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**THE BLACK 2006 FAMILY  
TRUST AGREEMENT**

**Dated:** \_\_\_\_\_

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
I : TRUST FUND .....	1
II : THE BLACK 2006 FAMILY TRUST .....	1
III : SEPARATE TRUSTS FOR ISSUE .....	4
IV : SPECIAL DISTRIBUTION RULES .....	9
V : ADDITIONS .....	16
VI : TRUSTEES' INVESTMENT AND ADMINISTRATIVE POWERS .....	17
VII : RESTRICTIONS ON POWERS .....	30
VIII : IRREVOCABILITY; MODIFICATION .....	32
IX : ACCOUNTING BY TRUSTEES .....	37
X : TRUSTEE DESIGNATIONS, RESIGNATIONS, AND REMOVALS .....	38
XI : ACTION BY TRUSTEES .....	42
XII : LIABILITY AND INDEMNITY OF TRUSTEES .....	43
XIII : DEFINITIONS AND RULES OF CONSTRUCTION .....	45

TRUST AGREEMENT made the 21st day of December, 2006, between LEON D. BLACK, as Settlor, and LEON D. BLACK and JOHN J. HANNAN, as Trustees.

### **I: TRUST FUND**

The Settlor hereby assigns, transfers and delivers to the Trustees the property listed on Schedule A annexed hereto. The Trustees acknowledge receipt of such property and agree to hold such property and all other assets that are a part of the Trust Fund in trust and to manage and dispose of it in accordance with the provisions of this Trust Agreement. This property shall be the original Trust Fund of a Trust for the benefit of the Beneficiaries, the dispositive terms of which are set forth in Article II. The Trust may be identified as the "BLACK 2006 FAMILY TRUST."

This Trust Agreement may be identified as the "BLACK 2006 FAMILY TRUST AGREEMENT." The Beneficiaries under this Trust Agreement at any particular time are those of the Settlor's spouse and the Settlor's issue who are then living. The definitions of the other terms used in this Trust Agreement are set forth in Article XIII or where they first appear.

### **II: THE BLACK 2006 FAMILY TRUST**

Following are the dispositive provisions of the "BLACK 2006 FAMILY TRUST":

(A) ***Mandatory Income Payments to Settlor.*** (1) Each year the Trustees shall distribute to the Settlor an amount equal to the Trust Accounting Income in such installments as may be convenient to the Trustees.

(2) For purposes of this section, the term "Trust Accounting Income" shall mean any distribution received by the Trust with respect to an interest in any of the Relevant Companies held in the Trust to the extent such distribution is derived from the Operating Profits

of any such Relevant Company. For purposes of this section, the term “Operating Profits” shall mean net profits for any year without taking into account any items of income, gain, loss or deduction generated or incurred in connection with a transaction constituting a Distribution Event. For purposes of this section, the term “Distribution Event” shall be interpreted broadly, and shall mean an extraordinary transaction (or a series of related transactions) involving any one or more of the Relevant Companies, whether occurring directly or indirectly, that constitutes a sale to, or material investment by, a Third Party Investor, in circumstances in which one or more members or partners of the Relevant Companies receive Distributions (or sales proceeds in respect of their interests) as a result of, or in connection with, such extraordinary transaction (or series of related transactions). For purposes of this section, the term “Distributions” shall mean all distributions made by any Relevant Company to its members or partners, whether in cash, property, dividends or distributions upon the occurrence of a dissolution of such Company or otherwise. For purposes of this section, the term “Third Party Investor” shall mean a Person who is not a private equity professional employed by a Relevant Company and who makes an investment in the Relevant Company in circumstances designed to monetize one or more of the equity interests in any Relevant Company.

(3) For purposes of this section, the term “Relevant Companies” shall mean all of the following entities, including any of their subsidiaries or successors in interest (whether by way of merger, exchange of interests or otherwise): Apollo Management, L.P., Apollo Management IV, L.P., Apollo Management V, L.P., Apollo Management VI, L.P., Apollo Investment Management, L.P., Apollo Value Management, L.P., Apollo SVF Management, L.P., Apollo Asia Management, L.P., Apollo Europe Management, L.P. and Apollo Alternative Assets, L.P.

