

**FORM #15**

[Irrevocable Trust. Settlor is married. Designed to hold insurance on life of settlor. Crummey powers. Contingent payment of taxes. Creates contingent QTIP, credit-shelter-style trust for surviving spouse, management-style trusts for children until stated ages.]

**IRREVOCABLE TRUST AGREEMENT**

Made February 1, 2010.

**ARTICLE I**

**Purpose**

I, KENNETH N. JAMES, of Peoria, Illinois, transfer to BEATRICE E. JAMES, of Peoria, Illinois, as Trustee, ten dollars and other consideration. The Trustee agrees to administer this property, together with any additions and changes, according to this instrument.

**ARTICLE II**

**Disposition During My Life**

During my life, the Trustee shall administer the trust estate as provided in this Article.

Section 2.01. Lifetime Trust. The Trustee shall set the trust estate apart, in a separate trust to be known as the "Lifetime Trust" and to be administered as provided in this Section.

(A) Distributions. The Trustee shall pay to any one or more of my wife and my descendants, without any duty of equalization, so much or all, if any, of the trust estate as the Independent Trustee in its sole and absolute discretion determines to be advisable from time to time, considering or not considering resources otherwise available, for any purpose or reason whatsoever, including the termination of the trust.

(B) Right to Withdraw. Notwithstanding any other provision of this instrument, the Trustee shall pay to each person (the "donee") who is my wife or a descendant of mine so much or all, if any, of the trust estate as the donee has a right to withdraw according to paragraph (1) and directs in writing before the right lapses according to paragraph (3).

(1)

(a) Whenever I make a contribution to the Trustee, my wife shall have the right to withdraw so much of the trust estate as has a value equal to the value of the contribution to such extent as the contribution, if given outright to my wife, would be excluded (according to Section 2503(b) of the Code) from my taxable gifts for purposes of determining United States gift tax.

(b) Whenever any donor makes a contribution to the Trustee, each donee (other than my wife, if I am the donor) shall have the right to withdraw so much of the trust estate as has a value equal to (i) the value of the contribution to such extent as the contribution exceeds any right to withdraw that the contribution generates according to (a) and, if given outright to the donee and gifts were split to the maximum extent according to Section 2513(a) of the Code, would be excluded (according to Section 2503(b) of the Code) from taxable gifts for purposes of determining United States gift tax or, if less, (ii) the product of (I) the value of the contribution to such extent as the contribution exceeds any right to withdraw that the contribution generates according to (a) and (II) a fraction of which the numerator is the amount that is described in (i) with respect to the donee and of which the denominator is the aggregate of the amounts that are described in (i) with respect to all donees.

Notwithstanding the preceding portion of this paragraph (1), the donor by direction delivered to the Trustee before or with any particular contribution may increase (to such extent as all rights to withdraw arising because of the contribution do not exceed the contribution) or decrease or eliminate any right to withdraw that, but for the direction, would arise because of the contribution.

(2) The property subject to the donee's right to withdraw shall be from such number of separate portions as there are contributions which empower the donee to withdraw some amount. Each separate portion shall consist of a particular contribution (and its proceeds but not any income or accretion), to such extent (if any) as the contribution empowers the donee (or, as the case may be, the donee and any one or more others) to withdraw. The donee shall have the right to withdraw from each portion the amount that the contribution to which the portion is attributable empowers the donee to withdraw; provided, no donee at any particular time shall have the right to withdraw from any property subject to withdrawal any amount greater than (i) (a) the amount (determined without regard to this provisory clause) that the donee then can withdraw from the property divided by (b) the amount (determined without regard to this provisory clause) that all donees then can withdraw from the property, multiplied by (ii) the value of the property at such time.

(3) The donee's right to withdraw shall lapse only upon the first to occur of

(a) The donee's death;

(b) My death, if my wife survives me, with respect to any of the trust estate that is included in my gross estate for purposes of determining the United States estate tax payable because of my death; and

(c) To such extent as the right is attributable to a particular contribution and the lapse of the donee's right during the calendar year does not exceed the greater of (I) five thousand dollars and (II) five percent of the value at the time of lapse of the property from which the Trustee can satisfy the right, the end (or as soon as possible after the end) of the four hundred tenth day after the contribution is made; provided, this clause (c) shall apply (i) to each portion of a right (compared to each other portion) in the same sequence as the contribution to which the portion is attributable (compared to each other contribution), so that any lapse of the portion that is attributable to the particular contribution shall occur at such time and in such amount as if no gift were made after the particular contribution, and (ii) as if any right created according to another instrument were created according to this subsection (B).

