

# THE \_\_\_\_\_ IRREVOCABLE LIVING TRUST

This Trust Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ as Grantor(s) and \_\_\_\_\_ as Trustee.

The Grantors, desiring to establish THE \_\_\_\_\_ IRREVOCABLE LIVING TRUST, a charitable remainder unitrust within the meaning of Section 5 of Rev. Proc. 90-31 issued by the Internal Revenue Service and Section 664(d)(2) and (3) of the Code, hereby transfer to the Trustee, and the Trustee acknowledges receipt of, the property described in Schedule A attached hereto. The Trustee agrees to hold, manage and distribute said property and any additional property subsequently transferred to the trust in accordance with the provisions hereof.

## ARTICLE I - DEFINITIONS

In this instrument, the following words or phrases shall have the meaning set forth next to them:

- A. "Grantors" - Said \_\_\_\_\_.
- B. "Code" - The federal Internal Revenue Code of 1986 as from time to time amended.
- C. "Executor" - The one or more executors, administrators or personal representatives of an estate then serving, regardless of gender.
- D. "Legal representative" - (1) The one or more legally appointed guardians, conservators or similar legal representatives of a person then serving, (2) an attorney-in-fact of a person if the power of attorney appointing such attorney authorizes such attorney to exercise a right conferred hereunder or (3) the parent of a minor to the extent that the laws of the state of the minor's domicile give the parent, without a judicial order, powers substantially equivalent to those of a guardian, conservator or the like over the property of the minor. If a person has more than one legal representative, the action of a representative under clause (1), if any, shall be binding, or, if none under clause (1), the action of a representative under clause (2), if any, shall be binding.
- E. "Recipient" - A person who is to receive a payment from the trust under Article II, Paragraph A, hereof.
- F. "Trustee" - The one or more persons then serving in the office of Trustee hereunder.
- G. "Trust income" - The income of the trust as defined in Section 643(b) of the Code and the regulations promulgated thereunder, taking into account the items properly chargeable thereto, including without limitation the expenses of administering the trust. Trust income shall include without limitation all the items described in Chapter 61, Title 12, Section 6112 of the (NAME OF STATE) Code, the provisions of which are hereby adopted by reference. In determining any increase under said Section 6112 in the value of an interest in a common trust fund held by the trust, the cost of the interest shall not include income or realized gains with respect to the interest which the common trust fund adds to principal or the trust invests in the common trust fund.
- H. "Valuation date" - The first day of each taxable year of the trust.

## ARTICLE II - DISTRIBUTIONS

A. In each taxable year of the trust, the Trustee shall pay to the Grantors jointly a unitrust amount equal to the lesser of (1) the trust income for the taxable year or (2) [insert a percentage which is not less than 5% nor more than 50%] per cent (\*\*%) of the net fair market value of the trust assets valued as of the valuation date. Upon the death of the first of the Recipients to die, the surviving Recipient shall be entitled to receive the entire unitrust amount. The unitrust amount for any year shall also include any amount of trust income for such year that is in excess of the amount required to be distributed under (2) above to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of the amounts computed as [insert same percentage as above] per cent (\*\*%) of the net fair market value of the trust assets on the valuation dates in such years.

B. The unitrust amount shall be paid in equal quarterly amounts on the last day of each calendar quarter year from income and, to the extent that income is not sufficient, from principal. At least as often as annually, any income of the trust for a taxable year in excess of the unitrust amount shall be added to principal. If for any year the net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Recipients (or the Recipients' executors) or to the surviving Recipient (or such Recipient's executor), in the case of an undervaluation, or receive from the Recipients (or the Recipients' executors) or from the surviving Recipient (or such Recipient's executor), in the case of an overvaluation, an amount equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

C. In determining the unitrust amount, the Trustee shall prorate the same on a daily basis for a short taxable year and for the taxable year of the Recipient's death. The obligation of the Trustee to pay such unitrust amount shall terminate with the regular quarterly payment next preceding the death of the surviving Recipient.

D. Upon the death of the surviving Recipient, the Trustee shall distribute all of the then principal and income of the trust, other than any amount due the Recipient or the Recipient's estate under the above provisions, to the following charitable organizations or their successors (each hereinafter referred to as a "Charitable Organization") to be used for the Charitable Organizations' general purposes, in the amounts or percentages or proportions thereof set forth next to each Charitable Organization's name:

1. [insert percentage]% to the [insert name and address of charity]
2. [insert percentage]% to the [insert name and address of charity]
3. [insert percentage]% to the [insert name and address of charity]

If any Charitable Organization is not an organization described in each of Sections [170(b)(1)(A), - include this section only if the grantor is certain a private foundation is not or will not become one of the charitable beneficiaries. If a private foundation may become a beneficiary, the charitable deduction for a gift to the trust will be limited to 20% of the grantor's adjusted gross income in any year. A five-year carryforward is available for the unused charitable deduction.] 170(c), 2055(a) and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, the Trustee shall distribute such principal or income to such one or more organizations then described in each of Sections [170(b)(1)(A), - see above] 170(c), 2055(a) and 2522(a) of the Code and in such amounts and proportions as the Trustee shall determine in its sole discretion.