(B) **Distributions.** (1) The Trustees shall pay or apply as much of the income of the Trust not disposed of pursuant to section (A) of this section and as much of the principal of the Trust to DEBRA so long as DEBRA is a Beneficiary as the Trustees, in their sole discretion, shall determine is necessary for DEBRA's health, education, support and maintenance, taking into consideration DEBRA's financial resources apart from the Trust.

(2) The Trustees shall pay or apply as much of the remaining income of the Trust not disposed of pursuant to section (A) of this section and as much of the principal of the Trust as the Independent Trustees, in their sole discretion, shall determine, to or for the benefit of such one or more of the Beneficiaries (to the exclusion of any one or more of them) and in such amounts or proportions as the Independent Trustees, in their sole discretion, shall determine. Payments or applications pursuant to this subsection may be made at any time or from time to time, for any reason or purpose whatsoever. In exercising the discretion granted in this subsection, the Independent Trustees need not, but may, consider such of the financial resources apart from the Trust as they deem appropriate of the Beneficiaries, or any one or more of them.

(3) At the end of each year, the Trustees shall add to principal any net income not paid or applied pursuant to the previous provisions of this Article. The Settlor confirms that the entire Trust Fund may be distributed at any time to or for the benefit of any one or more of the Beneficiaries pursuant to this section, even though such distribution terminates the Trust, without regard to the interest of any remainderman of the Trust.

(C) **Trust Termination.** (1) Unless sooner terminated by the distribution of the entire Trust Fund, the Trust shall terminate upon the death of the Settlor, or, if the Settlor is survived by the Settlor's spouse, upon the earlier to occur of the death of the Settlor's spouse and the Perpetuities Date. The date on which the Trust is to terminate is referred to as the

“Termination Date.” Upon such termination, the Trustees shall pay the Trust Fund to the Settlor’s Children living on the Termination Date in equal shares, or if none of the Settlor’s Children is living on the Termination Date, to the Settlor’s issue living on the Termination Date, subject, in each case, to the provisions of Article III.

(2) Notwithstanding subsection (1), at any time or from time to time within one year following the death of the survivor of the Settlor and the Settlor’s spouse, and before actual distribution of the Trust Fund in accordance with subsection (1), the Trustees shall have the power to make loans to and to purchase assets from any estate or any trust, as described in Article VI, and to delay the actual distribution of the Trust Fund for that purpose. The authority granted by the preceding sentence shall not affect the vesting of the Trust Fund, which shall be determined as of the date of the Trust’s termination as described in the first sentence of subsection (1).

### **III: SEPARATE TRUSTS FOR ISSUE**

If at the termination of any Trust (including any Trust under this Article), any share of such Trust is payable to an issue of the Settlor subject to the provisions of this Article, such share shall not be paid outright to such issue (referred to in this Article as the “Primary Beneficiary”), but shall instead be held in as many separate Trusts for the benefit of the Primary Beneficiary upon the terms set forth in this Article as the Trustees of such terminated Trust, in their sole discretion, shall direct.

(A) **Distributions.** (1) The Trustees shall pay to the Primary Beneficiary, or apply for his or her benefit, as much of the Trust Fund as the Trustees, in their sole discretion, shall determine is necessary for the Primary Beneficiary’s health, education, support and

maintenance, taking into consideration the Primary Beneficiary's financial resources apart from the Trust.

(2) The Trustees shall pay to the Primary Beneficiary or apply for his or her benefit, as much of the Trust Fund as the Independent Trustees, in their sole discretion, shall determine. Payments or applications pursuant to this subsection may be made at any time or from time to time, for any reason or purpose whatsoever. In exercising the discretion granted in this subsection, the Independent Trustees need not, but may, consider such of the Primary Beneficiary's financial resources apart from the Trust as they deem appropriate.

(3) At the end of each year, the Trustees shall add to principal any net income not so paid or applied. The Settlor confirms that the entire Trust Fund may be distributed at any time to or for the benefit of the Primary Beneficiary pursuant to this section, even though such distribution terminates the Trust, without regard to the interest of any remainderman of the Trust.

(4) It is the Settlor's desire, but not the Settlor's direction, that when the Primary Beneficiary attains thirty-five (35) years of age, the Trustees distribute to the Primary Beneficiary TEN (10%) PERCENT of the Trust Fund if the Independent Trustees believe it appropriate to do so.

