**APPENDIX A**

**SAMPLE COMPLETED TRUSTS**

**Sample Trust # 1**

**Sample Revocable Trust with:**

* **Estate tax planning for client**
* **Credit shelter trust/ Marital trust division**
* **Disclaimer Option on First Death**
* **Medicaid Eligibility Planning in the Credit Shelter Trust**
* **Unlimited Flexibility in QTIP for surviving spouse**
* **Creditor protection subtrusts for benefit of two of three individual children**

**THE DARREN WALTERS REVOCABLE TRUST**

This Trust Agreement is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_, by and between DARREN WALTERS, currently residing at 187 Main Street, Anywhere, Wisconsin (hereinafter sometimes referred to at the “Grantor” and sometimes referred to as the “Trustees” or “Trustee”) and his wife, STEPHANIE WALTERS, also currently residing at 187 Main Street, Anywhere, Wisconsin (hereinafter referred to as the “Trustees” or “Trustee”) on the following terms and conditions:

**ARTICLE I**

**Purposes and Funding the Trust**

The Grantor creates this trust as a means by which assets are to be held and administered in accordance with the terms and conditions set forth in this instrument. The Grantor hereby transfers to the Trustees the sum of ten dollars ($10) in cash. In addition to the initial transfer by the Grantor of the sum of ten dollars ($10) in cash, the Grantor and anyone else may transfer additional property to the Trustees at any time. All assets received by the Trustees shall be managed and distributed in accordance with this Agreement. It is the Grantor’s intent in creating this trust to transfer assets into this trust for the use and benefit of a class of people, as described herein.

**ARTICLE II**

**During the Lifetime of the Grantor**

As long as the Grantor is living, the Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

A. The Trustee shall pay to or apply for the benefit of the Grantor, or to or for the benefit of such person or persons (and in such proportions) as the Grantor may from time to time designate, all the net income from this Trust.

B. The Trustee may pay to or apply for the benefit of the Grantor, or to or for the benefit of such person or persons as the Grantor may from time to time designate, such sums from the principal of this Trust as in the Trustee’s sole discretion shall be necessary or advisable from time to time for the medical care, comfortable maintenance and welfare of the Grantor or the Grantor’s designee, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Grantor or the Grantor’s designee known to the Trustees.

C. The Grantor may at any time and from time to time, withdraw all or any part of the principal of this Trust, free of trust, by delivering an instru­ment in writing duly signed by the Grantor to the Trustee, describing the property or portion thereof desired to be withdrawn.  Upon receipt of such instrument, the Trustee shall thereupon convey and deliver to the Grantor, free of trust, the property described in such instrument.

**ARTICLE III**

**Grantor’s Powers**

A. The Grantor may, during his lifetime: (l) withdraw property from this Trust in any amount and at any time; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent.

B. Unless sooner terminated, the trust shall become irrevocable upon the death of the Grantor and shall be administered and distributed as set forth hereinafter.

**ARTICLE IV**

**After the Death of the Grantor**

A. Upon the death of the Grantor, if the Grantor is survived by his wife, then the trust assets that can pass free of federal and state estate tax by reason of the unified credit, estate tax exclusion amount and/or any other estate tax exemption (taking into account other assets that are part of the Grantor’s taxable estate that pass outside of this Trust) shall continue to be held in a “credit shelter trust” (“Trust B”) the terms and conditions for which are set forth hereinafter in ARTICLE VI. The remainder of the Trust assets shall be held in a “marital trust” (“Trust A”) for the benefit of the Grantor’s wife, the terms and conditions for which are set forth hereinafter in ARTICLE V.

B. Upon the death of the Grantor, if the Grantor’s wife (or her legal representative) makes a qualified disclaimer (as defined in Section 2518 of the Internal Revenue Code, as amended) on some or all of the bequest earmarked for the marital trust (Trust A) established under Paragraph B and administered under ARTICLE V, then the amount so disclaimed shall be added to the Credit Shelter trust (Trust B) created pursuant to Paragraph A above, and administered under ARTICLE VI, to be held, administered and distributed by the Trustees in accordance with the provisions of ARTICLE VI. This provision shall be applicable even if the disclaimer would result in federal or state estate tax.

**ARTICLE V**

**Marital Trust- Trust A**

The “marital trust” established under ARTICLE V shall be held, administered and distributed as follows:

 A. It is the intent of the grantor that this trust shall qualify for the estate tax marital deduction under Section 2056 of the Internal Revenue Code. Any provision of this ARTICLE that would negate the eligibility of this trust for the marital deduction shall be null and void. All provisions hereunder shall be construed in accordance with this intent.

B. During the lifetime of the Grantor’s wife, the Trustee shall pay to her all of this trust's net income in convenient installments, but at least annually.

C. The Trustee may not hold property that does not produce income in this trust without the consent of the Grantor’s wife.

D. During the lifetime of the Grantor’s wife, the Trustee shall pay to her as much of the Trust principal as she shall from time to time demand, at any time and for any reason.

E. Upon the later death of the Grantor’s wife, the Trustee shall distribute any remaining trust income to the Grantor’s wife’s estate and the remaining principal in accordance with ARTICLE VII.

**ARTICLE VI**

**Credit Shelter Trust- Trust B**

The credit shelter trust established under ARTICLE V shall be held, administered and distributed as follows:

A. During the lifetime of the Grantor’s wife, the trustee shall pay to or apply for the benefit of the Grantor’s wife, all of the net income of the Trust.

B. As long as the Grantor’s wife is living, the Grantor’s wife shall have the right to live in any residential real property owned by the Trust. If any residential real property owned by the Trust is sold, the Trust may provide her with alternative residential housing of equivalent quality. The trust may accomplish this either by purchasing alternative residential property and allowing the Grantor’s wife to reside in such property rent-free (but subject to the provisions of Paragraph E of this ARTICLE), or by leasing alternative housing for the Grantor’s wife and paying the rent for the Grantor’s wife for the rest of her life. However, the trust may not pay for the Grantor’s wife’s residence in any nursing home or similar long term care facility that provides enhanced medical or care services for its residents. In addition, if the Trust owns real property, the Grantor’s wife shall have the right to live in any such residential real property owned by the Trust.

C. All property taxes, carrying charges, maintenance, expenses, etc. relating to real property owned by the Trust shall be the responsibility of the Grantor’s wife, so long as she resides in such real property.

D. In addition, the Trustee may pay to, or spend on behalf of the Grantor’s children, as much of the remaining trust principal as the trustees deem necessary and appropriate for their health, education, maintenance and support. However, no assets may be spent from this trust under this paragraph for the benefit of any child of the grantor without the consent of at least one other child of the grantor.

E. Upon the later death of the Grantor’s wife, the Trustee shall distribute any remaining trust principal in accordance with ARTICLE VII.

**ARTICLE VII**

**Upon the death of the second to die of the Grantor and his Wife**

Upon the death of the second to die of the Grantor and his wife, the remaining trust assets (including those assets in the marital and credit shelter trusts administered under ARTICLE V and ARTICLE VI, respectively) shall be divided as follows:

A. ONE THIRD (1/3) shall be distributed to the Grantor’s son, JOHN WALTERS, if he is living, or, if he is not living, to his issue, in equal shares, per stirpes.

B. ONE THIRD (1/3) shall be held in a trust for the benefit of the Grantor’s son, MICHAEL WALTERS in accordance with the terms and conditions set forth hereinafter in ARTICLE VIII. If MICHAEL WALTERS is not living, then this share shall be distributed to his issue, in equal shares, per stirpes.

C. ONE THIRD (1/3) shall be held in a trust for the benefit of the Grantor’s daughter, MICHELLE WALTERS SMITH in accordance with the terms and conditions set forth hereinafter in ARTICLE IX. If MICHELLE WALTERS SMITH is not living, then this share shall be distributed to her issue, in equal shares, per stirpes or if she has no issue then among the other beneficiaries under this Paragraph.