### ARTICLE III - UNITRUST PROVISIONS

A. If any additional contributions are made to the trust after the initial contribution, the unitrust amount for the taxable year in which the additional contributions are made shall be equal to the lesser of (1) the trust income for the taxable year and (2) [insert same percentage as in Article II, Paragraph A] per cent (\*\*%) of the sum of (a) the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any income from, or appreciation on, such assets) and (b) that proportion of the fair market value of the assets so contributed that was excluded under (a) which the number of days in the period which begins with the date of contribution and ends with the earlier of the last day of the taxable year or the date of death of the surviving Recipient bears to the number of days in the period which begins on the first day of such taxable year and ends with the earlier of the last day in such taxable year or the date of the surviving Recipient's death. In case there is no valuation date in that taxable year after the time of contribution, the assets so added shall be valued as of the time of contribution. The unitrust amount for any such year shall also include any amount of trust income for such year that is in excess of the amount required to be distributed under clause (2) above to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of the amounts computed as [insert same percentage as above in this paragraph] per cent (\*\*%) of the net fair market value of the trust assets on the valuation dates.

B. If any additional contributions are made to the trust by will, the obligation to pay the unitrust amount with respect to such additional contribution shall commence with the date of death of the person under whose will the additional contribution is made, but payment of such unitrust amount may be deferred from such date of death to the end of the taxable year of the trust in which occurs the complete funding of the additional contribution. Within a reasonable period after such time, the Trustee shall pay to, in the case of an underpayment, or shall receive from, in the case of an overpayment, the Recipients or the surviving Recipient, as the case may be, the difference between any unitrust amounts actually paid to the Recipients or the surviving Recipient, as the case may be, plus interest, compounded annually, computed for any period at the rate of interest prescribed for such computation for such period under the regulations promulgated under Section 664 of the Code, and the unitrust amounts payable, determined under the method described in Section 1.664-1(a)(5)(ii) of said regulations, plus interest, compounded annually, computed for any period at the rate of interest that said regulations prescribe for such computation for such period. Any payments required to be made because of any underpayment shall be paid to the person (or his or her estate) who received the underpayment. Any repayments required to be made because of an overpayment shall be repaid by the person (or his or her estate) who received the overpayment.

C. The Trustee shall make distributions at such times and in such manner as not to subject the trust to tax under Section 4942 of the Code. Except for the payment of the unitrust amount to the Recipient, the Trustee is prohibited from engaging in any act of self-dealing as defined in Section 4941(d) of the Code, from retaining any excess business holdings as defined in section 4943(c) of the Code which would subject the trust to tax under Section 4943 of the Code, from making any investments which would jeopardize the charitable purpose of the trust within the meaning of Section 4944 of the

Code and shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

D. In creating this trust, the Grantors intend to obtain the full benefit of any income, gift and estate tax charitable contribution deductions to which the Grantors (and their estates) may be entitled under the Code, and for the trust to qualify as a charitable remainder unitrust under Section 664 of the Code and the regulations promulgated thereunder. Accordingly, the trust shall be interpreted, valued, managed, invested, administered and governed in a manner consistent with the Grantor's intent.

E. No part of any federal estate tax or state estate or other tax imposed by reason of the death of a Grantor or a Recipient, any debt of a Grantor's or Recipient's estate, funeral expense of a Grantor or Recipient or expense of administering the estate of a Grantor or Recipient shall be paid from the property of this trust. Unless a Grantor shall have made other provisions for the payment of said taxes and expenses, any such taxes and expenses shall be paid (or reimbursed) by the person (or the estate of such person) upon or to whose beneficial interest such taxes and expenses were imposed or charged such taxes. The lifetime unitrust interest of the surviving Recipient will continue in effect upon the death of the first Recipient to die only if the surviving Recipient furnishes the funds for payment of such taxes and expenses for which the Trustee may be liable upon the death of the first Recipient to die. If the surviving Recipient does not furnish said funds within a reasonable time after the death of the first Recipient to die, one half of the unitrust interest of the surviving Recipient will terminate as of the unitrust payment next preceding the death of the first Recipient to die and one-half of the then remaining principal and income of the trust and any distributions received or acquired thereon after the date of said payments shall be distributed as provided in Article II, Paragraph D above.

