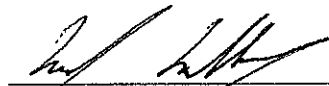


# KRUGER FAMILY IRREVOCABLE TRUST

**February 10, 2016**

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# Kruger Family Irrevocable Trust

## Table of Contents

<b>Article One</b>	<b>Establishing My Trust..... 1</b>
Section 1.01	Identifying My Trust.....1
Section 1.02	Third-Party Reliance on Affidavit or Certification of Trust .....1
Section 1.03	An Irrevocable Trust .....1
Section 1.04	Transfers to the Trust .....1
Section 1.05	Statement of My Intent .....2
Section 1.06	Family Information .....2
Section 1.07	My Lifetime Beneficiaries .....2
<b>Article Two</b>	<b>Trustee Succession and Trust Protector Provisions..... 2</b>
Section 2.01	Resignation of a Trustee .....2
Section 2.02	Trustee Succession.....3
Section 2.03	Removal and Replacement of Trustees.....3
Section 2.04	Prohibition Against SNT Beneficiary Serving as Trustee.....4
Section 2.05	Appointment of a Cotrustee .....4
Section 2.06	Appointment of Independent Special Trustee.....4
Section 2.07	Provisions for Trust Protector .....4
<b>Article Three</b>	<b>Administration While I am Living ..... 8</b>
Section 3.01	Contributions Held in a Single Trust .....8
Section 3.02	Intent as to Estate Inclusion .....10
Section 3.03	Administration Upon My Death .....10
<b>Article Four</b>	<b>Administration of Remaining Trust Property ..... 10</b>
<b>Article Five</b>	<b>Remote Contingent Distribution..... 11</b>
<b>Article Six</b>	<b>Supplemental Needs Trust..... 11</b>
Section 6.01	Distributions of Income and Principal .....11
Section 6.02	Definition of Supplemental Needs.....12
Section 6.03	Objective to Promote Independence of Beneficiary .....13
Section 6.04	Not Available Resource to Beneficiary .....13
Section 6.05	Distribution Guidelines .....14
Section 6.06	Use of Care Manager .....15
Section 6.07	No Seeking of Order to Distribute .....16
Section 6.08	Indemnification of Trustee When Acting in Good Faith .....16

Section 6.09	Distribution Upon the Death of Beneficiary .....	16
Section 6.10	Waiver of Court Invasion of Principal .....	16
Section 6.11	Prohibition Against Beneficiary Serving as Trustee .....	17
Section 6.12	Limitation on Power to Remove and Replace Trustee .....	17
Section 6.13	No Power to Adjust from Principal to Income .....	17
Section 6.14	No General Power of Appointment .....	17
Section 6.15	Application of Article .....	17

## Article Seven

## Administration of Trusts for Underage and Incapacitated Beneficiaries..... 17

Section 7.01	Distributions for Underage and Incapacitated Beneficiaries .....	17
Section 7.02	Methods of Distribution .....	18

## Article Eight

## Trust Administration..... 18

Section 8.01	No Bond .....	18
Section 8.02	Exoneration of My Trustee .....	18
Section 8.03	Trustee Compensation .....	19
Section 8.04	Employment of Professionals .....	19
Section 8.05	Exercise of Testamentary Power of Appointment .....	19
Section 8.06	Determination of Principal and Income .....	20
Section 8.07	Trust Accounting .....	20
Section 8.08	Information to Beneficiaries .....	20
Section 8.09	Action of Cotrustees .....	21
Section 8.10	Trustee Authority to Disclaim or Release Powers .....	21
Section 8.11	Authority to Merge or Sever Trusts .....	21
Section 8.12	Certificate by Trustee .....	22
Section 8.13	Generation-Skipping Transfer Tax Provisions .....	22
Section 8.14	Grantor Trust Provisions .....	23
Section 8.15	Waiver of Court-Ordered Invasion of Principal .....	24

## Article Nine

## My Trustee's Powers ..... 24

Section 9.01	Introduction to Trustee's Powers .....	24
Section 9.02	Power to Appoint in Further Trust (Trust Decanting) .....	24
Section 9.03	Investment Powers in General .....	25
Section 9.04	Business Powers .....	25
Section 9.05	Insurance Powers .....	25
Section 9.06	No Loans to Me .....	25
Section 9.07	Limitation on My Trustee's Powers .....	26

## Article Ten

## General Provisions ..... 26

Section 10.01	Maximum Term for Trusts .....	26
Section 10.02	Spendthrift Provision .....	26
Section 10.03	Contest Provision .....	27

# **Kruger Family Irrevocable Trust**

## **Article One Establishing My Trust**

The effective date of this Irrevocable Trust Agreement is February 10, 2016. The parties to the agreement are Mary Anne Kruger (the "Grantor") and Amy Anne Bishop and Brian Frederick Dooley (my "Initial Trustees").

By this agreement I intend to create a valid trust under the laws of Kentucky and under the laws of any state in which any trust created under this agreement is administered.

Either Trustee may act independently to transact business on behalf of this Trust.

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

My trust is called the "Kruger Family Irrevocable Trust." However, the following format should be used for taking title to assets:

**"Amy Anne Bishop and Brian Frederick Dooley, Trustees of the Kruger Family Irrevocable Trust, dated February 10, 2016."**

### **Section 1.02 Third-Party Reliance on Affidavit or Certification of Trust**

My Trustee may provide an affidavit or certification of trust to third parties in lieu of providing a copy of this agreement. Third parties are exonerated from any liability for acts or omissions in reliance on the affidavit or certification of trust, and for the application that my Trustee makes of funds or other property delivered to my Trustee.

### **Section 1.03 An Irrevocable Trust**

This trust is irrevocable, and I may not alter, amend, revoke, or terminate it in any way.

### **Section 1.04 Transfers to the Trust**

I transfer to my Trustee the property listed in Schedule A, attached to this agreement, to be held on the terms and conditions set forth in this instrument. I retain no right, title or interest in the income or principal of this trust or any other incident of ownership in any trust property.

#### **(a) Trustee Acceptance**

By execution of this agreement, my Trustee accepts and agrees to hold the trust property described on Schedule A. All property, including life insurance policies, transferred to my trust after the date of this agreement must be acceptable to my Trustee. My Trustee may refuse to accept any property. My Trustee shall hold, administer and dispose of all trust property accepted by my Trustee for the benefit of my beneficiaries in accordance with the terms of this agreement.

**(b) No Distributions of Income or Principal**

My Trustee shall have no right, power, privilege, or authority to invade or distribute income or principal of the trust to or for my benefit, under any circumstances.

**Section 1.05 Statement of My Intent**

It is my express intent that the principal and income of this trust will not be available to me for any purpose, including Medicaid.

**Section 1.06 Family Information**

**(a) Marital Status**

I am widowed. I was married to Heinz Kruger, who passed away on October 12, 2015.

**(b) My Children and Descendants**

I have one child, Amy Anne Bishop, born on February 28, 1968. All references in this agreement to “my children” are references to my daughter, Amy Anne Bishop.

References to “my descendants” are to my daughter, Amy Anne Bishop and her descendants.