**ARTICLE VIII**

**Trust for the Benefit of MICHAEL WALTERS**

A trust for the benefit of MICHAEL WALTERS created under Paragraph B of ARTICLE VII shall be held, administered and distributed as follows.

A. During the lifetime of MICHAEL WALTERS, the trustee shall distribute to MICHAEL WALTERS, in quarterly or more frequent installments, all of the next income of the trust.

B. In addition, the trustee may, in his or her sole discretion, distribute to MICHAEL WALTERS as much of the trust principal as he deems appropriate for the health, education, maintenance and support of MICHAEL WALTERS. The trustee may, but need not, take into account other resources available to MICHAEL WALTERS when making this determination.

C. Upon the death of MICHAEL WALTERS, the trust assets shall be distributed to whomever among the issue of the Grantor that MICHAEL WALTERS shall appoint said assets by a Will that specifically references this limited power of appointment. In default of appointment, the trust assets shall be distributed to the issue of MICHAEL WALTERS, in equal shares, per stirpes.

**ARTICLE IX**

**Trust for the Benefit of MICHELLE WALTERS SMITH**

A trust for the benefit of MICHELLE WALTERS SMITH created under Paragraph C of ARTICLE VII shall be held, administered and distributed as follows.

A. During the lifetime of MICHELLE WALTERS SMITH, the trustee shall distribute to MICHELLE WALTERS SMITH, in quarterly or more frequent installments, all of the next income of the trust.

B. In addition, the trustee may, in his or her sole discretion, distribute MICHELLE WALTERS SMITH as much of the trust principal as he deems appropriate for the health, education, maintenance and support of MICHELLE WALTERS SMITH. The trustee may, but need not, take into account other resources available to MICHELLE WALTERS SMITH when making this determination.

C. Upon the death of MICHELLE WALTERS SMITH, the trust assets shall be distributed to whomever among the issue of the Grantor that MICHELLE WALTERS SMITH shall appoint said assets by a Will that specifically references this limited power of appointment. In default of appointment, the trust assets shall be distributed to the issue of MICHELLE WALTERS SMITH, in equal shares, per stirpes, or, if she has no issue, then to the issue of the Grantor, in equal shares, per stirpes.

**ARTICLE X**

**Spendthrift Clause**

To the extent permitted by law, the beneficiaries' interests will not be subject to their liabilities or creditor claims or to assignment or anticipation.

**ARTICLE XI**

**Interests Vesting to a Beneficiary under the age of Twenty-one (21) Years**

 If any Trust principal or income shall vest in absolute ownership in a minor, the Trustee shall have the authority to: 1. Hold and manage the property and defer payment or distribution of all or a part of the property to that minor until that minor reaches the age of twenty-one (21) years; 2. Distribute part or all of the property to a custodian or guardian for the minor under the laws of the jurisdiction where the minor resides, and 3. Directly apply part or all of the property for the minor's health, education, support (in his/her accustomed manner of living) or maintenance costs.

**ARTICLE XII**

**Merger, Consolidation, and Division**

For convenience of administration or investment, the Trustee of any trusts created hereunder may:

A. Invest the assets of multiple trusts in a single fund, assigning them undivided interests in such common fund, dividing the income proportionately and accounting for them separately;

B. Merge or consolidate any trust created hereunder together with any other trusts having the same trustee and substantially the same dispositive provisions; and

C. Divide any trust created hereunder into two (2) or more separate trusts, each such trust to contain a fractional share of the assets of the trust before such division.

**ARTICLE XIII**

**Trustee's Powers**

The Trustee is exclusively empowered to do the following, exclusively in the Trustee's fiduciary capacity:

A. To hold and retain all or any property received from any source, without regard to diversification, risk, productivity, or the Trustee's personal interest in such property in any other capacity, and to keep all or part of the trust property at any place within the United States or abroad.

B. To invest and reinvest the trust funds (or leave them temporarily uninvested), in any type of property and every kind of investment, including (but not limited to) corporate obligations of every kind, preferred or common stocks, securities of any regulated investment trust, and partnership interests.

C. To participate in the operation of any business or other enterprise, and to incorporate, dissolve, or otherwise change the form of such business.

D. To deposit trust funds in any commercial savings or savings and loan accounts.

E. To borrow money for any reasonable trust purpose and upon such terms, including (but not limited to) interest rates, security, and loan duration, as the trustee deems advisable. The Trustee may secure the repayment of any or all amounts so borrowed by mortgage or pledge of any property, whether real property or personal property, as the Trustee deems advisable. The Trustee may also arrange for the mortgaging of trust property, whether through a private lender or through any bank or other financial institution.

F. To lend trust funds to such persons and on such terms, including (but not limited to) interest rates, security, and loan duration, as the Trustee deems advisable; provided, however, that the Trustee may not lend money to the Grantor's estate without receiving adequate security and an adequate rate of interest.

G. To sell or otherwise dispose of trust assets, including (but not limited to) trust real property, for cash or credit, at public or private sale, and with such warranties or indemnifications as the Trustee deems advisable.

H. To buy assets of any type from any person on such terms, including (but not limited to), cash or credit, interest rates, and security, as the Trustee deems advisable; provided, however, that the Trustee may not buy assets from the Grantor's estate other than at their fair market value.

I. To improve, develop, manage or abandon any trust assets, as the Trustee deems advisable.

J. To hold property in the name of any trustee or any custodian or nominee, without disclosing this trust; but the Trustee is responsible for the acts of any custodian or nominee so used.

K. To pay and advance money for the trust's protection and for all expenses, losses, and liabilities sustained in its administration.

L. To prosecute or defend any action for the protection of the trust, the Trustee in the performance of the Trustee's duties, or both, and to pay, contest, or settle any claim by or against the trust or the Trustee in the performance of the Trustee's duties.

M. To employ persons, even if they are associated with the Trustee, to advise or assist the Trustee in the performance of the Trustee's duties.

N. To determine what is principal or income and what items shall be charged or credited to either.

O. To distribute trust assets in kind or in cash.

P. To execute and deliver any instruments necessary or useful in the exercise of any of these powers.

Q. To rent or lease out any real property held by the trust to any tenant upon such terms as the Trustee, in his or her sole discretion, determines to be in the best interest of the Trust.

R. To assign or delegate, for convenience purposes, the authority to perform administrative tasks in connection with the Trust, to any person that the Trustee deems appropriate.

**ARTICLE XIV**

**The Trustees**

A. As long as both the Grantor and his wife are living, the Grantor, DARREN WALTERS and his wife, STEPHANIE WALTERS, shall serve as Co-Trustees of this trust and they shall serve without bond. Each trustee shall have the authority to act as sole Trustee for any purpose. If, for any reason, either of them is unable or unwilling to serve or to continue to serve, then the other shall serve as sole Trustee, and shall serve without bond. If neither is able and willing to serve or to continue to serve as Trustee, then the Grantor’s son, JOHN WALTERS shall serve as Trustee of this trust, and shall serve without bond. If he is unable or unwilling to serve or to continue to serve, then the Grantor’s son, MICHAEL WALTERS, shall serve as successor trustee, and he shall serve without bond.

B. Subject to the provisions of Paragraph C of this Article, after the Grantor’s death, the Grantor’s wife, STEPHANIE WALTERS, shall serve as sole trustee of all trusts created hereunder. If she is unable or unwilling to serve or to continue to serve as Trustee, then the Grantor’s son, JOHN WALTERS shall serve as Trustee of this trust and all trusts created hereunder, and he shall serve without bond. If he is unable or unwilling to serve or to continue to serve, then the Grantor’s son, MICHAEL WALTERS, shall serve as successor trustee, and he shall serve without bond.

C. JOHN WALTERS shall serve as trustee of the trust for the benefit of MICHAEL WALTERS created under Paragraph C of ARTICLE VII and administered under ARTICLE VIII. If, for any reason, he is unable or unwilling to serve or to continue to serve, then MICHAEL WALTERS shall have the authority to name a successor trustee; provided, however, that such successor trustee must not be a related or subordinate party to MICHAEL WALTERS, as defined under Section 672(c) of the Internal Revenue Code. In addition, as long as JOHN WALTERS is not serving as trustee, MICHAEL WALTERS shall have the authority to remove and replace any then serving trustee, though no more frequently than once every year, so long as any trustee that he appoints must not be a related or subordinate party to MICHAEL WALTERS, as defined under Section 672(c) of the Internal Revenue Code. All trustees serving under this Paragraph shall serve without bond.

