence of such decisions to any person whomsoever.

**Article XVII**  
**Compensation**

Unless otherwise agreed to by the Trustees, no Trustee, Managing Agent or Unit Holder shall be entitled to receive any remuneration for services rendered to the trust. All direct expenses incurred by the Trustees and the Managing Agent in connection with the performance of their respective duties and responsibilities under this Agreement, shall be reimbursed by the Trust and shall be a trust expense.

**Article XVIII**  
**Dispute Resolution.**

- A. The Unit Holders have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, they agree that if any dispute arises between them relating to

this Agreement (the "Dispute"), they will first use the mediation procedures specified in this Article (the "Procedure") prior to commencing additional proceedings as defined below.

- B. The parties agree to participate in good faith in the mediation to its conclusion. If the Disputing Unit Holders (as defined below) are not successful in resolving the Dispute through mediation, then the Disputing Unit Holders agree that the Dispute shall be settled by arbitration in [insert city, state] in accordance with the provisions of the [insert appropriate procedural rules to be relied upon] ("Additional Proceedings"), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.
- C. The Unit Holder(s) seeking to initiate the Procedure (the "Initiating Unit Holder" whether one or more) shall give written notice to the other Unit Holder(s), describing in general terms the nature of the Dispute, the Initiating Unit Holder's claim for relief, and identifying one or more individuals with authority to settle the Dispute on such Unit Holder's behalf. The Unit Holder(s) receiving such notice (the "Responding Unit Holder" whether one or more) shall have five (5) business days within which to designate by written notice to the Initiating Unit Holder one or more individuals with authority to settle the Dispute on such Unit Holder's behalf. The individuals so designated shall be known as the "Authorized Individuals." The Initiating Unit Holder and the Responding Unit Holder shall collectively be referred to as the "Dispute Unit Holders" or, individually, as the "Disputing Unit Holder."
- D. Provided that [designated mediator] is available and is willing to serve as the mediator, [designated mediator] shall serve as the mediator of the Dispute. Otherwise, the Authorized Individuals shall have thirty (30) business days from the date of the Responding Unit Holder's written response to the Initiating Unit Holder to select a mutually agreeable mediator. In consultation with the mediator selected, the Authorized Individuals shall promptly designate a mutually convenient time and place for the mediation, and unless circumstances require otherwise, such time to be not later than forty-five (45) days after selection of the mediator.
- E. In the mediation, each Disputing Unit Holder shall be represented by an Authorized Individual and may be represented by counsel. In addition, each Disputing Unit Holder may, with permission of the mediator, bring such additional Persons as needed to respond to questions, contribute information, and participate in the negotiations. The Disputing Unit Holders agree to sign a document that provides that the mediator shall be governed by the provisions of laws of the State of [ ] and such other rules as the mediator shall prescribe. The Disputing Unit Holders commit to participate in the proceedings in good faith with the intention of resolving the Dispute if at all possible.
- F. The Dispute Unit Holders agree to participate in the mediation procedure to its conclusion. The mediation shall be terminated (i) by the execution of a settlement agreement by the Disputing Unit Holders, (ii) by a declaration of the mediator that the mediation is terminated, or (iii) by a written declaration of a Disputing Unit Holder to the effect that the mediation process is terminated at the conclusion of one full day's

mediation session. Even if the mediation is terminated without a resolution of the Dispute, the Disputing Unit Holders agree not to commence any Additional Proceedings prior to the expiration of five (5) days following the mediation. Notwithstanding the foregoing, any Disputing Unit Holders may commence Additional Proceedings within such five day period if the Dispute could be barred by an applicable statute of limitations.

IN WITNESS WHEREOF, the Grantor and the Trustees have each signed this Agreement, effective the day and year first above written and executed by each of them on the dates set forth below. This Agreement may be executed in counterparts.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Grantor, as

Date: \_\_\_\_\_  
\_\_\_\_\_  
Trustee, as

Dated \_\_\_\_\_

\_\_\_\_\_, as

Trustee

Dated \_\_\_\_\_

\_\_\_\_\_, as

Trustee

**EXHIBIT A**

The initial property contributed to the Trust is the following described real property situated in \_\_\_\_\_ County, State of \_\_\_\_\_.