F. The trust created hereunder is irrevocable and may not be amended except that:

1. The Trustee shall have the power, acting alone, to amend the trust in writing at any time or times in any manner required for the sole purpose of insuring that the trust hereunder qualifies and continues to qualify as a charitable remainder unitrust within the meaning of Section 664(d)(2) and (3) of the Code.
2. Each Grantor shall have the power, exercisable only by such Grantor's last will to revoke or terminate the one-half of the unitrust interest of the surviving Recipient. If a Grantor effectively exercises such testamentary power, one-half of the trust property shall be administered as if the surviving Recipient had died on the date of such Grantor's death.
3. The Grantors, jointly while both are living, and the surviving Grantor shall have the right, exercisable from time to time in writing or writings signed by the Grantors or surviving Grantor and delivered to the Trustee while both are living, (in the case of the Grantors) or while the surviving Grantor is living (in the case of such Grantor), but not by will, to change the Charitable Organizations listed in Article II, Paragraph D to such one or more other Charitable Organizations as are described in Sections [170(b)(1)(A), - include this section only if the grantor is certain a private foundation is not or will not become one of the charitable beneficiaries. If a private foundation may become a beneficiary, the charitable deduction for a gift to the trust will be limited to 20% of the grantor's adjusted gross income in any year. A five-year carryforward is available for the unused charitable deduction.] 170(c), 2055(a) and 2522(a) of the Code, and to change the

amounts, percentages and or proportions of the trust property to be held for or distributed to such organizations.

#### **ARTICLE IV - INVESTMENTS**

A. While Grantor(s) are living, they jointly and, after the death of a Grantor, the surviving Grantor, shall have the right from time to time to appoint and remove an Investment Adviser to have the power and authority set forth in Paragraph B below with respect to the property of the trust. Each such appointment and removal shall be by written notice delivered to the Trustee and to each person so appointed or removed. Each Investment Adviser shall accept appointment in a writing delivered to the Trustee within ten (10) days after receipt of the notice of appointment. An Investment Adviser may resign at any time upon not less than thirty (30) days written notice to the then living Grantors and to the Trustee. The most recent such appointment shall bind the Trustee even if there is currently no person entitled or competent to exercise such right to appoint or remove. The then living Grantors shall be the Investment Advisers of any trust property for which another Investment Adviser has not been appointed. Each Investment Adviser, including a Grantor, shall be a fiduciary hereunder.

B. Each Investment Adviser shall have the power and authority, in the Investment Adviser's uncontrolled discretion, from time to time, to direct the Trustee:

1. To invest and reinvest in any kind of property, real, personal, or mixed, and to retain such investments, the original principal indefinitely, even though any or all of the property retained is of a type or size but for this express authority would not be a proper investment for a fiduciary.
2. To sell or exchange any property held under this trust and to execute transfers, assignments, deeds, mortgages, leases and other instruments of any kind.
3. To open accounts, including without limitation margin accounts, at brokerage firms.
4. To rent or lease real property interests held hereunder and to grant mineral rights, including without limitation the right to mine or drill for and remove minerals, for such periods of time (including ones extending beyond the termination of every trust hereunder) and upon such terms as the Investment Adviser deems proper; to subdivide and build upon any real property held hereunder.
5. To vote and give discretionary or other proxies for voting, to participate in reorganizations, consolidations and the like, and to join with other security holders in acting through committees, depositaries, trustees or otherwise.

The Investment Adviser shall have no duty to diversify investment of the original principal retained pursuant to Subparagraph 1 above. For purposes of determining diversification of the trust's investments only, the investments held by any entity in which the trust owns an interest shall be deemed to be owned directly by the trust pro rata in accordance with the trust's interest.

C. Any direction to the Trustee hereunder shall be in writing, by telephone facsimile, by electronic mail or by telephone, and in such form as the Trustee may specify from time to time by written notice to the Investment Adviser. The Trustee shall be fully protected in relying on any such direction from a person purporting to be the Investment Adviser without further inquiry by the Trustee.