D. JOHN WALTERS shall serve as trustee of the trust for the benefit of MICHELLE WALTERS SMITH created under Paragraph C of ARTICLE VII and administered under ARTICLE VIII. If, for any reason, he is unable or unwilling to serve or to continue to serve, then MICHELLE WALTERS SMITH shall have the authority to name a successor trustee; provided, however, that such successor trustee must not be a related or subordinate party to MICHELLE WALTERS SMITH, as defined under Section 672(c) of the Internal Revenue Code. In addition, as long as JOHN WALTERS is not serving as trustee, MICHELLE WALTERS SMITH shall have the authority to remove and replace any then serving trustee, though no more frequently than once every year, so long as any trustee that he appoints must not be a related or subordinate party to MICHELLE WALTERS SMITH, as defined under Section 672(c) of the Internal Revenue Code. All trustees serving under this Paragraph shall serve without bond.

E. Notwithstanding the above Trustee designation provisions, in the event that trust principal from the credit shelter trust (Trust B) is to be paid to or expended for the benefit of the Grantor’s wife, then the Grantor’s wife shall not participate in any such distribution or in the decision to make such distribution. In such event, only the successor Trustees shall participate in the decision to make such distribution. The Grantor’s wife may, however, in her capacity as beneficiary and Trustee, participate in the distribution of Trust income to herself (in accordance with the provisions of ARTICLE VI). Furthermore, with respect to the credit shelter trust (Trust B), in no event shall the Grantor’s wife, acting in her capacity as beneficiary or Trustee, possess any power or authority, if the possession of such power or authority would be deemed to be a General Power of Appointment under Sections 2041 and 2514 of the Internal Revenue Code.

F. No Trustee shall be required to obtain the order of any court to exercise any power or discretion under this trust. In addition, no Trustee shall be required to file any accounting with any public official.

G. Any Co-Trustee may delegate any or all Trustee duties and powers to any other Co-Trustee, provided that such authority may be revoked by the delegating trustee. Furthermore, any Trustee may delegate any and all trust administrative duties to any other party, provided that such delegation may be revoked by the delegating Trustee.

**ARTICLE XIV**

**Miscellaneous**

A. This declaration of trust shall be governed by and construed according to the laws of the State of Wisconsin.

B. Whenever the context of this trust requires, the masculine gender includes the feminine and neuter, and vice versa, and the singular number includes the plural, and vice versa.

C. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to antici­pate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

D. If any provision of this trust instrument should be invalid or unenforceable, the remaining provisions shall continue to be fully effective.

E. Notwithstanding any contrary provision of this trust, the principal of any trust created hereunder shall vest absolutely in interest not later than twenty-one years after the death of the last survivor of the Grantor and any beneficiary who is living at the time of the creation of this trust. Immediately prior to the expiration of twenty-one years after the death of the last survivor of the above group, the principal of each trust that has not previously vested shall become payable to the issue of the Grantor and his wife, per stirpes.

F. If this trust or any trust created hereunder is the beneficiary of an IRA or any qualified tax-deferred retirement plan account, then the Trustee shall have the authority to take whatever steps are required so that the minimum required distribution amounts from such account are to be measured based on the life expectancy of an individual beneficiary of such trust. This shall include (but not be limited to) the authority to establish new sub-trusts that benefit individual beneficiaries. Any such steps shall be allowed so long as they are not contrary to the purposes of the trust as set forth hereunder.

G. In the event that any technical corrections must be made to this trust document, then any acting trustee shall have the authority to make such technical corrections; provided, however, that the corrections must be consistent with the Grantor’s intentions in creating this trust, as set forth in this trust instrument, with regard to the beneficiaries of the trust, the uses and purposes of the trust, the distribution plan of the trust, etc.

IN WITNESS WHEREOF, the Grantor has executed this agreement, effective as of the above referenced date.

*[notarized signatures of Darren Walters and Stephanie Walters]*

**Sample Trust # 2**

**Sample Medicaid Planning Trust with:**

* **Lifetime Medicaid and Creditor Protection**
* **Grantor Trust Provision**
* **Posthumous estate tax planning**
* **Credit shelter trust/ Marital trust division**

**- Qualified Domestic Trust for foreign spouse**

**THE WHITE IRREVOCABLE TRUST**

This Trust Agreement is made effective as of the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between DOUG WHITE and LINDA WHITE, husband and wife, both currently residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Grantors” or “Grantor”), and WARREN WHITE, who is the son of the Grantors, currently residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as the “Trustee”) on the following terms and conditions:

**ARTICLE I**

**Purposes and Funding the Trust**

A. The Grantors create this trust as a means by which assets are to be held and administered in accordance with the terms and conditions set forth in this instrument. The Grantors hereby transfer to the Trustee the sum of ten dollars ($10) in cash. In addition to the initial transfer by the Grantors of the sum of ten dollars ($10) in cash, the Grantors and anyone else may transfer additional property to the Trustee at any time. All assets received by the Trustee shall be managed and distributed in accordance with this Agreement. It is the Grantors’ intent in creating this Trust to irrevocably transfer assets into this Trust for the use and benefit of a class of people, as described herein.

B. Specifically, this Trust is established as a vehicle into which residential real estate (along with other assets as may be contributed to the Trust from time to time) can be transferred for a class of beneficiaries, as described herein.

C. Unless specified otherwise at the time of the gift, one-half (2) of any gift to this trust given by either of the Grantors shall be presumed to be given by each Grantor.

**ARTICLE II**

**Irrevocability**

This Trust and all interests in it are irrevocable, and the Grantors have no power to alter, amend, revoke, or terminate any trust provision or interest, whether under this trust or under any statute or other rule of law.

**ARTICLE III**

**Spendthrift Clause**

To the extent permitted by law, the beneficiaries' interests will not be subject to their liabilities or creditor claims or to assignment or anticipation.

**ARTICLE IV**

**During the Lifetime of the Grantors**

A. As long as both Grantors are living, each Grantor shall have the right to live in one-half of any residential real property owned by the Trust. If only one grantor is living, then he or she shall have the right to live in all such residential real property.

B. As long as either Grantor is living, each Grantor shall have the right to disallow the sale of any residential real property owned by the Trust by a letter in writing signed by the Grantor and delivered to the Trustee.

C. If any residential real property owned by the Trust is sold, the Trust may (but is not obligated to) purchase alternative residential real property. If it does so, then each Grantor shall have a right to live in any one-half (2) of such residential real property (or, if one Grantor is living, then he or she shall have the right to live in such real property). Alternatively, the Trust may (but is not obligated to) utilize some or all of the trust income to pay for the Grantors’ rent at a suitable alternative location. This right of the Trustee shall not include the right to pay for care for the Grantor(s) at any nursing home or any facility or residence that provides enhanced care services to its residents.

D. All property taxes, carrying charges, maintenance, expenses, etc. relating to real property owned by the Trust shall be the responsibility of the Grantor(s), so long as at least one Grantor resides in such real property.

E. In addition, the Trustee may pay to, or spend on behalf of the trust beneficiaries, as much of the remaining trust principal and income, as the Trustee deems appropriate for their health, education, maintenance and support, after taking into account, to the extent the trustee deems advisable, the other resources available to them.

F. Any distribution made by the trustee under Paragraph E of this ARTICLE shall require the consent of one person who is not receiving the distribution and who does not have a legal obligation to support the person receiving the distribution.

G. Each grantor shall have the authority, without the consent of any other party and in a non-fiduciary capacity, to remove trust assets that he or she contributed from the trust by substituting other assets of reasonably equivalent value.