**Section 1.07 My Lifetime Beneficiaries**

While I am living, Amy Anne Bishop and my brother, Brian Frederick Dooley, are the only beneficiaries of trust income and principal (my “Lifetime Beneficiaries”), *per stirpes*.

In this agreement, “Lifetime Beneficiaries” refers only to my daughter, Amy Anne Bishop, and my brother, Brian Frederick Dooley, and does not include me. As specified in Section 1.04(b) above, under no circumstances may my Trustee invade or distribute trust income or principal to or for my benefit.

The distribution provisions for income and principal are specified in Article Three.

## **Article Two**

### **Trustee Succession and Trust Protector Provisions**

**Section 2.01 Resignation of a Trustee**

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

## **Section 2.02 Trustee Succession**

This Section governs the succession of my Trustees.

### **(a) I May Not Serve as Trustee**

Notwithstanding any provision of this agreement to the contrary, under no circumstances may I serve as Trustee at any time.

### **(b) Successors to Initial Trustees**

If any of my Initial Trustees fails to serve, the remaining Initial Trustees will continue to serve, without the necessity of a successor Trustee.

## **Section 2.03 Removal and Replacement of Trustees**

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

The income beneficiaries of any trust created under this agreement may remove a Trustee of the trust at any time, with or without cause, by majority decision.

In addition, if the income beneficiaries remove a Trustee, they may also, by majority decision, appoint a replacement Trustee that is an individual or corporate fiduciary.

The right to remove a Trustee under this subsection will not be deemed to grant to the person holding that right any of the powers of that Trustee.

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

### **(b) Default of Designation and Appointment of Trustee**

If the office of Trustee of a trust created under this agreement is vacant and all designated successor Trustees fail to act, my Trust Protector may appoint an individual or corporate successor Trustee.

If my Trust Protector fails to act, the primary beneficiary may appoint a successor Trustee that is an individual or corporate fiduciary.

In the case of a minor or incapacitated beneficiary, the parent or legal representative of such beneficiary, other than me, may act on behalf of such beneficiary.

Any beneficiary or his or her legal representative may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy remaining unfilled after a period of 30 days. By making such appointment, such court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making such appointment.

### **(c) Effect of Removal and Replacement**

The replacement of a Trustee under this Section 2.03 does not invoke the Trustee succession provisions of Section 2.02, rather the name of the

appointed Trustee under this Section replaces the name of the removed Trustee under the Trustee succession provisions.

#### **Section 2.04 Prohibition Against SNT Beneficiary Serving as Trustee**

Notwithstanding any other provision of this agreement, under no circumstances may the beneficiary of a trust share that is being administered pursuant to the terms of Article Six, entitled "Supplemental Needs Trust," serve as Trustee of that share.

#### **Section 2.05 Appointment of a Cotrustee**

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

#### **Section 2.06 Appointment of Independent Special Trustee**

If for any reason a Trustee of any trust created under this agreement is unwilling or unable to act with respect to any trust property or any provision of this agreement, or if a provision of this agreement requires an Independent Trustee to act, then the Trustee or Trust Protector shall appoint, in writing, a corporate fiduciary or an individual to serve as an Independent Special Trustee as to such property or with respect to such provision. The Independent Special Trustee appointed shall not be related or subordinate to me while living or to any beneficiary of the trust within the meaning of Section 672(c) of the Internal Revenue Code. The appointing party may revoke any such appointment at will.

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

Under no circumstances may I serve as an Independent Special Trustee.

#### **Section 2.07 Provisions for Trust Protector**

The function of the Trust Protector is to direct my Trustee in matters concerning the trust, and to assist, if needed, in achieving my objectives as manifested by the other provisions of my estate plan.

In order to serve, any Trust Protector named or appointed under this Section must be a corporate fiduciary or an individual who is not related or subordinate to a transferor or any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

**(a) Designation of Trust Protector**

I appoint Robert L. McClelland to serve as Trust Protector for a period of time limited to sixty days from the execution of this agreement.

**(b) Authority to Name Successor**

The serving Trust Protector may appoint a successor Trust Protector in writing, which appointment will take effect upon the resignation, incapacity, or death of the appointing Trust Protector.

Under no circumstances may I serve as Trust Protector.

**(c) Resignation of Trust Protector**

A Trust Protector may resign by giving notice as provided in paragraph (n) below. A resigning Trust Protector will not be liable or responsible for the acts or omissions of any successor Trust Protector.

**(d) Default of a Designated Trust Protector**

During any period in which a trust created under this agreement requires a Trust Protector to act and no Trust Protector is serving, Robert L. McClelland may appoint a Trust Protector.

If Robert L. McClelland fails to make the appointment after 30 days, then any beneficiary or trustee may petition a court of competent jurisdiction to appoint a Trust Protector.

The court acting to appoint a Trust Protector will acquire jurisdiction or authority over the trust only to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

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

A Trust Protector appointed under this paragraph (d) may be removed by the party or parties who made the appointment.

**(e) Rights of Successor Trust Protectors**

Any successor Trust Protector has all of the authority of any predecessor Trust Protector, but will not be responsible for the acts or omissions of the predecessor.

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

The Trust Protector may remove any Trustee of a trust created under this agreement.



Whenever the office of Trustee of a trust is vacant and no successor Trustee is effectively named, the Trust Protector may appoint an individual or a corporate fiduciary to serve as Trustee. No Trust Protector may be self-appointed as a Trustee and may not simultaneously serve as both Trust Protector and Trustee.

Notwithstanding any other provision of this agreement, removal or appointment of a Trustee will be effective upon giving notice as provided in paragraph (n) below. No advance notice is required.

**(g) Good Faith Standard Imposed**

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

**(h) Power to Amend**

The Trust Protector may amend any provision of this agreement as it applies to any trust for which the Trust Protector is serving to do any of the following:

- (i) alter the administrative and investment powers of my Trustee;
- (ii) grant a beneficiary of any trust created under this agreement the testamentary power to appoint all or part of the beneficiary's trust or trust share to the creditors of the beneficiary's estate;
- (iii) correct ambiguities and scrivener errors that might otherwise require court construction or reformation; and
- (iv) reflect tax or other legal changes.

Any amendment made by the Trust Protector to correct a scrivener's error in accordance with this Section is effective as of the original date of the trust. Any other amendment made by the Trust Protector as authorized above is effective as of the date of the trust, or the date of the amendment, in the sole and absolute discretion of the Trust Protector. The decision of the Trust Protector as to the effective date of any such amendment must be set forth in the amendment.

In granting a testamentary power of appointment, the Trust Protector may require, as a condition for the beneficiary's exercise of the power, that the beneficiary first obtain the consent of the Trust Protector. The Trust Protector may revoke the power at any time during the lifetime of the beneficiary to whom it was given. I suggest, but do not require, that the Trust Protector exercise this authority to subject trust property to estate tax

instead of the generation-skipping transfer tax when it appears that it may reduce overall taxes.

Notwithstanding the foregoing, the Trust Protector may not amend this agreement in any manner that would make trust corpus or income available to me for Medicaid eligibility or Medicaid estate recovery purposes.

Any amendment made by the Trust Protector must be in a signed written instrument. The Trust Protector must provide notice of the amendment as provided in paragraph (n) below, along with a copy of the amendment.