D. While an Investment Adviser is serving, the Trustee shall have no responsibility or liability whatsoever to consider the advisability of purchasing, retaining or disposing



of any investment, unless the Trustee determines that any investment is unlikely to produce a reasonable amount of income or gain from its disposition. If the Trustee makes that determination, it shall promptly notify the Investment Adviser, and the Investment Adviser shall, within ten (10) days after such notification, direct the Trustee to sell such investment and reinvest the proceeds in another investment

E. The Trustee shall have the power and authority of an Investment Adviser set forth in Paragraph B above:

1. While both Grantors are serving as Investment Advisers, after the Trustee has received written notice from the Grantors' attending physicians that the Grantors are unable to manage their affairs and, while the surviving Grantor is so serving, after the Trustee has received written notice from the Grantor's attending physician that the Grantor is unable to manage his or her affairs;
2. After the death of the surviving Grantor; and
3. With respect only to an investment of which the Trustee has notified the Investment Adviser under Paragraph D above and the Investment Adviser has failed to act in accordance therewith.

F. The Trustee shall pay from the trust property the compensation of each Investment Adviser other than the Grantor.

G. No provision of this trust shall be construed to restrict the Trustee or any Investment Adviser from investing the trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

#### **ARTICLE V - THE TRUSTEE**

A. The Trustee may resign by delivery of a written resignation to the then living Grantors and, after the death of the Grantors, to any beneficiary. The then living Grantors shall have the right at any time, by written notice to a Trustee, to remove such Trustee. If a Trustee fails or ceases to act as Trustee, the then living Grantors shall have the right by a writing to appoint a successor Trustee. In the case of any vacancy in the office of Trustee hereunder not filled as aforesaid within thirty (30) days after the Trustee has resigned, the Trustee so resigning may appoint a successor Trustee upon written notice to any beneficiary. In the case of any vacancy in the office of Trustee hereunder not filled within sixty (60) days after such vacancy occurs, a successor Trustee may be appointed by any court having jurisdiction. Each such appointment not made by a court shall take effect upon written acceptance of the office.

B. The Trustee shall be entitled to reasonable compensation for its services hereunder, but not less than at the rates for trusts of a similar size and character contained in the schedule of fees it then publishes or quotes. In the event that the Trustee shall render any extraordinary services, it shall be entitled to additional compensation therefore.

C. In the event the Trustee is unable, or it is inconvenient for the Trustee, to act with respect to any trust property, the Trustee shall have the power from time to time to designate in writing an individual or entity having trust powers to act as Designated Trustee with respect to such property. Each Designated Trustee shall have all of the Trustee's powers with respect to such property provided under this Agreement except as the Trustee may otherwise specify or direct from time to time in writing. Any Designated

Trustee may resign at any time by delivery of a written resignation to the Trustee, and the Trustee may at any time by written notice remove the Designated Trustee.

D. No purchaser or other person relying in good faith on any act of a Trustee relating to any property held by such Trustee need inquire concerning the authority of such Trustee or as to any facts required by the provisions hereof for the exercise of such authority by the Trustee alone.

E. No Trustee shall be required to give any bond or surety. No one dealing with any Trustee hereunder need see to the application of any payment made or property transferred to him or upon his order. No Trustee shall be liable for errors of judgment or mistakes of fact or law, but shall be liable only for the Trustee's own receipts, and for willful defaults and gross negligence.

F. No successor Trustee hereunder shall have any duty to account for or inquire into the acts or omissions of any predecessor Trustee nor be liable for any such act or omission. Each successor Trustee shall be responsible only for property delivered to it by its predecessor Trustee.

G. If at any time the market value of the trust as determined by Trustee is \$50,000.00 or less, Trustee may, in its discretion, terminate the trust and distribute the trust property to the Charitable Organizations in accordance with Article II, Paragraph C.

H. Whenever a successor Trustee has accepted his appointment as such, title to the trust property shall automatically vest in him as Trustee.

I. Anyone may rely fully upon any statement of fact certified by any Trustee hereunder and acknowledged before a notary public.

J. While the trust holds an unmarketable asset as defined in Reg. Section 1.664-1(a)(7)(ii) promulgated under the Code, only a person who is not described in Section 672(c) of the Code and the regulations promulgated thereunder shall serve as Trustee. Such a person shall be referred to below as "independent." Whenever the trust receives an unmarketable asset and the Trustee is not independent, the Trustee shall resign before the trust's next valuation date, if any, or the thirtieth day following receipt of such property, whichever first occurs. If such a Trustee fails to resign as aforesaid, its service as Trustee shall automatically cease on the date aforesaid specified for its resignation. Any person appointed to fill a vacancy resulting from the operation of this paragraph shall be independent.

#### **ARTICLE VI - TRUSTEE'S POWERS**

Subject to Article IV - Investments above, the Trustee shall have the power and authority in its uncontrolled discretion, in addition to its powers conferred upon it by law and its other powers under this instrument:

A. To receive from any source additions to the principal of this trust and to hold and administer the same as though they were a part of the original principal.