H. It is the intent of the Grantors that, for income and capital gains tax purposes, each Grantor shall be treated as owner of the assets in the trust that he or she contributed under Section 675 of the Internal Revenue Code and that this trust be treated as a “grantor trust” under that section, for purposes of calculating income tax and capital gains tax under the Internal Revenue Code; particularly with respect to the provisions of Section 121 of the Code. All provisions in this trust shall be interpreted in accordance with this intent.

**ARTICLE V**

**After the Death of the First Grantor**

A. Upon the death of the first-to-die of the Grantors, the Trust assets that were contributed by the surviving Grantor shall continue to be held in trust under the terms and conditions set forth above in ARTICLE IV.

B. Upon the death of the first-to-die of the Grantors, the Trust assets that were contributed by the deceased Grantor shall be distributed to whomever among the issue of the Grantors that the deceased Grantor shall appoint these assets by a Will that specifically references this special power of appointment. The assets not appointed pursuant to this power of appointment shall continue to be held, managed and distributed as follows:

B1. The amount of such trust assets that can pass free of federal and state estate tax by reason of the unified credit, estate tax exclusion amount and/or any other estate tax exemption (taking into account other assets that are part of the deceased Grantor’s taxable estate that pass outside of this Trust) shall continue to be held in a **credit shelter trust**, the terms and conditions for which are set forth hereinafter in ARTICLE VI.

B2. The remainder of such assets shall be held in a **marital trust** the terms and conditions for which are set forth hereinafter in ARTICLE VII. However, if the surviving spouse is not a citizen of the United States at the time of the death of the first spouse, then this share shall instead be held in a **qualified domestic trust**, the terms and conditions for which are set forth hereinafter in ARTICLE VIII.

**ARTICLE VI**

**Credit Shelter Trust**

The credit shelter trust established under Paragraph B1 of ARTICLE V shall be held, administered and distributed as follows:

A. The Trustee shall pay to or apply for the benefit of the surviving Grantor, all of the net income of the trust.

B. As long as the surviving Grantor is living, the surviving Grantor shall have the right to live in any residential real property owned by the Trust.

C. As long the surviving Grantor is living, the surviving Grantor shall have the right to disallow the sale of any residential real property owned by the Trust by a letter in writing signed by the surviving Grantor and delivered to the Trustee.

D. As long as the surviving Grantor is living, if any residential real property owned by the Trust is sold, the Trust may (but is not required to) provide him or her with alternative residential housing of equivalent quality. The Trust may accomplish this either by purchasing alternative residential property and allowing the surviving Grantor to reside in such property rent-free (but subject to the provisions of Paragraph D of this ARTICLE), or by leasing alternative housing for the surviving Grantor and paying the rent for the surviving Grantor from the trust income for the rest of his or her life. This right of the Trustee shall not include the right to pay for care for the Grantor at any nursing home or any facility or residence that provides enhanced care services to its residents.

E. All property taxes, carrying charges, maintenance, expenses, etc. relating to real property owned by the Trust shall be the responsibility of the surviving Grantor, so long as he or she resides in such real property.

 F. In addition, the Trustee may pay to, or spend on behalf of the Grantors’ children as much of the remaining trust assets, including trust income and trust principal, as the trustee deems appropriate. However, the Trustee may not make any distributions from this trust to himself without the consent of at least one other child of the Grantors.

G. Upon the death of the surviving Grantor, the Trustee shall distribute all remaining trust assets to the Grantors’ children, in equal shares, per stirpes.

**ARTICLE VII**

**Marital Trust**

A marital trust established under Paragraph B2 of ARTICLE V shall be held, administered and distributed as follows:

A. During the lifetime of the surviving Grantor, the Trustee shall pay to him or her all of this trust's net income in convenient installments, but at least annually.

B. The Trustee may not hold property that does not produce income in this trust without the consent of the surviving Grantor.

C. As long as the surviving Grantor is living, the surviving Grantor shall have the right to live in any residential real property owned by the Trust.

 D. As long the surviving Grantor is living, the surviving Grantor shall have the right to disallow the sale of any residential real property owned by the Trust by a letter in writing signed by the surviving Grantor and delivered to the Trustee.

E. As long the surviving Grantor is living, if any residential real property owned by the Trust is sold, the Trust may provide him or her with alternative residential housing of equivalent quality. The Trust may accomplish this either by purchasing alternative residential property and allowing the surviving Grantor to reside in such property rent-free (but subject to the provisions of Paragraph G of this ARTICLE), or by leasing alternative housing for the surviving Grantor and paying the rent with the trust income for the surviving Grantor for the rest of his or her life

F. The rights contained in Paragraphs C through E are specifically intended to fulfill the requirements necessary to be considered a “qualifying income interest for life” under section 2056(b)(7)(B)(ii)(I) of the Internal Revenue Code. If that section would require any further rights in any residential real property owned by the Trust for the marital deduction to be preserved, the surviving Grantor is hereby granted whatever power and authority is necessary for that purpose.

G. All property taxes, carrying charges, maintenance, expenses, etc. relating to real property owned by the Trust shall be the responsibility of the surviving Grantor, so long as he or she resides in such real property.

H. It is the Grantors’ intent that the Trust created under this paragraph shall qualify for the federal estate tax marital deduction, and all provisions of this instrument shall be construed consistent with this intent. It is expressly provided that the grant of rights, powers, privileges, and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust or by any statute relating thereto, shall not be effective if it would disqualify the marital deduction as established in this Trust. The Trustee shall not, in the exercise of its discretion, make any determination inconsistent with the foregoing.

I. Upon the later death of the surviving Grantor, the Trustee shall distribute any remaining trust principal to the Grantors’ children, in equal shares, per stirpes.

**ARTICLE VIII**

**Qualified Domestic Trust**

A Qualified Domestic Trust established under Paragraph B2 of ARTICLE V shall be held, administered and distributed as follows:

A. These provisions are intended to insure that the gift to this trust upon the death of the first Grantor shall meet all requirements as a **Qualified Domestic Trust** as defined in Section 2056A of the Internal Revenue Code (or in any successor provision), in order to permit the Trustee (and/or the Executor of the deceased Grantor’s estate who is preparing the estate’s estate tax return) to qualify such bequest for the marital deduction. The Trustee is authorized to amend the provisions of this trust, as required, in order to qualify it at the time of the Grantor’s death as a Qualified Domestic Trust as defined in IRC Section 2056A. All provisions of this ARTICLE shall be construed in such a manner as best to effect these intents:

B. The Trustee is authorized in its absolute discretion to determine whether to elect under Section 2056A of the Internal Revenue Code or any successor provision to qualify this bequest as a Qualified Domestic Trust (QDOT) in order to qualify for the federal estate tax marital deduction.

C. To the extent not inconsistent with the terms of Paragraph D of this ARTICLE and to the extent not inconsistent with the purposes of this Trust as set forth in Paragraph A of this ARTICLE, the income and principal of this trust shall be held and distributed under the provisions set forth in ARTICLE VII (the Marital Trust). However, no term referenced in that ARTICLE shall apply is such term would cause the assets being distributed to this Trust to be ineligible for the marital deduction.

D. The Trustee shall comply with the requirements for security arrangements for qualified domestic trusts as set forth in Treas. Reg. section 20.2056A 2(d)(1)(i) or (ii), and or any subsequent regulations, summarized as follows:

(1) TRUST IN EXCESS OF $2 MILLION. If the fair market value of the assets passing to the trust (determined without reduction for any indebtedness thereon) exceeds $2 million on the relevant valuation date, then the Trustee must at all times during the term of the Trust either satisfy the U.S. Bank as Trustee requirement (see Treas. Reg. section 20.2056A 2(d)(1)(i)(A)), or furnish a bond that satisfies the requirements of Treas. Reg. section 20.2056A 2(d)(1)(i)(B), or furnish an irrevocable letter of credit that satisfies the requirements of Treas. Reg. section 20.2056A 2(d)(1)(i)(C), (hereinafter referred to as the U.S. Bank, Bond, or Letter of Credit Requirement). The Trustee may alternate between any of the security arrangements described in the preceding sentence provided that, at all times during the term of the trust, one of the arrangements is operative. If the Trustee elects to furnish a bond or letter of credit as security, then in the event the Internal Revenue Service draws on the instrument in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until after April 15th of the calendar year following the year in which the bond or letter of credit is drawn upon.