Notwithstanding the preceding portion of this paragraph (3), the donor by direction delivered to the Trustee before or with any particular contribution may increase or decrease what, but for the direction, would be the duration of any right to withdraw that is attributable to the contribution.

(4) The Trustee shall notify the donee (and any person described in the next sentence) about all rights granted to the donee pursuant to this subsection (B). A person described in subsection (F) of Section 6.03 may exercise the rights for any legally incapacitated donee.

(C) Insurance. The Trustee may apply any of the trust estate to the payment of premiums on policies of insurance on my life.

(D) Termination. Unless sooner terminated by distribution or expenditure according to the foregoing, the Lifetime Trust shall terminate upon my death, and, subject to any remaining portion of any right to withdraw granted according to subsection (B) of this Section, the Trustee shall administer the trust estate of the Lifetime Trust according to the subsequent provisions of this instrument.

### ARTICLE III

#### Disposition Upon My Death

Upon my death, the Trustee shall administer the trust estate as provided in this Article.

Section 3.01. Taxes. If any of the trust estate is included in my gross estate for purposes of determining the United States estate tax payable because of my death, the Trustee shall pay estate and inheritance taxes (including any interest and penalty) payable because of my death, in such amount, if any, as these items are increased because of inclusion of the trust estate in my estate for such death tax purposes. The Trustee shall make the payments directly or to my personal representative, without apportionment or reimbursement, from principal of the trust estate so included, as an expense of administration. Notwithstanding the preceding portion of this Section, I apportion to, and the Trustee shall pay (or obtain reimbursement) from, principal of each disposition (or, when functionally significant, share or portion) according to Section 3.02 and Section

## A-188 Flexible Trusts and Estates, Fourth Edition

3.03 the amount, if any, by which the disposition (or share or portion) increases the estate and inheritance taxes, interest and penalty payable because of my death. Notwithstanding anything to the contrary, the Trustee shall not make any payment from any property that is excluded from my gross estate for purposes of determining the United States estate tax payable because of my death or that is elected to qualify for the marital deduction for purposes of determining any estate tax payable because of my death.

Section 3.02. Marital Trust. If my wife survives me or there is no sufficient evidence that we died other than simultaneously (in which event my wife conclusively shall be presumed for purposes of this Section to have survived me) and any of the trust estate is included in my gross estate for purposes of determining the United States estate tax payable because of my death, the Trustee as of my death shall set apart, in a separate trust to be known as the "Marital Trust" and to be administered as provided in this Section, all of the trust estate that so is included and that consists of Qualified Property which remains after satisfaction of all dispositions and payments under prior provisions of this instrument. "Qualified Property" shall mean such property (or its proceeds) in the trust estate as, if given outright to my wife, would qualify for the marital deduction for purposes of determining the United States estate tax payable because of my death. My personal representative shall elect according to the principles of Section 2056(b)(7) of the Code to qualify the trust estate of the Marital Trust for the marital deduction, to such extent, if any, as my personal representative determines to be advisable. If less than all of the trust estate of the Marital Trust qualifies for the marital deduction, the portion that qualifies shall be known as the "Marital Portion," the portion that does not qualify shall be known as the "NonMarital Portion," and (i) the Trustee shall charge any payment of principal according to subsection (A)(2) of this Section to the Marital Portion until the Marital Portion is exhausted, (ii) at any time during the life of my wife before the end of the administration of my estate, the Trustee may divide the trust estate of the Marital Trust into separate trusts consisting, respectively, of the Marital Portion and the NonMarital Portion and (iii) the Trustee shall administer each separate trust, created according to (ii), as if, separately, the separate trust were the Marital Trust.

(A) Disposition During Life of My Wife. During the life of my wife, the Trustee shall administer the Marital Trust as provided in this subsection (A). The Marital Trust is primarily for the benefit of my wife, and I would approve (but do not direct) the exercise of each power (determined as if this sentence did not exist) to the maximum extent in favor of my wife.

(1) Income. The Trustee shall pay the net income to my wife quarter-annually.

(2) Principal. The Trustee shall pay to my wife so much or all, if any, of the principal as the Trustee determines to be necessary or advisable from time to time, considering resources otherwise available, to provide for her health, education and support in the manner of living to which accustomed. Additionally, the Trustee shall pay to my wife so much or all, if any, of any balance of the principal as the Independent Trustee in its sole and absolute discretion determines to be advisable from time to time, considering or not considering resources otherwise available, for any purpose or reason whatsoever, including the termination of the trust.

(B) Disposition on Death of My Wife. Upon the death of my wife, the Trustee shall distribute any undistributed or accrued income to her estate and shall distribute the principal to such one or more members of a group consisting exclusively of my descendants in such amounts and portions and subject to such trusts, terms and conditions as my wife may appoint by Will specifically referring