(B) ***Primary Beneficiary's Right to Direct Payment.*** (1) In each calendar year prior to the year of the Primary Beneficiary's death, if the Primary Beneficiary is competent and at least twenty-five (25) years of age at the beginning of such year, the Primary Beneficiary shall have the absolute right, from time to time, to direct the Trustees to pay to the Primary Beneficiary out of the Trust Fund an aggregate amount not exceeding the amount (the "Annual Amount"), if any, by which (i) an amount equal to three percent (3%) of the Trust Fund valued on the Withdrawal Valuation Date as hereinafter defined of the calendar year in which the

Primary Beneficiary submits such direction exceeds (ii) the sum of all amounts paid or applied pursuant to section (A) to or for the benefit of the Primary Beneficiary during the portion of such calendar year preceding such direction, provided that such Primary Beneficiary's right to direct such payment has not been postponed, suspended or terminated pursuant to Article IV(J). For purposes of this section, the term "calendar year" shall include the portion of the calendar year following the Trust Commencement Date, but shall not include the portion of the calendar year of the Primary Beneficiary's death that precedes the Primary Beneficiary's death. The right to direct payment shall be noncumulative and shall be exercised by a written instrument signed by the Primary Beneficiary alone (and not by any guardian, conservator, committee, attorney-in-fact or other legal representative purporting to act on the Primary Beneficiary's behalf) and delivered to the Trustees prior to the close of such year.

(2) In any particular calendar year, the Trustees are authorized to make payments to the Primary Beneficiary on account of the Annual Amount based upon the lesser of (a) the value of the Trust Fund at the time of such direction and (b) the value of the Trust Fund on the first day of such calendar year, notwithstanding that (i) the Annual Amount cannot be precisely determined until the end of such year and (ii) the Primary Beneficiary may not be living at the end of such year. At the end of such year, in determining the Annual Amount, any such payment shall be treated as an asset, in the form of a loan from the Trust, valued at the amount distributed, until the moment immediately following the time of determination of the Annual Amount. If it is determined, after the end of such year, that there has been an overpayment, then the Primary Beneficiary (or the Primary Beneficiary's Personal Representatives, if the Primary Beneficiary is not then living) shall repay to the Trustees the amount by which the aggregate payments made in such year on account of the Annual Amount

exceed the Annual Amount. The Primary Beneficiary's Personal Representatives shall repay to the Trustees an amount equal to the aggregate payments, if any, made to the Primary Beneficiary during the year of the Primary Beneficiary's death on account of the Annual Amount.

(3) For purposes of this section, the "Withdrawal Valuation Date" for any particular calendar year shall be the first day of such calendar year, unless the value of the Trust Fund on the last day of such calendar year is less than the value of the Trust Fund on the first day of such calendar year, in which case the "Withdrawal Valuation Date" for such calendar year shall be the last day of such calendar year.

(C) ***Powers of Appointment.*** (1) At any time or from time to time, the Primary Beneficiary, if he or she is at least twenty-five (25) years of age, shall have the absolute power to appoint any part or all of the Trust Fund to or for the benefit of such one or more of the Settlor's issue (other than the Primary Beneficiary and other than those whose deaths preceded the time the appointment is effective) in such amounts and proportions, either outright or in further trust, upon such terms and conditions (including the granting to the appointee of a further and general or limited power of appointment), and to the exclusion of any one or more of them, as the Primary Beneficiary shall determine, provided that such Primary Beneficiary's power of appointment has not been postponed, suspended or terminated pursuant to Article IV(J). The Primary Beneficiary may exercise this power of appointment at any time when he or she is competent either (a) by a written instrument that is delivered to the Trustees, which makes specific reference to this section and which is signed and acknowledged by the Primary Beneficiary or (b) by a provision in his or her Will that makes specific reference to this section. Any appointment made by such exercise shall be effective on the date specified in the written instrument or in the Primary Beneficiary's Will, as the case may be, provided, however, that, in

the case of an exercise by Will, such date shall not precede the date of the Primary Beneficiary's death.

(2) (a) The Independent Trustees, at any time, may grant to the Primary Beneficiary a general power of appointment (as defined in § 2041 of the Code) which may be subject to such restrictions as the Independent Trustees set forth in the instrument by which the power is granted. The grant of this power shall be effected by written instrument signed by a majority of the Independent Trustees and delivered to the Primary Beneficiary, and may be revoked at any time during the Primary Beneficiary's lifetime by written instrument of revocation signed by a majority of the Independent Trustees and delivered to the Primary Beneficiary. If revoked, a new power of appointment may be granted as provided in the preceding provisions of this subsection.