(2) TRUST OF $2 MILLION OR LESS. If the fair market value of the assets passing to the trust (determined without reduction for any indebtedness) is $2 million or less on the relevant valuation date, then the Trustee must comply with either the U.S. Bank, Bond, or Letter of Credit Requirement only if more than 35% of the fair market value of the trust assets, determined annually on the last day of the taxable year of the trust, consists of real property located outside the United States. For purposes of determining whether more than 35% of the trust assets consist of foreign real property, Treas. Reg. section 20.2056A 2(d)(1)(ii)(B) applies.

(3) DETERMINATION OF VALUE. For purposes of determining whether the fair market value of the trust assets exceeds $2 million, the Trustee is authorized to make the election under Treas. Reg. section 20.2056A 2(d)(1)(iv)(A) with respect to real property used as the Grantor’s spouse's personal residence.

(4) AMOUNT OF BOND OR LETTER OF CREDIT. For purposes of determining the amount of the bond or letter of credit, the Trustee is authorized to make the election under Treas. Reg. section 20.2056A 2(d)(1)(iv)(B) with respect to real property used as the spouse's personal residence.

(5) ANNUAL STATEMENTS. The Trustee is directed to file any annual statements required under Treas Reg. section 20.2056A 2(d)(3).

(6) GENERAL CONDUCT. Notwithstanding anything contained herein to the contrary, the U.S. Trustee is hereby authorized to enter into alternative plans or arrangements with the Internal Revenue Service pursuant to Treas. Reg. section 20.2056A 2(d)(4) to assure collection of the deferred estate tax, in lieu of the provisions contained herein.

(7) REFERENCES TO REGULATIONS. All references to "Treas. Reg." in this document shall be references to regulations published under 26 CFR as in effect on the date of execution of this document, or, in the event that any such regulation is amended or superseded thereafter, to the regulation (or any successor regulation) as so amended.

E. Upon the death of the surviving Grantor, the Trustee shall distribute any remaining trust principal to the Grantors’ children, in equal shares, per stirpes.

**ARTICLE IX**

**Upon the death of the Second Grantor**

 Upon the death of the second-to-die of the Grantors, the trust assets contributed by the second-to-die of the Grantors shall be distributed to whomever among the issue of the second-to-die of the Grantors shall appoint said assets by a Will that specifically references this special power of appointment. All such trust assets not distributed in accordance with the exercise of such appointment shall be distributed to the Grantors’ children, in equal shares, per stirpes.

**ARTICLE X**

**Interests Vesting to a Beneficiary under the age of Twenty-one (21) Years**

If any Trust principal or income shall vest in absolute ownership in a minor, the Trustee shall have the authority to: 1. Hold and manage the property and defer payment or distribution of all or a part of the property to that minor until that minor reaches the age of twenty-one (21) years; 2. Distribute part or all of the property to a custodian or guardian for the minor under the laws of the jurisdiction where the minor resides, and 3. Directly apply part or all of the property for the minor's health, education, support (in his/her accustomed manner of living) or maintenance costs.

**ARTICLE XI**

**Trustee's Powers**

A. The Trustee is exclusively empowered to do the following, exclusively in the Trustee's fiduciary capacity:

1. To hold and retain all or any property received from any source, without regard to diversification, risk, productivity, or the Trustee's personal interest in such property in any other capacity, and to keep all or part of the trust property at any place within the United States or abroad.

2. To invest and reinvest the trust funds (or leave them temporarily uninvested), in any type of property and every kind of investment, including (but not limited to) corporate obligations of every kind, preferred or common stocks, securities of any regulated investment trust, and partnership interests.

3. To participate in the operation of any business or other enterprise, and to incorporate, dissolve, or otherwise change the form of such business.

4. To deposit trust funds in any commercial savings or savings and loan accounts.

5. To borrow money for any reasonable trust purpose and upon such terms, including (but not limited to) interest rates, security, and loan duration, as the trustee deems advisable. The Trustee may secure the repayment of any or all amounts so borrowed by mortgage or pledge of any property, whether real property or personal property, as the Trustee deems advisable. The Trustee may also arrange for the mortgaging of trust property, whether through a private lender or through any bank or other financial institution.

6. To lend trust funds to such persons and on such terms, including (but not limited to) interest rates, security, and loan duration, as the Trustee deems advisable; provided, however, that the Trustee may not lend money to the Grantor's estate without receiving adequate security and an adequate rate of interest.

7. To sell or otherwise dispose of trust assets, including (but not limited to) trust real property, for cash or credit, at public or private sale, and with such warranties or indemnifications as the Trustee deems advisable.

8. To buy assets of any type from any person on such terms, including (but not limited to), cash or credit, interest rates, and security, as the Trustee deems advisable; provided, however, that the Trustee may not buy assets from the Grantor's estate other than at their fair market value.

9. To improve, develop, manage or abandon any trust assets, as the Trustee deems advisable.

10. To hold property in the name of any trustee or any custodian or nominee, without disclosing this trust; but the Trustee is responsible for the acts of any custodian or nominee so used.

11. To pay and advance money for the trust's protection and for all expenses, losses, and liabilities sustained in its administration.

12. To prosecute or defend any action for the protection of the trust, the Trustee in the performance of the Trustee's duties, or both, and to pay, contest, or settle any claim by or against the trust or the Trustee in the performance of the Trustee's duties.

13. To employ persons, even if they are associated with the Trustee, to advise or assist the Trustee in the performance of the Trustee's duties.

14. To determine what is principal or income and what items shall be charged or credited to either.

15. To distribute trust assets in kind or in cash.

16. To execute and deliver any instruments necessary or useful in the exercise of any of these powers.

17. To rent or lease out any real property held by the trust to any tenant upon such terms as the Trustee, in his or her sole discretion, determines to be in the best interest of the Trust.

18. To assign or delegate, for convenience purposes, the authority to perform administrative tasks in connection with the Trust, to any person that the Trustee deems appropriate.

B. In making any payment to a minor or disabled beneficiary, the Trustee may expend such payments for the benefit of such beneficiary or make such payments to such beneficiary, or to his or her parent, guardian, personal representative, or the person with whom he or she resides, without having to look to the proper application of those payments. This paragraph does not limit the Trustee's powers and must be construed to enable the Trustee to give each beneficiary the fullest possible benefit and enjoyment of all of the trust income and principal to which he or she is entitled.

**ARTICLE XII**

**The Trustee**

A. WARREN WHITE, who is the son of the Grantors, shall serve as Trustee of this trust of all trusts created hereunder, and he shall serve without bond. If, for any reason, he is unable or unwilling to serve or to continue to serve, then REBECCA WHITE, who is the daughter of the Grantors, shall serve as successor Trustee, and she shall serve without bond. If, for any reason, she is unable or unwilling to serve or to continue to serve, then the children of the Grantors shall, by majority vote, name a successor trustee, and such trustee shall serve without bond.

B. Notwithstanding the above Trustee designation provisions, no acting trustee shall possess any power or authority, if the possession of such power or authority would be deemed to be a General Power of Appointment under Sections 2041 and 2514 of the Internal Revenue Code.

C. No Trustee shall be required to obtain the order of any court to exercise any power or discretion under this Trust.

D. Any Trustee may delegate any and all trust administrative duties to any third party, provided that such delegation may be revoked.

E. No Trustee shall be required to file any accounting with any public official.

F. No Trustee shall be liable for damage to, loss of, or mismanagement of, Trust assets in the absence of bad faith.

**ARTICLE XIII**

**Miscellaneous**

A. This declaration of trust shall be governed by and construed according to the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

B. Whenever the context of this trust requires, the masculine gender includes the feminine and neuter, and vice versa, and the singular number includes the plural, and vice versa.

C. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

D. If any provision of this trust instrument should be invalid or unenforceable, the remaining provisions shall continue to be fully effective.

E. Notwithstanding any contrary provision of this trust, the principal of any trust created hereunder shall vest absolutely in interest not later than twenty-one years after the death of the last survivor of the Grantors and any beneficiary who is living at the time of the creation of this trust. Immediately prior to the expiration of twenty-one years after the death of the last survivor of the above group, the principal of each trust that has not previously vested shall become payable to the issue of the Grantors, per stirpes.

F. If this trust or any trust created hereunder is the beneficiary of an IRA or any qualified tax-deferred retirement plan account, then the Trustee shall have the authority to take whatever steps are required so that the minimum required distribution amounts from such account are to be measured based on the life expectancy of an individual beneficiary of such trust. This shall include (but not be limited to) the authority to establish new sub-trusts that benefit individual beneficiaries. Any such steps shall be allowed so long as they are not contrary to the purposes of the trust as set forth hereunder

G. In the event that any technical corrections must be made to this trust document, then any acting trustee shall have the authority to make such technical corrections; provided, however, that the corrections must be consistent with the Grantors’ intentions in creating this trust, as set forth in this trust instrument, with regard to the beneficiaries of the trust, the uses and purposes of the trust, the distribution plan of the trust, etc.

IN WITNESS WHEREOF, the Grantor has executed this agreement, effective as of the above referenced date.

*[notarized signatures of Grantor and Trustee]*

**Sample Trust # 3**

**Sample Irrevocable Life Insurance Trust with:**

* **Spouse as trustee**
* **“Crummey” withdrawal rights provisions**
* **Contingent Marital Trust at first death**
* **Credit shelter trust at first death**
* **Individual Single Beneficiary trusts at second death**

**THE SAMANTHA McNEIL IRREVOCABLE LIFE INSURANCE TRUST**

This trust agreement is effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2011, by SAMANTHA McNEIL, currently residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Grantor"), and the Grantor’s husband, JOSEPH McNEIL, also currently residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Trustee”) on the following terms and conditions:

**ARTICLE I**

**Purposes and Funding the Trust**

A. The Grantor creates this trust as a means by which assets, which may include one (1) or more policies of insurance on her life, may be held for the benefit of her family, on the terms and conditions set forth in this instrument. It is the Grantor's intent in creating this trust that all gifts made to this trust be complete and gifts of present interests for federal gift tax purposes, and that the assets of this trust, including any life insurance proceeds, be excluded from her gross estate for federal estate tax purposes. All provisions of this trust shall be construed in such a manner as best to effect these intents.

B. The Grantor transfers to the Trustee the property listed in Schedule A [omitted], to be held and administered according to the terms of this trust. The Grantor and anyone else may transfer additional property, whether or not such property is listed on Schedule A, to the Trustee at any time, whether during the Grantor's lifetime or after her death, to be held and administered according to the trust's terms. The Trustee may refuse to accept any gift to a trust hereunder if the Trustee deems it to be in the best interests of the trust and its beneficiaries, and the Trustee may accept it subject to one (1) or more conditions imposed by the donor on the Trustee, if the Trustee deems it to be in the best interests of the trust and the beneficiaries. No condition imposed on a gift and accepted by the Trustee may in any way alter, amend, or change the rights of a beneficiary with respect to any prior gifts. The Grantor retains no right, title, or interest in any trust property.

**ARTICLE II**

**Irrevocability**

This trust and all interests in it are irrevocable, and the Grantor has no power to alter, amend, revoke, or terminate any trust provision or interest, whether under this trust or under any statute or other rule of law.

**ARTICLE III**

**Annual Demand Power**

During the Grantor's life, the following demand powers shall exist with respect to contributions to the trust:

A. Immediately following any contribution to the trust, each of the Grantor's children, shall have the right to withdraw an amount equal to a pro rata share of each contribution to the trust (subject to the limitations in this article). Such pro rata portion will be the amount of the contribution, divided by the number of the beneficiaries of this right of withdrawal at the time of the contribution. If any such beneficiary demands and receives a distribution in excess of the amount authorized under this article, the Trustee shall immediately notify him or her in writing, requiring the prompt repayment of such excess amount. This demand power takes precedence over any other power or discretion granted the Trustee or any other person.

B. With respect to these demand powers, the following rules shall apply:

1. This demand power can be exercised by a written request delivered to the Trustee. If a beneficiary is unable to exercise such demand power because of a legal disability, any legally authorized personal representative, including (but not limited to) a parent, guardian, committee, or conservator, may make the demand on such beneficiary's behalf. In the event that no such legally authorized personal representative is available, then the Trustee may, acting as a fiduciary for the legally disabled beneficiary, exercise the demand power on the beneficiary’s behalf. However, in no event can the Grantor make the demand for any beneficiary.

2. The Trustee must reasonably notify the person who would exercise the demand power granted under this Article of its existence and of any contributions made to the trust that are subject to the power.

3. The maximum amount that any beneficiary may withdraw with respect to all contributions made by the same donor during a single calendar year shall be the lesser of the total amount of such contributions and the amount of the federal gift tax annual exclusion in effect on the date of the earliest of such contributions. If requested by a married donor at the time of a contribution, the alternative limitation based on the gift tax annual exclusion shall be two (2) times the amount of the gift tax annual exclusion.

4. Each beneficiary's unexercised right to withdraw a contribution shall lapse after thirty (30) days following notification to the beneficiary of the contribution, provided, however, that in any calendar year the extent of the lapse of a right of withdrawal shall not exceed the greater of Five Thousand Dollars ($5,000.00) or five percent (5%) of the value of the trust assets from which such withdrawal could be satisfied. To the extent that a withdrawal power does not lapse on a particular December 31, the withdrawal power continues to be exercisable (whether or not a contribution was made in that year), in all later years, subject to the same lapse provisions.

5. The Trustee may satisfy a demand for a distribution by distributing cash, other assets, or fractional interests in other assets, as the Trustee deems appropriate. Without limiting the Trustee's power to select assets to satisfy a demand, the Grantor prefers that cash or tangible assets be distributed before life insurance policies and intangible assets, unless the Trustee decides that another selection is warranted.

6. "Contribution" means any cash or other assets transferred to the Trustee to be held as part of the trust funds and the payment of any premiums on life insurance policies owned (in whole or in part) by the trust. The amount of any contribution is its federal gift tax value, as determined by the Trustee at the time of the contribution.

7. After the calendar year in which the trust is created, a person who makes a contribution to any trust created under this instrument may, by a written instrument delivered to the Trustee at the time of such contribution and with respect solely to the contribution then being made, do one (1) or more of the following: (a) increase or decrease the amount subject to any person’s demand power as to such new contribution; and (b) change the period during which any person’s demand power as to such new contribution may be exercised. No such direction may in any way alter, amend or change such person’s demand power with respect to any prior contributions.

**ARTICLE IV**

**During the Grantor's Life**

During the Grantor's life, the Trustee shall hold and administer all funds remaining after the exercise or lapse of all demand powers created under Article III, using some or all of the trust's net income and principal to pay premiums on policies of life insurance on the life of the Grantor, adding to principal any income not so used. In addition, subject to the restrictions set forth in later provisions of this trust, the Trustee may distribute to the Grantor's husband and/or children, or may spend on their behalf, so much of the trust principal and income (including all or none) as the Trustee deems necessary for their health, education, maintenance and support. However, the Trustee may not use any trust income or principal in a manner that would give the Grantor any pecuniary benefit, or pay for any debt or obligation for which the Grantor would otherwise be liable. In addition, the husband of the Grantor shall not participate in the decision to make any distribution under this Paragraph. Instead, the successor Trustees shall have the sole authority to make a distribution under this Paragraph.