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

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

**(j) Release of Powers**

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

**(k) No Duty to Monitor**

The Trust Protector has no duty to monitor or supervise any Trustee or trust created under this agreement. Further, the Trust Protector has no duty to be informed as to the acts or omissions of others or to take any action to prevent or minimize loss. Any exercise or non-exercise of the powers and discretions granted to the Trust Protector is in the sole and absolute discretion of the Trust Protector.

**(l) Compensation**

Any Trust Protector serving under this agreement is entitled to receive reasonable compensation for services as determined by my Trustee. The Trust Protector is entitled to reimbursement for all expenses incurred in the performance of its duties as Trust Protector, including travel expenses.

Serving in the capacity of Trust Protector does not prevent the Trust Protector from also providing legal, investment or accounting services on behalf of the trust or the trust beneficiaries. If the Trust Protector is providing professional services, the Trust Protector may charge its typical fees for professional services, and may also be compensated for its services as Trust Protector.

**(m) Right to Examine**

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

**(n) Notice**

Unless otherwise specified, when notice is required by a provision of this Section, notice must be given in a signed written instrument delivered to the following or the personal representative of the following, to the extent practicable:

- (i) me;
- (ii) the income beneficiaries of the trust; and
- (iii) all Trustees then serving.

## **Article Three Administration While I am Living**

While I am living, my Trustee shall administer the trust as provided in this Article.

### **Section 3.01 Contributions Held in a Single Trust**

While I am living, my Trustee shall retain all contributions to my trust in a single trust to be held or distributed according to the provisions of this Section. My Trustee shall administer the trust as follows:

**(a) Residence Provisions**

In the event that my trust holds residential real property (including condominiums or the shares of a cooperative apartment) used by me, then I have the exclusive right to possess, occupy, and use the real property (including a cooperative apartment) for residential purposes.

**(1) No Payment of Rent; Payment of Maintenance**

I may not be required to pay rent for such property, but will be responsible for and required to pay all of the expenses of the maintenance of the property, including taxes, insurance, utilities, mortgage payments and normal costs of maintenance and upkeep of the property.

**(2) Termination of Tenancy**

If I cease to use such property as a residence (permanently or seasonally), my Trustee may, in the exercise of sole and absolute discretion, either continue to hold such property as

an investment or sell it. Notwithstanding the above, any purchaser of real property owned by this trust will be entitled to rely upon the authority of my Trustee to sell such real property. My Trustee may purchase or acquire substitute property or properties to be used by me for residential purposes. Any substitute property purchased shall be part of the principal of this trust.

### **(3) Homestead Exemption**

In order to claim homestead exemption rights under Kentucky law, I shall have the right to use, possess, and occupy any real property that may be owned by the trust. My interest in such real property shall be construed so as to qualify as my homestead property.

I currently reside in the real property located at 2944 Polo Club Blvd., Lexington, Kentucky, which property is designated as my Homestead under Kentucky law. It is my intention that the transfer of the aforementioned property into this trust shall in no way diminish the property's status as Homestead property under Kentucky's Homestead laws. My Trustee shall take any and all actions necessary to maintain the status of the property located at 2944 Polo Club Blvd., Lexington, Kentucky as Homestead property, including any successor property which may qualify as my Homestead under Kentucky law.

### **(b) Distribution of Income and Principal to My Lifetime Beneficiaries**

My Trustee, including an Interested Trustee, may distribute to any one or more of the Lifetime Beneficiaries as much of the net income and principal of the trust as my Trustee may determine advisable for any purpose. I direct that the provisions of any state law that limits an Interested Trustee to distributions for health, education, maintenance, or support shall not apply, so that while I am living, my Trustee may make distributions for his or her own benefit in excess of any amount required for his or her health, education, maintenance, and support.

A distribution to or for the benefit of a Lifetime Beneficiary shall be charged to the trust as a whole rather than against the beneficiary's ultimate share.

My Trustee shall have no right, power, privilege, or authority to invade or distribute income or principal of the trust to or for my benefit.

I direct that no provision of Kentucky law, or the laws of any other state, shall be available to require any invasion of income or principal by my Trustee or any court.

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

**(c) Unequal Distributions Allowed**

When making distributions of income and principal as authorized in subsection (b) above, my Trustee may make such distributions to any one or more of the Lifetime Beneficiaries in equal or unequal amounts, to the complete exclusion of any other beneficiary, as determined in my Trustee's sole and absolute discretion.

**(d) Discharge of a Legal Obligation**

No payment or distribution shall be made by any Trustee for the discharge of any of my legal obligations.

**Section 3.02 Intent as to Estate Inclusion**

Upon my death, I intend that all trust property will be required to be included in determining the value of my gross estate under chapter 11 of subtitle B of the Internal Revenue Code (the "Code"). The retained limited testamentary power of appointment in Section 3.03, entitled "Administration Upon My Death," is intended to satisfy that objective.

The Trust Protector may amend my trust to more fully comply with my stated intent.

**Section 3.03 Administration Upon My Death**

I have the limited testamentary power to appoint the remaining principal and the accrued or accumulated income of the trust to or for the benefit of my descendants and their spouses.

I may not exercise this power of appointment for the benefit of myself, my creditors, my estate, or the creditors of my estate.

Upon my death, my Trustee will administer any unappointed remaining trust property as provided in the Articles that follow.

## **Article Four**

### **Administration of Remaining Trust Property**

My Trustee shall distribute the remaining trust property to my daughter, Amy Anne Bishop, *per stirpes*, and distribute each share outright, free of trust, except as provided in Article Seven.

Notwithstanding the preceding paragraph, during any period that a beneficiary is a Supplemental Needs Person, my Trustee shall administer the beneficiary's share as provided in Article Six.

## Article Five

### Remote Contingent Distribution

If, at any time, there is no person or entity qualified to receive final distribution of the trust estate or any part of it, then my Trustee shall distribute the portion of my trust estate with respect to which the failure of qualified recipients has occurred to my brother, Brian Frederick Dooley, *per stirpes*, and distribute his share outright, free of trust, except as provided in Article Seven.

## Article Six

### Supplemental Needs Trust

Trust property will be administered pursuant to the terms of this Supplemental Needs Trust Article when:

- (i) another Article of this agreement directs that the property is to be administered as provided in this Supplemental Needs Trust Article; or
- (ii) the beneficiary of the property under another Article of this agreement is a Supplemental Needs Person, unless the other Article directs the beneficiary's interest to be distributed to a trust not created under this document.

"Beneficiary" under this Supplemental Needs Trust Article refers to the beneficiary of the property under the other Article. The provisions of the other Article shall continue to apply to the extent they do not conflict with the provisions of this Supplemental Needs Trust Article; specifically, the provisions of this Supplemental Needs Trust Article shall control the distributions of income and principal.

#### **Section 6.01     Distributions of Income and Principal**

The Trustee shall collect income and, after deducting all charges and expenses attributed thereto, may apply for Beneficiary's benefit, in-kind, or in cash, so much of the income and principal (even to the extent of the whole) as the Trustee deems advisable in the Trustee's sole and absolute discretion, **subject to the limitations set forth below**. The Trustee shall add the balance of net income not paid or applied to the principal of the Supplemental Needs Trust.

