

SOLVENCY LETTER

To: Wilmington Trust Company, Trustee  
From: [*Trustor Full Name*]  
Re: The [*Trustor Full Name*] Irrevocable Trust Agreement, dated «Date of Execution»  
("Trust")  
Date: [*Date of Execution*]

This letter is written to you in connection with my creation of the Trust, which Trust I have signed (as Trustor) concurrent with the execution of this letter and which Trust I (as Trustor) will fund (i.e., transfer property to) subsequent to the execution of this letter.

I am aware that, under certain circumstances, assets held in the Trust may not be reached by my personal creditors. But, I understand that, under existing Delaware law,<sup>1</sup> a personal creditor of mine could reach assets held in the Trust if the creditor could prove that my transfer of assets to the Trust was a fraudulent transfer. I also understand that no assurance can be given that Delaware law would apply to the determination as to whether a transfer of assets to the Trust is a fraudulent transfer. Accordingly, I acknowledge that I have, to the extent I deem advisable, had the opportunity to consult with counsel in Delaware and in other states, including my state of residence, regarding the laws pertaining to fraudulent transfers in those states.

You have not advised me in any manner with respect to the fraudulent-transfer laws, or law of similar import, in any state.

I have no intent to hinder, delay, or defraud any creditor of mine in connection with the transfer of assets to the Trust or otherwise.

I am not now engaged in, nor do I have any intent or plan to engage in, any business or transaction for which my assets remaining after the completion of my intended transfer of assets to the Trust would be unreasonably small in relation to the business or transaction.

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<sup>1</sup> Under Delaware law, a transfer is fraudulent if: (i) made by the debtor with actual intent to hinder, delay, or defraud a creditor, (ii) the debtor engages in a business or transaction for which his or her assets remaining thereafter are unreasonably small in relation to the business or transaction, or (iii) the debtor intended or should have known that he or she would incur debts beyond his or her ability to pay when due. See Del. Code Ann. tit. 6, § 1304(a). The fraudulent-transfer laws of other states may be more or less restrictive.

This document is not designed or intended to provide financial, tax, legal, accounting, or other professional advice because such advice always requires consideration of individual circumstances. If professional advice is needed, the services of a professional advisor should be sought.

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I do not intend to incur, nor do I have any belief or reason to believe that I will incur, debts beyond my ability to pay when due.

Except for those matters, if any, that are disclosed on attached **Exhibit A**, I am not presently involved in, nor am I aware of, any pending or threatened litigation in which any person is directly or indirectly seeking damages against me. Except for those matters, if any, that are disclosed on the attached **Exhibit A**, I am not involved in any administrative proceeding under the jurisdiction of a federal, state, or municipal government as of this date.

Upon the completion of my intended transfer of assets to the Trust, I will *not* have made a transfer to the Trust of substantially all of my assets.

Except for those matters, if any, that are disclosed on attached **Exhibit B**, to the best of my knowledge, I am not liable for, or indebted to, any person who suffered death, personal injury, or property damage on or before the date upon which I create and fund the Trust, whose death, personal injury, or property damage may be determined at any time to have been caused, in whole or in part, either by my act or omission or by the act or omission of another person for whom I am vicariously liable.

Except for those matters, if any, that are disclosed on attached **Exhibit C**, I am not presently in arrears on account of any agreement or court order for the payment of support or alimony in favor of a former spouse or my children, nor have I failed to comply with any agreement or court order providing for the division of property in favor a former spouse.

I have no intent to abscond.

No part of my intent in creating the Trust is to conceal assets.

I am not currently insolvent, nor have I incurred debts I am unable to pay when due. I do not currently contemplate filing for relief under the provisions of the United States Bankruptcy Code, nor am I involved in any situation that I reasonably anticipate would cause me to file for relief thereunder in the future.

Following the completion of my intended transfer of assets to the Trust, I will remain solvent and the value of my assets will substantially exceed my debts. To the best of my knowledge, I will remain able to pay my debts as they come due.

When I state that my assets will exceed my debts, I am referring to all of my assets, *except* the following: (1) the value of any valid liens against my assets, (2) my assets that are generally exempt under non-bankruptcy law, and (3) any tenancy-by-the entirety asset that is subject to process by a creditor holding a claim against both tenants.

I am not about to incur substantial debt, nor have I already incurred a substantial debt in relation to the value of my assets.

I have full right, title, and authority to make the intended transfer of assets to the Trust. None of

the assets that I intend to transfer to the Trust have been pledged or otherwise promised in satisfaction of any debt, and none of those assets are subject to any lien, encumbrance, or security interest of any type.

The assets intended to be transferred to the Trust were not derived from unlawful activities.

Whenever, in this letter, I refer to my "creditors" or my "debts," I mean to include both my direct creditors and direct debts and those creditors to whom, and those debts for which, I am, or may be, jointly and severally liable or indirectly liable such as, for example, those creditors to whom, and debts for which, I am, or may be, liable on account of my status as a general partner in a partnership or guarantor of the debt of another.

I intend that each person now or hereafter serving as Trustee or Adviser under the Trust may rely upon this letter in agreeing to act as a fiduciary of the Trust. You, along with any other Trustee of the Trust, may rely upon it for any purpose including assisting in any defense in any legal proceeding that may be brought against you in your corporate or fiduciary capacity.

Very truly yours,

\_\_\_\_\_  
[*Trustor Full Name*]

WITNESS:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by [*Trustor Full Name*].

\_\_\_\_\_  
Notary Public