B. To compromise, arbitrate or otherwise adjust claims in favor of or against the trust, or any matter in controversy.

C. To deduct from or reserve against income or principal such reasonable amounts as the Trustee considers properly chargeable thereto for any taxes, expenses and liabilities, whether then accrued or estimated.

D. To make any division, apportionment or distribution of principal in cash or in kind, or partly in cash and partly in kind, conveying transferable assets instead of cash at

then current values; to make such division, apportionment or distribution on other than a pro rata basis.

E. To keep trust property in the name of a nominee or otherwise without indication of any trust, with a depository or custodian or in book entry form.

F. Except as otherwise expressly provided herein, to decide all questions of apportionment between principal and income of all items of receipts, gains, taxes, expenses or liabilities.

G. To commingle, for convenience of administration, any property of separate trusts hereunder with one another and with those of other trusts of which it is the trustee.

H. To employ attorneys, accountants, custodians and sub-custodians, investment counsel, advisers and agents, to consult with them (and give investment counsel discretionary power to manage the investments of the trust), and to pay their compensation and expenses in connection therewith from the trust, without reduction of compensation otherwise payable to the Trustee.

I. To exercise any right as owner or beneficiary of an interest in any deferred compensation, pension, profit-sharing or retirement plan or trust.

#### **ARTICLE VII - GENERAL PROVISIONS**

A. The interest of any beneficiary in either the income or principal of the trust shall not be alienated, anticipated or in any other manner assigned or transferred by such beneficiary; and such interest shall be free from interference or control by and exempt from execution, attachment, distress for rent and other legal or equitable process which may be instituted by or on behalf of any creditor, assignee or spouse of such beneficiary. Notwithstanding the foregoing, any beneficiary (or, in the case of a beneficiary who dies prior to receiving property required to be distributed hereunder, such beneficiary's legal representative) may, by a writing delivered to the Trustee, disclaim, renounce or relinquish, in whole or in part, any interest (including a future interest and including any power with respect to property) such beneficiary may have in the trust.

B. Whenever a Recipient is entitled to a payment of income or principal from the trust (whether or not discretionary) and the Recipient is a minor, is ill or is away, or other circumstances make it impractical or undesirable, in the Trustee's opinion, to make such payment directly to the Recipient, the Trustee shall apply such payment for the Recipient's benefit in such manner as the Trustee thinks best for the Recipient and regardless of the Recipient's other resources. Such application for the beneficiary's benefit may be made directly or through a guardian or member of the Recipient's family. The receipt of the payee with respect to each payment made in any of the foregoing ways shall be a sufficient discharge of the Trustee so that it need not see to the further application thereof.

C. The receipt of the payee with respect to each payment made in any manner specified in this instrument shall be a sufficient discharge of the Trustee so that it need not see to the further application thereof.

D. The taxable year of the trust shall be the calendar year.

#### **ARTICLE VIII - ACCOUNTINGS**

The Trustee may from time to time render an account of its administration of each separate trust hereunder to each beneficiary who during the period covered by the



account was entitled absolutely to a distribution from the trust. The written assent thereto of each such beneficiary shall fully protect the Trustee as to all matters or transactions stated in such account or shown thereby. Any beneficiary who is not of full age and legal capacity shall be deemed to assent to such account if his or her legal representative assents in writing to the account or if (the beneficiary having no such legal representative) any parent of the beneficiary assents in writing to the account. Any beneficiary to whom any such account is rendered shall be deemed to assent to it unless he or she (or, if the beneficiary is not of full age and legal capacity, his or her legal representative or, if none, his or her parent) gives the Trustee written objection thereto within sixty (60) days after the account is rendered.

#### **ARTICLE IX - MISCELLANEOUS**

A. To the extent permitted by law, while a corporation is serving as Trustee hereunder, this trust agreement and the trusts hereunder are to be governed, construed and administered according to the laws of the state in which such trustee has its principal office. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust under Section 664(d)(2) and (3) of the Code and the regulations promulgated thereunder.

B. The article headings hereunder are for convenience only and shall not be deemed to affect the meaning or interpretation of any provision hereof. The singular shall include the plural, the plural shall include the singular, and a reference to one gender shall include the other two, where the context so admits. This agreement may be executed in one or more counterparts, each of which shall be deemed to be the original.

Signed and sealed the day and year first above written

Grantor -

Grantor-

Trustee - The \_\_\_\_\_ Company of (NAME OF STATE)

By:

**SCHEDULE A**