##### **(a)     Maximize Benefits**

Consistent with the purpose of the Supplemental Needs Trust, before expending any amounts from the net income and/or principal of this trust, the Trustee shall consider the availability of all benefits from government or private assistance programs for which Beneficiary may be eligible. The Trustee, where appropriate and to the extent possible, shall endeavor to

maximize the collection and facilitate the distribution of these benefits for Beneficiary's benefit.

**(b) No Reduction in Benefits**

None of the income or principal of the Supplemental Needs Trust shall be applied in such a manner as to supplant, impair or diminish any governmental benefits or assistance for which Beneficiary may be eligible or which Beneficiary may be receiving, unless, in the sole and absolute discretion of the Trustee, such use of income and/or principal is beneficial to Beneficiary.

**(c) No Assignment**

Beneficiary shall not have the power to assign, encumber, direct, distribute or authorize distributions from the Supplemental Needs Trust.

**(d) Discretionary Distributions**

Notwithstanding the above provisions, the Trustee may make distributions to meet Beneficiary's need for food, shelter, health care, or other personal needs, even if those distributions will impair or diminish Beneficiary's receipt or eligibility for government benefits or assistance, but only if the Trustee determines that the distributions will better meet Beneficiary's needs, and it is in Beneficiary's best interests, notwithstanding the consequent effect on Beneficiary's eligibility for, or receipt of, benefits.

**(e) Supplemental Needs Trust Savings Clause**

In the event that the mere existence of the authority to make distributions that will impair or diminish Beneficiary's receipt or eligibility for government benefits or assistance, as specified in subsections (b) and (d), above, will result in a reduction or loss of Beneficiary's entitlement program benefits, regardless of whether the Trustee actually exercises the authority, then such authority specified in subsections (b) and (d), above, shall be null and void, and the Trustee's authority to make these distributions shall terminate. If such authority is terminated, then the Trustee's authority to make distributions shall be limited to distributions for Beneficiary's Supplemental Needs, in a manner that will not adversely affect Beneficiary's government benefits.

Notwithstanding any provision to the contrary, in the event that the Supplemental Needs Trust is challenged or faces imminent invasion by any governmental department or agency in such a way as to affect Beneficiary's eligibility for benefits available under any governmental program, the Trustee is empowered to amend the trust so as to maintain Beneficiary's eligibility for benefits under such governmental program.

**Section 6.02 Definition of Supplemental Needs**

"Supplemental needs" refers to the requisites for maintaining the good health, safety, and welfare of Beneficiary when, in the sole and absolute discretion of the Trustee, such

requisites are not being provided by any public agency, office, or department of any state or of the United States.

Supplemental needs shall also include, but not be limited to, medical and dental expenses, annual independent checkups, clothing and equipment, programs of training, education, treatment and rehabilitation, private residential care, transportation (including vehicle purchases), maintenance, insurance, and essential dietary needs. Supplemental needs may include spending money; additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and money to purchase appropriate gifts for relatives and friends. However, in deciding whether to make these distributions the Trustee must first consider the impact on certain government benefits as is directed in Section 6.05, entitled "Distribution Guidelines."

The Trustee shall have no obligation to expend trust assets for such needs, but if the Trustee, in the Trustee's sole and absolute discretion, decides to expend trust assets, under no circumstances should any amounts be paid to, or reimbursed to, the federal government, any state, or any governmental agency for any purpose, including for the care, support, and maintenance of Beneficiary.

### **Section 6.03 Objective to Promote Independence of Beneficiary**

While actions are in the Trustee's sole and absolute discretion, the Trustee should be mindful that it is my wish that Beneficiary live as independently, productively, and happily as possible.

### **Section 6.04 Not Available Resource to Beneficiary**

It is my intent to create a Supplemental Needs Trust that conforms to Kentucky law (or if Beneficiary is not a Kentucky resident, to the law of the state where Beneficiary resides), in order to provide for Beneficiary's Supplemental Needs. I intend that the trust assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any Federal, state, county, city, or other governmental entity for which Beneficiary may otherwise be eligible or which Beneficiary may be receiving.

Consistent with that intent, it is my desire that, before expending any amounts from net income and/or principal of the trust, the Trustee consider the availability of all benefits from government or private assistance programs for which Beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee endeavors to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of Beneficiary. All actions of the Trustee shall be directed toward carrying out this intent and the discretion granted the Trustee under this agreement to carry out this intent is absolute.

For purposes of determining Beneficiary's eligibility for any such benefits, no part of the principal or undistributed income of the Supplemental Needs Trust shall be considered available to Beneficiary for public benefit purposes.

The Trustee shall hold, administer, and distribute all property allocated to the Supplemental Needs Trust for the exclusive benefit of Beneficiary during his or her



lifetime. All distributions from the trust are in the sole and absolute discretion of the Trustee.

In the event the Trustee is requested to release principal or income of the Supplemental Needs Trust to or on behalf of Beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or in the event the Trustee is requested to petition a court or any other administrative agency for the release of trust principal or income for this purpose, the Trustee is authorized to deny such request and is authorized in its sole and absolute discretion to take whatever administrative or judicial steps may be necessary to continue Beneficiary's eligibility for benefits, including obtaining legal advice about Beneficiary's specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to Beneficiary for eligibility purposes. Any expenses of the Trustee in this regard, including reasonable attorney's fees, shall be a proper charge to the Supplemental Needs Trust.

### **Section 6.05     Distribution Guidelines**

The Trustee shall be responsible for determining what discretionary distributions shall be made from the Supplemental Needs Trust, and may use a Care Manager in accordance with the provisions of this Article. The Trustee may distribute discretionary amounts of income and principal to or for the benefit of Beneficiary for those Supplemental Needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services. Any undistributed income shall be added to principal.

In making distributions, the Trustee will:

- (i) consider any other known income or resources of Beneficiary that are reasonably available;
- (ii) take into consideration all entitlement benefits from any government agency, such as Social Security Disability payments (SSDI), Medicaid, Department of Medicaid Services, Supplemental Security Income (SSI), and any other special purpose benefits for which Beneficiary is eligible;
- (iii) take into consideration resource and income limitations of any such assistance program;
- (iv) make expenditures so that Beneficiary's standard of living will be comfortable and enjoyable;
- (v) not be obligated or compelled to make specific payments;
- (vi) not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by such governmental agency and reimbursement is required by the state; and
- (vii) not be liable for any loss of benefits.

## **Section 6.06 Use of Care Manager**

The Trustee shall have the option of utilizing the services of a Care Manager to assist in advising on how best to provide for Beneficiary's needs. The primary objective of the Care Manager shall be to assist the Trustee to carry out the purposes of the Supplemental Needs Trust to ensure that Beneficiary maintains a safe living situation, receives counseling services when appropriate and lives as independently as possible.

A Care Manager shall be a professional Clinical Licensed Social Worker, Professional Conservator, or care management agency that has experience in the field of assessment of conditions similar to those of Beneficiary and is familiar with the public benefits to which Beneficiary may be entitled.

### **(a) Distribution Advisement**

If the Trustee uses a Care Manager, the Care Manager shall advise the Trustee concerning discretionary distributions to be made from the trust that are helpful and appropriate for Beneficiary's needs including payment for medical care, counseling services, and daily support.