**ARTICLE V**

**After the Grantor's Death**

Upon the Grantor's death, the Trustee will hold the trust funds, including any funds received on account of the Grantor's death, in trust as follows:

 A. If the Grantor is survived by her husband, the Trustee shall hold the proceeds of any life insurance policies on the Grantor's life that are included in her gross estate for federal estate tax purposes, whether or not she died within three (3) years of transferring such policies to the trust, in a separate trust, for the exclusive lifetime benefit of the Grantor's husband. During the lifetime of the Grantor's husband, the Trustee will pay to him all of this trust's net income in convenient installments, but at least annually. The Trustee will also pay to him so much of this trust's principal (including all or none) as the Trustee deems necessary or advisable for his health, education, support and maintenance. The Trustee may not hold unproductive property in this trust without the consent of the Grantor's husband. It is the Grantor's intent that the trust created under this paragraph shall qualify for the federal estate tax marital deduction, and all provisions of this instrument shall be construed consistent with this intent. It is expressly provided that the grant of rights, powers, privileges, and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust or by any statute relating thereto, shall not be effective if it would disqualify the marital deduction as established in this Trust. The Trustee shall not, in the exercise of its discretion, make any determination inconsistent with the foregoing. Upon the later death of the Grantor's husband, the Trustee shall distribute any remaining trust principal pursuant to paragraph C of this Article.

 B. If the Grantor is survived by her husband, the Trustee will hold any trust funds not distributed pursuant to paragraph A, above, in trust (including any portion of the marital trust established under Paragraph A disclaimed by the Grantor’s husband pursuant to Section 2518 of the Internal Revenue Code B i.e., a qualified disclaimer), and shall administer and distribute such funds as follows:

B.1. During the lifetime of the Grantor’s husband, the Trustee shall pay to or for the benefit of the Grantor’s husband, in quarterly or more frequent installments, all of the net income of the trust.

 B.2. During the lifetime of the Grantor’s husband, the Trustee may, in his or her sole discretion, also pay to or apply for the benefit of the Grantor’s husband and/or children or may spend on their behalf, so much of the trust principal and income (including all or none) as the Trustee deems advisable; provided, however, that the husband of the Grantor shall not participate in the decision to make any distribution under this Paragraph. Instead, the successor Trustees shall have the sole authority to make a distribution under this Paragraph.

B.3. In addition to the above provisions, during the month of December of any calendar year, the Grantor’s husband shall have the power to direct the Trustee to pay to her out of the trust’s principal in each year, an amount not in excess of the greater of five thousand dollars ($5,000) or five percent (5%) of the aggregate value of the trust principal as determined at the end of each taxable year of the trust. This power is non-cumulative and can be exercised only by an instrument in writing signed by the Grantor’s husband during the month of December and delivered that month to the Trustee in any calendar year of withdrawal.

B.4. Upon the death of the Grantor’s husband, the Trustee shall divide the remaining trust principal and income in the same manner as is provided for in Paragraph C of this ARTICLE.

C. Upon the Grantor's death if her husband does not survive him, the Trustee shall divide and distribute the remaining trust principal among the children of the Grantor; provided, however, that the share any child of the Grantor under the age of thirty-five (35) shall be held in an individual single beneficiary trust for the benefit of such child under the terms and conditions set forth hereinafter in ARTICLE VI. If any of the Grantor’s children do not survive the Grantor, then the share of such child shall be distributed to his or her issue, in equal shares, per stirpes, or, if he or she does not leave issue then living, then to the Grantor’s issue, in equal shares, per stirpes.

**ARTICLE VI**

**Individual Single Beneficiary Trusts**

 An individual trust that a maintained for the benefit of a single beneficiary shall be held, administered and distributed as follows:

 A. The trustee shall pay to or apply for the benefit of the beneficiary, until distribution pursuant to Paragraph B, as much of the net income and/or principal from the trust as the trustee in his/her sole discretion shall determine, for the health, education, support (in his/her accustomed manner of living) or maintenance of said beneficiary, taking into consideration to the extent the trustee deems advisable, any other income or resources of said beneficiary known to the trustee.

 B. Upon the beneficiary’s attainment of age twenty-five (25) or if the beneficiary has already attained the age of twenty-five (25) prior to the Trust’s creation, the trustee shall distribute to that beneficiary one-third (1/3) of the trust principal (and accumulated income). Upon the beneficiary’s attainment of age thirty (30) or if the beneficiary has already attained the age of thirty (30) prior to the trust’s creation, the trustee shall distribute to that beneficiary one-half (1/2) of the trust principal (and accumulated income). Upon the beneficiary’s attainment of age thirty-five (35), the trustee shall terminate the trust and shall distribute outright to the beneficiary all of the remaining principal of the trust.

 C. In the event that the beneficiary should die prior to the termination of the trust, the trust principal and income shall be distributed to whomever said beneficiary shall appoint said funds (by a will specifically referring to this power of appointment), or in default of appointment to the beneficiary’s issue per stirpes, or if the beneficiary leaves no issue, to the grantor’s other issue, per stirpes.

**ARTICLE VII**

**Interests Vesting in a Minor**

 If, when any trust created by this instrument ends, any principal vests in absolute ownership in any minor beneficiary, the Trustee may, if the Trustee deems it appropriate to do so, hold such interest in trust until the beneficiary attains age twenty-one (21), paying so much (including all or none) of the trust's net income and principal to the beneficiary as the Trustee deems appropriate for the beneficiary's health, education, support, and maintenance, adding to principal any undistributed income. The Trustee may make such payments to the beneficiary, or to his or her parent, guardian, or the person with whom the beneficiary resides, without having to look to the proper application of those payments. The Trustee may also make any payments to a custodian (who may be the Trustee) under any applicable Uniform Transfers (or Gifts) to Minors Act. When the beneficiary attains age twenty-one (21), the Trustee will pay him or her all of the remaining trust funds and this trust will end. If the beneficiary dies before attaining age twenty-one (21), the Trustee will pay all of such funds to the beneficiary's estate. The authority conferred on the Trustee is a power only and will not operate to suspend absolute vesting of any property in such beneficiary.

**ARTICLE VIII**

**Spendthrift Clause**

To the extent permitted by law, the beneficiaries' interests will not be subject to their liabilities or creditor claims or to assignment or anticipation.

**ARTICLE IX**

**Uneconomical Trusts**

If, after the Grantor's death, any trust created under this instrument ever shall have a fair market value of twenty-five thousand dollars ($25,000) or less, the Trustee may terminate such trust and distribute the trust funds to the issue of the Grantor, in equal shares, per stirpes.

**ARTICLE X**

**Merger, Consolidation, and Division**

For convenience of administration or investment, the Trustee of any trusts created hereunder may:

A. Invest the assets of multiple trusts in a single fund, assigning them undivided interests in such common fund, dividing the income proportionately and accounting for them separately;

B. Merge or consolidate any trust created hereunder together with any other trusts having the same trustee and substantially the same dispositive provisions; and

C. Divide any trust created hereunder into two (2) or more separate trusts, each such trust to contain a fractional share of the assets of the trust before such division.

**ARTICLE XI**

**Trustee's Powers**

A. The Trustee is exclusively empowered to do the following, exclusively in the Trustee's fiduciary capacity:

1. To hold and retain all or any property received from any source, without regard to diversification, risk, productivity, or the Trustee's personal interest in such property in any other capacity, and to keep all or part of the trust property at any place within the United States or abroad.

2. To invest and reinvest the trust funds (or leave them temporarily uninvested), in any type of property and every kind of investment, including (but not limited to) corporate obligations of every kind, preferred or common stocks, securities of any regulated investment trust, and partnership interests.

3. To participate in the operation of any business or other enterprise, and to incorporate, dissolve, or otherwise change the form of such business.

4. To deposit trust funds in any commercial savings or savings and loan accounts.

5. To borrow money (and mortgage, pledge or encumber any trust real or personal property to secure such loan) for any reasonable trust purpose and upon any such terms, including (but not limited to) interest rates, security, and loan duration, as the trustee deems advisable.