### **(b) Annual Care Plan**

If the Trustee uses a Care Manager, the Care Manager shall provide to the Trustee, at least annually, a written care plan for purposes of evaluation of Beneficiary's medical and psychosocial status. The care plan shall include recommendations concerning resources and services beneficial to Beneficiary.

### **(c) Quarterly Assessments**

If the Trustee uses a Care Manager, the Care Manager shall, at least quarterly, visit Beneficiary to assess his or her physical and emotional needs including the appropriateness of present placement, monitoring attendant care, accessing required resources, making and keeping medical appointments, and accessing socialization activities.

### **(d) Compensation of the Care Manager**

If the Trustee uses a Care Manager, the Care Manager shall be entitled to fair and reasonable compensation for the services it renders. The amount of compensation shall be an amount equal to the customary and prevailing charges for services of a similar nature during the same period of time and in the same geographic locale.

### **(e) The Resignation of a Care Manager**

Any Care Manager may resign by giving thirty (30) days' written notice to the Trustee.

### **(f) Replacement of Care Manager**

The Trustee may terminate the Care Manager without cause and name a replacement. If a Care Manager cannot serve for any reason, the Trustee may name a replacement, which may begin to serve immediately. If the

Care Manager must be replaced, then the successor Care Manager shall also be a professional Clinical Licensed Social Worker, Professional Conservator, or care management agency who has experience in the field of assessment of conditions similar to those of Beneficiary and is familiar with the public benefits to which Beneficiary may be entitled.

#### **Section 6.07 No Seeking of Order to Distribute**

For purposes of determining Beneficiary's state Medicaid program equivalent eligibility, no part of the principal or undistributed income of the Supplemental Needs Trust may be considered available to Beneficiary. The Trustee will deny any request by Beneficiary to:

- (i) release principal or income of the trust to or on behalf of Beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or
- (ii) petition a court or any other administrative agency for the release of trust principal or income for this purpose.

The Trustee may, in its sole and absolute discretion, take necessary administrative or legal steps to protect Beneficiary's state Medicaid program eligibility, including obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to Beneficiary for purposes of determining eligibility. Expenses for this purpose, including reasonable attorney's fees, are a proper charge to Beneficiary's Supplemental Needs Trust.

#### **Section 6.08 Indemnification of Trustee When Acting in Good Faith**

The Trustee shall be indemnified from the trust property for any loss or reduction of public benefits sustained by Beneficiary as a result of the Trustee exercising, in good faith, the authority granted to the Trustee under this Article.

#### **Section 6.09 Distribution Upon the Death of Beneficiary**

Upon the death of Beneficiary, the Trustee shall distribute or retain the remaining Supplemental Needs Trust property according to the other Article of this agreement that directed the property to be held pursuant to this Article.

If the other Article does not provide for distribution upon the death of Beneficiary, then the Trustee shall distribute or retain the remaining Supplemental Needs Trust property as though Beneficiary had predeceased me.

#### **Section 6.10 Waiver of Court Invasion of Principal**

Under no circumstances shall Supplemental Needs Trust principal be subject to any court-directed invasion pursuant to the provisions of the laws of Kentucky or any other state.

#### **Section 6.11 Prohibition Against Beneficiary Serving as Trustee**

Notwithstanding any other provision of this agreement, under no circumstances may Beneficiary serve as Trustee of any share that is being administered for his or her benefit under the provisions of this Supplemental Needs Trust Article.

#### **Section 6.12 Limitation on Power to Remove and Replace Trustee**

Notwithstanding any other provision of this agreement, Beneficiary has the power to remove the Trustee of the Supplemental Needs Trust, but may not appoint the replacement Trustee.

#### **Section 6.13 No Power to Adjust from Principal to Income**

Notwithstanding any provision of this agreement or state law to the contrary, in no event may the Trustee adjust between income and principal if such adjustment would cause any public benefit program to consider the adjusted principal or income to be an available resource or available income, or if such adjustment would otherwise supplant any governmental benefit that Beneficiary is entitled to receive. The Trustee must administer this trust according to its terms even if such terms conflict with Kentucky Revised Statutes Section 386.454, as amended.

#### **Section 6.14 No General Power of Appointment**

Notwithstanding any provision of this agreement or state law to the contrary, Beneficiary shall not have a lifetime or testamentary general power of appointment as defined in Section 2041 of the Internal Revenue Code, or as defined under Kentucky law, or the laws of any other state.

#### **Section 6.15 Application of Article**

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

### **Article Seven**

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

#### **Section 7.01 Distributions for Underage and Incapacitated Beneficiaries**

If under another provision of this agreement any part of the trust property is directed or required to be distributed outright to a person (other than me) who has not yet attained the age of 25 years or is incapacitated, then my Trustee may distribute or retain that part of the trust property as described in Section 7.02, unless the provisions of Article Six, entitled "Supplemental Needs Trust," apply.

When making a distribution, I request, but do not require, that my Trustee consider the ability that the beneficiary demonstrated in managing prior distributions.

shall be in any way or manner responsible for any act, omission, or forbearance on the part of any previous Trustee or the personal representative of my estate. Unless my Trustee has received notice of removal, my Trustee shall not be liable to me or to any beneficiary for the consequences of any action taken by my Trustee that would have been, but for the prior removal of my Trustee, a proper exercise by my Trustee of the authority granted to my Trustee under this agreement. Absent bad faith on the part of my Trustee, my Trustee is exonerated from any and all liability for the acts, omissions, and forbearances of my Trust Protector.

### **Section 8.03 Trustee Compensation**

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

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

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

### **Section 8.04 Employment of Professionals**

My Trustee may appoint, employ and remove, at any time and from time to time, investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, expert advisers, agents, and employees to advise or assist my Trustee in the performance of its duties. My Trustee may act upon the recommendations of the persons or entities employed with or without independent investigation. My Trustee may pay the usual compensation for services contracted for under this Section out of principal or income of the trust as my Trustee may deem advisable.

### **Section 8.05 Exercise of Testamentary Power of Appointment**

Except as otherwise prohibited, a testamentary power of appointment granted under this agreement may be exercised by a valid will, living trust, or other written instrument that specifically refers to the power of appointment.

The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the holder of the power designates. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

My Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this agreement has not been exercised by the beneficiary if my Trustee has no knowledge of the existence of a valid will, living trust,

or other written instrument exercising the power within 30 days after the beneficiary's death, and my Trustee shall then be released from any liability for any distributions made in good faith.

#### **Section 8.06 Determination of Principal and Income**

The provisions of the Kentucky Principal and Income Act (KRS 386.450-386.504) shall govern beneficiaries' rights among themselves in matters concerning principal and income. If the Kentucky Principal and Income Act (KRS 386.450-386.504) contains no provision concerning a particular item, my Trustee shall determine in a fair, equitable and practical manner what shall be credited, charged, and apportioned between principal and income.

Notwithstanding the above, in no event may my Trustee adjust between income and principal if such adjustment would cause any public benefit program to consider the adjusted principal or income to be an available resource or available income, or if such adjustment would otherwise supplant any governmental benefit that a beneficiary is entitled to receive. My Trustee must administer this trust according to its terms even if such terms conflict with Kentucky Revised Statutes Section 386.454, as amended.

#### **Section 8.07 Trust Accounting**

Except to the extent required by law, my Trustee is not required to file accountings in any jurisdiction. Upon the written request of a Qualified Beneficiary of a trust created under this agreement, my Trustee must render an accounting to the Qualified Beneficiaries of that trust during the accounting period that includes the date of the written request.

The accounting must include the receipts, expenditures, and distributions from the trust for which the accounting is prepared occurring during the accounting period. If a tax return is prepared for a trust during a period for which a trust accounting is made, my Trustee's accounting must include a copy of that tax return. If there is no tax return prepared for the accounting period, my Trustee's accounting must include a balance sheet itemizing the trust property and my Trustee's reasonable estimation of the value of the assets held in the trust as of the date the accounting is completed.

#### **Section 8.08 Information to Beneficiaries**

My beneficiaries' privacy is important to me. This section establishes my Trustee's duties to inform, account, and report to beneficiaries of various trusts created under this agreement, and to other individuals during the term of any trust created under this agreement. Except to the extent required by law, or to the extent required by Section 8.07, entitled "Trust Accounting," my Trustee is not required to comply with a request to furnish a copy of this trust agreement to a Qualified Beneficiary at any time, and my Trustee is not required to send annual reports or reports upon termination of the trust to any Permissible Distributee or Qualified Beneficiary who requests the report. If my Trustee decides, in my Trustee's sole and absolute discretion, to provide any information to a Permissible Distributee or Qualified Beneficiary, my Trustee may exclude any information that my Trustee determines is not directly applicable to the beneficiary receiving the information. Any decision by my Trustee to make information available to

any beneficiary does not constitute an obligation to provide any information to any beneficiary in the future.

#### **Section 8.09 Action of Cotrustees**

Unless otherwise specified, if two Trustees are eligible to act with respect to a given matter, the concurrence of both is required; if more than two Trustees are eligible to act with respect to a given matter, the concurrence of a majority of the Trustees is required.

If an Interested Trustee joins in an action with respect to a given matter, then the authority of the Trustees for that action is limited to the authority given to an Interested Trustee with respect to the matter.

Even though an act may require the concurrence of more than one Trustee, any one Trustee may carry out the act on behalf of the trust with the same force and effect as if all Trustees had done so. Persons dealing with the acting Trustee in good faith may rely upon the Trustee's authority to act on behalf of the trust without inquiry as to the other Trustees' concurrence.

If the Trustees are unable to concur with respect to a matter as to which they have joint powers, I request that the matter be settled by mediation and, if necessary, arbitration in accordance with the Uniform Arbitration Act. Each of the Trustees will select an arbiter and, if necessary to establish a majority decision, the arbiters so selected will select an additional arbiter. The decision of a majority of the arbiters so selected will control with respect to the matter.

A nonconcurring Trustee may dissent or abstain from any action of the other Trustee or Trustees. The nonconcurring Trustee is absolved from personal liability by registering his or her dissent or abstention in the records of the trust. After doing so, the nonconcurring Trustee will then act with the other Trustees in any way necessary or appropriate to effectuate the action of the other Trustees.

#### **Section 8.10 Trustee Authority to Disclaim or Release Powers**

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

#### **Section 8.11 Authority to Merge or Sever Trusts**

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

My Trustee may sever any trust on a fractional basis into two or more separate and identical trusts or may segregate a specific amount or asset from the trust property by allocation to a separate account or trust. My Trustee shall hold and administer each separate trust upon terms and conditions substantially identical to those of the trust from which it was severed.

## **Section 8.12 Certificate by Trustee**

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

## **Section 8.13 Generation-Skipping Transfer Tax Provisions**

Notwithstanding any other provision of this agreement to the contrary, if a trust created under this agreement would be partially exempt from generation-skipping transfer tax after the intended allocation of Available GST Exemption to the trust then:

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

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

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

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

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

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

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

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

My intent is to minimize the application of the generation-skipping transfer tax to the trust property but not to affect the total amount of trust property to which any beneficiary may be entitled under this agreement.



This agreement shall be so construed and interpreted to give effect to this intent.

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

#### **Section 8.14 Grantor Trust Provisions**

I intend that my trust be a grantor trust for federal income tax purposes for those periods of time during which I or any other person holds one or more of the powers described in Sections 671 through 679 of the Internal Revenue Code, the effect of which is that I will be taxed on the income of my trust. To carry out this intent, the following provisions apply to the administration of my trust.

##### **(a) Power of Substitution**

While I am living, my Trust Protector may direct my Trustee to transfer any property of my trust to me in exchange for property of equivalent value. My Trustee must follow any such directive.

##### **(b) Nonfiduciary Capacity**

The powers described in this Section are exercisable solely in a nonfiduciary capacity without approval or consent of any person acting in a fiduciary capacity. No claim for breach of fiduciary duty may be imposed as a result of the exercise or nonexercise of the powers granted under this Section.

##### **(c) Release and Restoration of Powers**

A power holder may release any or all of the powers described in this Section at any time by delivering a written instruction to my Trustee. The release will be effective upon receipt by my Trustee, unless the instruction specifies a later effective date.

If a power described in this Section has been released, unless my Trust Protector is the former power holder, my Trust Protector may restore the power. But if my Trust Protector is the former power holder, then an Independent Trustee who is not the former power holder may restore the power. The power may be restored to the former power holder or to any person who is not an adverse party within the meaning of Section 672(a) of the Internal Revenue Code and not related or subordinate to me within the meaning of Section 672(c).

##### **(d) No Income Tax Liability Reimbursement**

My Trustee may not make any distributions of income or principal of my trust to satisfy or reimburse me for my personal income tax liability attributable to including trust income in my taxable income.

### **Section 8.15 Waiver of Court-Ordered Invasion of Principal**

Under no circumstances, however, shall trust principal be subject to any court-directed invasion pursuant to any provision of Kentucky law, or the laws of any other state.

## **Article Nine My Trustee's Powers**

### **Section 9.01 Introduction to Trustee's Powers**

Except as otherwise specifically provided in this agreement, my Trustee may exercise, without prior approval from any court, all the powers conferred by this agreement and any other powers conferred by law, including, without limitation, those powers set forth under the common law or statutory law of Kentucky or any other jurisdiction whose law applies to this trust. The powers set forth in Kentucky Revised Statutes Chapter 386 are specifically incorporated into this trust agreement. The powers conferred upon my Trustee by law, including those powers conferred by Kentucky Revised Statutes Chapter 386, shall be subject to any express limitations or contrary directions contained in this agreement.