6. To lend trust funds to such persons and on such terms, including (but not limited to) interest rates, security, and loan duration, as the Trustee deems advisable; provided, however, that the trustee may not lend money to the Grantor's estate without receiving adequate security and an adequate rate of interest.

7. To sell or otherwise dispose of trust assets, including (but not limited to) trust real property, for cash or credit, at public or private sale, and with such warranties or indemnifications as the Trustee deems advisable.

8. To buy assets of any type from any person on such terms, including (but not limited to), cash or credit, interest rates, and security, as the Trustee deems advisable; provided, however, that the Trustee may not buy assets from the Grantor's estate other than at their fair market value.

9. To improve, develop, manage, lease, or abandon any trust assets, as the Trustee deems advisable.

10. To pay and advance money for the trust's protection and for all expenses, losses, and liabilities sustained in its administration.

11. To prosecute or defend any action for the protection of the trust, the Trustee in the performance of the Trustee's duties, or both, and to pay, contest, or settle any claim by or against the trust or the Trustee in the performance of the Trustee's duties.

12. To employ persons, even if they are associated with the Trustee, to advise or assist the Trustee in the performance of the Trustee's duties.

13. To determine what is principal or income and what items shall be charged or credited to either.

14. To distribute trust assets in kind or in cash.

15. To execute and deliver any instruments necessary or useful in the exercise of any of these powers.

B. During the administration of the Grantor's estate under applicable state law, the Trustee may use the trust funds, in the Trustee's discretion, to lend money to and buy assets from the Grantor's estate, on such terms and conditions as the Trustee deems to be in the best interests of the trust's beneficiaries. The Trustee will not, however, make grants to the Grantor's estate or otherwise distribute funds except through bona fide loans or purchases, it not being the Grantor's intention to make any persons who are not specifically so identified in this instrument, the beneficiaries of any trust created hereunder.

C. With respect to any life insurance policies held as part of the trust funds, the following special rules shall apply:

1. The Trustee may, in the Trustee's discretion, pay any premiums or other charges from trust income or principal. If the trust funds are inadequate to pay such premiums or charges, the Trustee may, in the Trustee's discretion, do one or more of the following: (a) use any automatic premium loan feature; (b) borrow against any policy cash reserves (whether or not on the policy for which premium or charges will be paid); or (c) elect any automatic non-forfeiture feature.

2. Any additional insurance policies, no matter how acquired (including, but not limited to acquisition by gift, conversion, reissue, consolidation), should be listed on Schedule A, but failure to do so does not affect the trust's policy ownership.

3. The Trustee may, in the Trustee's discretion, refuse to enter into or maintain any litigation, endorse policy payments, or take other action respecting any trust insurance policies, until the Trustee has been indemnified against all expenses and liabilities that, in the Trustee's judgment, may be involved in such action.

4. The Trustee need not inquire whether or not the Trustee or the trust has been designated the beneficiary of any insurance policy or other death benefit, and the Trustee need not act with respect to such policies until receipt of written notice that the Trustee or the trust is a beneficiary.

 5. No Trustee shall participate in the exercise of any discretion (including any discretion that would constitute an “incident of ownership” within the meaning of IRC 2042) with respect to any policy of insurance on his or her life held hereunder.

 D. In making any payment to a minor or disabled beneficiary, the Trustee may expend such payments for the benefit of such beneficiary or make such payments to such beneficiary, or to his or her parent, guardian, personal representative, or the person with whom he or she resides, without having to look to the proper application of those payments. This paragraph does not limit the Trustee's powers and must be construed to enable the Trustee to give each beneficiary the fullest possible benefit and enjoyment of all of the trust income and principal to which he or she is entitled.

**ARTICLE XII**

**The Trustees**

 A. Subject to the limitations set forth in Paragraph D of this ARTICLE and those contained elsewhere in this instrument, JOSEPH McNEIL, who is the husband of the Grantor, shall serve as trustee of this trust and he shall serve without bond. If, for any reason, he is unable or unwilling to serve or to continue to serve, then the Grantor’s two children, STUART McNEIL and TIFFANY McNEIL, shall serve as successor Co-Trustees, and they shall serve without bond. If, for any reason, either of them is unable or unwilling to serve or to continue to serve, then the other shall serve as sole Trustee, and shall serve without bond.

 B. Subject to the limitation set forth in Paragraph C of this ARTICLE, Grantor’s two children, STUART McNEIL and TIFFANY McNEIL, shall serve as Co-Trustees of all individual single beneficiary trusts administered under ARTICLE VI of this Trust Agreement, and they shall serve without bond. If, for any reason, one of them is unable or unwilling to serve or to continue to serve, then the other shall serve as sole Trustee, and he or she shall serve without bond.

 C. Notwithstanding the Trustee designation set forth in Paragraph B of this ARTICLE, no child of the Grantor shall be eligible to serve as Trustee of any individual single beneficiary trust administered under ARTICLE VI unless he or she is age forty-five (45) years or older. Unless and until any trustee designated in Paragraph B reaches that age, the designated successor Trustee shall serve in his or her stead; or, if one of two designated Co-Trustees is under that age, then the other Co-Trustee shall serve as sole Trustee until such child reaches the age of forty-five (45) years. If no trustee is available for any individual single beneficiary trust by reason of this limitation, then the Grantor’s brother, MICHAEL WILLIAMSON, shall serve as successor trustee of such trust, and he shall serve without bond.

 D. Notwithstanding any other provision hereunder, in the event that Trust assets from the trust principal that are in excess of the greater of $5,000 or 5% of the aggregate value of the Trust principal, are, in any calendar year, to be paid to or applied for the benefit of any beneficiary under any provision hereunder, the Grantor’s husband shall not participate in any such distribution or in the decision to make such distribution. In such event, only the successor Trustee shall participate in the decision to make such distribution. Furthermore, in no event shall the Grantor’s husband or any other Trustee of any trust created hereunder, acting in his or her capacity as beneficiary or Trustee, possess any power or authority, if the possession of such power or authority would be deemed to be a General Power of Appointment under Sections 2041 and 2514 (or any similar or successor statute) of the Internal Revenue Code.

 E. No Trustee shall be required to obtain the order of any court to exercise any power or discretion under this trust.

 F. Any Trustee or Co-Trustee shall have the authority to delegate any trustee duty to any other Co-Trustee, provided that such delegation may be revoked at any time by the delegating trustee. Further, the Trustee(s) may delegate any and all trust administrative duties to any third party, provided that such delegation may be revoked.

 G. No Trustee shall be required to file any accounting with any public official. The Trustee must, however, maintain accurate records concerning the trust. If requested by a Trust beneficiary, the Trustee shall furnish an annual accounting of the trust's condition, including receipts and disbursements, to each adult beneficiary of the current trust income. This required accounting may be satisfied by a copy of the trust's federal income tax return, if one is required.

**ARTICLE XII**

**Miscellaneous**

A. This declaration of trust shall be governed by and construed according to the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 B Whenever the context of this trust requires, the masculine gender includes the feminine and neuter, and vice versa, and the singular number includes the plural, and vice versa.

 C Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

 D. If any provision of this trust instrument should be invalid or unenforceable, the remaining provisions shall continue to be fully effective.

 E. Notwithstanding any contrary provision of this trust, the principal of any trust created hereunder shall vest absolutely in interest not later than twenty-one years after the death of the last survivor of the Grantor and any beneficiary who is living at the time of the creation of this trust. Immediately prior to the expiration of twenty-one years after the death of the last survivor of the above group, the principal of each trust that has not previously vested shall become payable to the issue of the Grantor, per stirpes.

 F. In the event that any technical corrections must be made to this trust document, the then acting trustee shall have the authority to make such technical corrections; provided, however, that the corrections must be consistent with the Grantors’ intentions in creating this trust, as set forth in this trust instrument, with regard to the beneficiaries of the trust, the uses and purposes of the trust, the distribution plan of the trust, etc.

 IN WITNESS WHEREOF, the Grantor has executed this agreement at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the day and year first written above.

*[notarized signatures of grantor and trustee]*

**Schedule A**

**[listing of the trust assets]**