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

### **Section 9.02 Power to Appoint in Further Trust (Trust Decanting)**

An Independent Trustee (the "decanting trustee") may distribute assets of any trust created under this agreement (the "old trust") to another trust (the "new trust") that meets all of the following requirements:

- (i) the new trust must provide for one or more of the beneficiaries of the old trust;
- (ii) the new trust must not reduce any fixed income, annuity, or unitrust right of any beneficiary of the old trust, other than me;
- (iii) the new trust must not defeat a presently exercisable right of any beneficiary to withdraw property from the old trust, other than me;
- (iv) the new trust must not accelerate the interests of remainder beneficiaries of the old trust, but such restriction does not prevent the designation of a beneficiary of the remainder interest of the old trust as a beneficiary of the lifetime interest of the new trust;
- (v) the new trust must not create or expand my rights as a beneficiary over what was provided in the old trust, but may remove or contract any such rights;
- (vi) the new trust must not benefit the decanting trustee, the decanting trustee's creditors, the decanting trustee's estate, or the creditors of the decanting trustee's estate;

- (vii) the term of the new trust must not extend beyond the period of perpetuities provided under the governing law of the old trust; and
- (viii) the new trust must qualify for each of the following if the old trust so qualifies:
  - (a) the marital deduction;
  - (b) the charitable deduction;
  - (c) the gift tax or generation-skipping transfer tax annual exclusion for gifts to the trust; and
  - (d) as a qualified subchapter S corporation shareholder.

### **Section 9.03 Investment Powers in General**

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

### **Section 9.04 Business Powers**

My Trustee is authorized to serve as an officer, director, manager, or in any other capacity of any proprietorship, partnership, joint venture, corporation, or other enterprise in which the trust has an interest. My Trustee may receive compensation for services.

If any trust created under this agreement is funded with subchapter S stock, my Trustee may either elect to qualify the trust as a qualified subchapter S trust ("QSST") under Section 1361(d)(3) of the Internal Revenue Code or as an electing small business trust under Section 1361(e)(1) to administer the trust in accordance with the requirements of the corresponding Section.

### **Section 9.05 Insurance Powers**

My Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on my life, the life of any beneficiary, or on the life of any person in whom any beneficiary has an insurable interest. It is my intent that life insurance policies be considered proper investments of trust principal.

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

The provisions of this Section shall supersede the principles of general trust law with respect to my Trustee's duties and obligations relating to any life insurance policies owned or acquired by my trust.

### **Section 9.06 No Loans to Me**

My Trustee may not make loans of any type to me at any time.

### **Section 9.07    Limitation on My Trustee's Powers**

All powers granted to my Trustee under this agreement or by applicable law shall be limited as set forth in this Section, unless explicitly excepted by reference to this Section.

#### **(a)    No Distributions in Discharge of Certain Legal Obligations**

My Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of my Trustee, including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove my Trustee, including that person's obligation of support.

## **Article Ten General Provisions**

### **Section 10.01    Maximum Term for Trusts**

Pursuant to Kentucky Revised Statutes Section 381.224, the rule against perpetuities does not apply to any trust created under this agreement. However, if for any reason the rule against perpetuities does apply, then this Section controls the maximum term for trusts.

Notwithstanding any other provision of this agreement to the contrary (except for the preceding paragraph), unless terminated earlier under other provisions of this agreement, each trust created under this agreement terminates 21 years after the last to die of the descendants of my maternal and paternal grandparents, who are alive at the relevant time.

At that time, the remaining trust property will vest in and be distributed to the persons then entitled to receive mandatory distributions of net income of the trust and in the same proportions to which they are entitled to receive the net income. If no beneficiary is entitled to receive mandatory distributions of net income, then the remaining trust property will vest in and be distributed to the beneficiaries then entitled to receive discretionary distributions of net income of the trust, in equal shares.

### **Section 10.02    Spendthrift Provision**

Neither the income nor the principal of any trust created under this agreement may be assigned, anticipated, encumbered, alienated, or otherwise voluntarily transferred in any manner by any beneficiary. In addition, neither the income nor the principal of any trust created under this agreement is subject to attachment, bankruptcy proceedings or any other legal process, to the interference or control of creditors or others, or otherwise subject to any involuntary transfer.

This section does not restrict a beneficiary's right to disclaim any interest or the exercise of any power of appointment granted in this agreement. In addition, this Section does not limit the ability of an Independent Trustee to appoint property in further trust for any beneficiary as provided in Section 9.02, entitled "Power to Appoint in Further Trust (Trust Decanting)."

### **Section 10.03 Contest Provision**

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

### **Section 10.04 Survivorship Presumption**

If a beneficiary dies within 30 days after my death, then the beneficiary will be deemed to have predeceased me for purposes of this agreement.

### **Section 10.05 Changing the Governing Law and Situs of Administration**

My Trust Protector may, at any time, change the governing law of the trust, remove all or any part of the property or the situs of administration of the trust from one jurisdiction to another, or both. My Trust Protector may elect, by filing an instrument with the trust records, that the trust will thereafter be construed, regulated and governed as to administration by the laws of the new jurisdiction. My Trust Protector may take action under this Section for any purpose my Trust Protector deems appropriate, including the minimization of any taxes in respect of the trust or any beneficiary of such trust, and may do so with or without providing notice to any beneficiary.

If necessary, or if deemed advisable by my Trust Protector, my Trust Protector will appoint an Independent Trustee to serve as trustee in the new situs.

If necessary, and if my Trust Protector does not appoint an Independent Trustee within 30 days of my Trust Protector's action to change the governing law or situs of the trust, the beneficiaries entitled to receive distributions of net income under the trust may, by majority consent, appoint a corporate fiduciary in the new situs. If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

### **Section 10.06 Definitions**

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

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

A legally adopted person in any generation and his or her descendants, including adopted descendants, has the same rights and shall be treated in the same manner under this agreement as would children born of the adopting parent, provided such person is legally adopted prior to attaining

the age of 18 years. A person is deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

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

**(b) Agreement**

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

**(c) Available GST Exemption**

An individual's "Available GST Exemption" means the GST exemption provided in Section 2631 of the Internal Revenue Code in effect at the time reduced by the aggregate of:

- (i) the amount, if any, of GST exemption allocated to lifetime transfers; and
- (ii) the amount, if any, of allocations of GST exemption made or deemed made to transfers other than allocations to transfers under this agreement.

If, at the time, the individual has made a gift with an inclusion ratio of greater than zero but has not filed a gift tax return and the due date for the gift tax return has not yet passed, that individual's GST exemption is deemed to have been allocated to this gift to the extent necessary and possible to exempt the gift from generation-skipping transfer tax.

**(d) Descendants**

The term "descendants" means the lineal descendants of all generations of the identified person, and includes children whose relationships with their parents arose from any of the following:

- (i) natural birth;
- (ii) legal adoption;
- (iii) court declaration of parentage; and
- (iv) recognition of parent-child relationship by state law for children born during a domestic partnership, civil union, or marriage.

**(e) Education**

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

- (i) enrollment at private elementary, junior and senior high school including boarding school;

- (ii) undergraduate and graduate study in any field at a college or university;
- (iii) specialized, vocational or professional training or instruction at any institution, including private instruction;
- (iv) computer-based training (also referred to as e-learning, Internet-based training, or web-based training), including all forms of electronically supported learning and teaching, including educational technology, whether out-of-classroom or in-classroom education, and supplied via technology applications and processes such as web-based learning, computer-based learning, virtual educational opportunities, and digital collaboration; and
- (v) any other curriculum or activity that my Trustee may deem useful for developing the abilities and interests of a beneficiary including, without limitation, athletic training, musical instruction, theatrical training, the arts and travel.

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

**(f) Grantor**

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

**(g) Incapacity**

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

**(1) The Opinion of a Licensed Physician**

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

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

**(2) Court Determination**

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

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

An individual is deemed incapacitated whenever, in my Trustee's sole and absolute discretion, he or she cannot effectively manage his or her property or financial affairs due to disappearance, absence, or detention (including incarceration).

A person's disappearance, absence, or detention (including incarceration), may be established by an affidavit of my Trustee describing the relevant circumstances. A third party dealing in good faith with my Trustee may rely on the affidavit as conclusive evidence of incapacity.

### **(h) Income Beneficiary**

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

### **(i) Independent Trustee**

The term "Independent Trustee" means a Trustee who is not an Interested Trustee as defined in subsection (j) and includes an Independent Special Trustee appointed under the provisions of Section 2.06. Whenever a power is granted exclusively to an Independent Trustee or the phrase "other than an Interested Trustee" is used (or similar prohibitive language), then the power or discretion may be exercised only by an Independent Trustee.

### **(j) Interested Trustee**

The term "Interested Trustee" means a Trustee who (1) is a transferor or beneficiary; (2) is related or subordinate to a transferor or beneficiary; (3) can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor; or (4) can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.

For purposes of this subsection, (1) "transferor" means a person who transferred property to the trust, including a person whose disclaimer resulted in property passing to the trust; (2) "beneficiary" means a person who is or in the future may be eligible to receive income or principal from the trust pursuant to the terms of the trust, even if such person has only a remote contingent remainder interest in the trust, but not if the person's only interest is as a potential appointee under a power of appointment; and (3) "related or subordinate" means related or subordinate within the meaning of Section 672(c) of the Internal Revenue Code.



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

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

**(l) Lifetime Beneficiary or Lifetime Beneficiaries**

The term "Lifetime Beneficiary" or "Lifetime Beneficiaries" means one or more of those beneficiaries that are identified as such in Section 1.07.

**(m) Per Stirpes**

Whenever a distribution is to be made to a person's descendants "per stirpes," the distribution will be divided into as many equal shares as there are then-living children of the person and deceased children of the person who left then-living descendants. Each then-living child will receive one share and the share of each deceased child will be divided among such child's descendants in the same manner.

**(n) Permissible Distributee**

"Permissible Distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

**(o) Primary Beneficiary**

The primary beneficiary of a trust created under this agreement is the oldest income beneficiary of that trust unless some other individual is specifically designated as the primary beneficiary of that separate trust.

**(p) Qualified Beneficiary**

The term "Qualified Beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

- (i) is a distributee or Permissible Distributee of trust income or principal;
- (ii) would be a distributee or Permissible Distributee of trust income or principal if the interests of the distributees described in subparagraph (i) terminated on that date; or
- (iii) would be a distributee or Permissible Distributee of trust income or principal if the trust terminated on that date.

**(q) Supplemental Needs Person**

The term "Supplemental Needs Person" means a person who:

- (i) is disabled; or
- (ii) is receiving, or is eligible to receive, assistance or other benefits under a means-based government program (such as Medicaid or Supplemental Security Income).

As used above, the term "disabled" means disabled as defined in United States Code Title 42, Section 1382c(a)(3), or under Kentucky law related to means-based government programs, and in particular Kentucky Administrative Regulations Title 907 Chapter 1:011 .

As used above, the term "assistance" means assistance or medical assistance as defined in United States Code Title 42, Section 1396d(a), or under Kentucky law related to means-based government programs, and in particular Section 205.510 of the Kentucky Revised Statutes.

**(r) Trust**

The terms "trust," "my trust," "this trust," "this agreement," and similar terms refer to this agreement and all trusts created under the terms of this agreement.

**(s) Trustee**

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

**(t) Trust Estate and Trust Property**

The terms "trust estate" and "trust property" mean all property (income and principal) held by my Trustee under this agreement, including all property that my Trustee may acquire from any source.

**Section 10.07 General Provisions and Rules of Construction**

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

**(a) Singular and Plural; Gender**

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context.

**(b) Headings of Articles, Sections, and Subsections**

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

**(c) Governing Law**

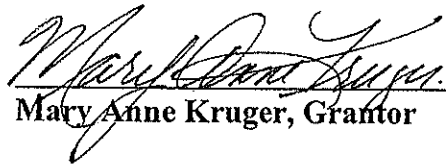
Unless the Situs of Administration is changed as provided in Section 10.05, Kentucky law governs the validity and construction of this agreement.

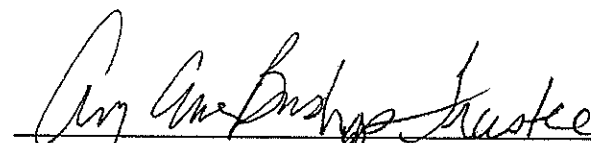
**(d) Severability**

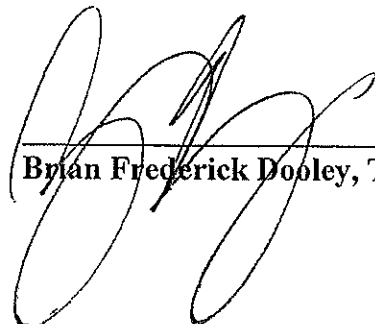
The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement.

**Grantor and Trustees**

I certify that I have read this agreement, that I understand it, and that it correctly states the provisions under which the trust property is to be administered and distributed by my Trustee. I hereby sign this agreement in the presence of the witnesses.

  
Mary Anne Kruger, Grantor

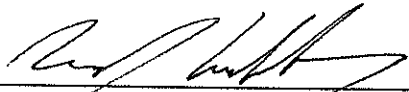
  
Amy Anne Bishop, Trustee

  
Brian Frederick Dooley, Trustee

COMMONWEALTH OF KENTUCKY )  
 ) ss.:  
COUNTY OF FAYETTE )

This instrument was sworn to, executed and acknowledged before me on February 10, 2016, by **Mary Anne Kruger as Grantor and Amy Anne Bishop as Trustee.**

[Seal]

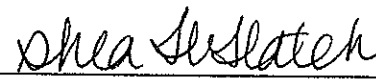
  
\_\_\_\_\_  
Mark Maddox, Notary Public  
My commission expires 01/03/2017  
Notary registration # 480755

STATE OF GEORGIA )  
 ) ss.:  
COUNTY OF Effingham )

This instrument was sworn to, executed and acknowledged before me on February 10, 2016, by **Brian Frederick Dooley as Trustee.**


[Seal]

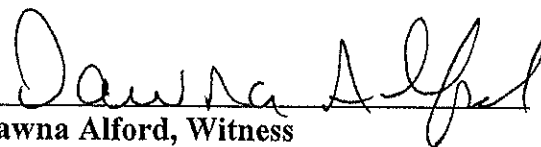


  
\_\_\_\_\_  
Notary Public  
My commission expires: 9.10.17  
Notary registration # \_\_\_\_\_

### Witnesses

The foregoing instrument was signed by Grantor in our presence, and we, in Grantor's presence and the presence of each other, sign as witnesses.

  
\_\_\_\_\_  
**Betsy Browning, Witness**  
1795 Alysheba Way, Suite 2102  
Lexington, KY 40509

  
\_\_\_\_\_  
**Dawna Alford, Witness**  
1795 Alysheba Way, Ste 2102  
Lexington, Kentucky 40509

## Schedule A

Ten Dollars Cash