(b) In considering whether to grant a general power of appointment to the Primary Beneficiary, the Settlor requests that the Independent Trustees give particular consideration to the likelihood that generation-skipping transfer taxes imposed on the Trust at the Primary Beneficiary's death would exceed the estate taxes otherwise payable with respect to the Trust if the Trust Fund were included in the Primary Beneficiary's gross estate for estate tax purposes. For this purpose, the Independent Trustees may rely without further investigation on a statement provided by or on behalf of the Primary Beneficiary as to the potential value of the Primary Beneficiary's gross estate.

(D) ***Trust Termination.*** Unless sooner terminated by the distribution of the entire Trust Fund, the Trust shall terminate on the date of the Primary Beneficiary's death. Upon such termination, the Trustees shall pay the Trust Fund, if and to the extent not effectively appointed pursuant to a power granted under this Article, to the Primary Beneficiary's issue who

survive the Primary Beneficiary, or, if no issue of the Primary Beneficiary survives the Primary Beneficiary, to the issue who survive the Primary Beneficiary of the Primary Beneficiary's nearest ancestor who was an issue of the Settlor and who has issue who survive the Primary Beneficiary, or, if there is no such ancestor or issue, to the Settlor's issue who survive the Primary Beneficiary, subject, in each case, to the provisions of this Article.

(E) ***Termination on Perpetuities Date.*** Notwithstanding any other provision of this Trust Agreement, the Trust shall terminate, unless it shall have sooner terminated, on the Perpetuities Date. Upon such termination, the Trustees shall pay the Trust Fund to the Primary Beneficiary, outright and not in trust.

#### **IV: SPECIAL DISTRIBUTION RULES**

(A) ***Per Stirpital Distributions.*** Except when otherwise provided, mandatory distributions or payments of property to the issue of a particular individual (including distributions subject to the provisions of Article III) shall be distributed or paid on a per stirpes basis. The preceding sentence shall not apply to discretionary distributions or payments, or to payments made pursuant to the exercise of a power of appointment granted under this Trust Agreement. A per stirpital distribution or payment shall require an initial division into the number of shares required to provide one share for each then living child of such individual, if any, and one share for each then deceased child of such individual who has issue then living. Each then living child shall be allotted one share and the share of each deceased child shall be divided in the same manner among such deceased child's then living issue.

(B) ***Beneficiaries Under a Legal Disability or Under 21.*** (1) Distribution of any money or other property from any Trust to an individual who is under a legal disability may, in the sole discretion of the Trustees, be made directly to that individual, or to any Person

(including a Trustee) who is that individual's parent or that individual's guardian, conservator or similar fiduciary in whatever jurisdiction appointed and however denominated.

(2) In addition, distribution of any money or other property from any Trust to an individual who is younger than twenty-one (21) years of age (whether or not he or she is an "infant" or "minor" under local law and whether or not he or she is under any other legal disability), may be made to a Person selected by the Trustees (including a Trustee) as custodian for such individual's benefit under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any jurisdiction.

(3) Any receipt or release furnished by a Person who receives a distribution pursuant to this section on behalf of a beneficiary shall fully release and discharge the Trustees with respect to such distribution, even though the Person furnishing such receipt or release is a Trustee.

(4) Notwithstanding the preceding provisions of this section, no distribution of property pursuant to this section or pursuant to law may be made to the Settlor in any capacity.

(C) ***Adopted, Out-of-Wedlock and Posthumously Conceived Children.*** (1) An individual legally adopted on or before his or her nineteenth (19th) birthday shall be deemed to be a descendant of his or her adoptive parent or parents, and shall be deemed not to be a descendant of a parent of his or hers who consented to such adoption unless the adoption did not terminate such parent's rights as a parent, or unless such parent also adopted such individual.

(2) Except as provided in subsection (3) and Article XIII(A)(23), the adoption of an individual after his or her nineteenth (19th) birthday by an adoptive parent other than the

Settlor shall be ignored for purposes of determining his or her status as a descendant of any individual.

(3) An individual who is the genetic child of parents who were not married to each other at the time of his or her birth shall be deemed not to be a descendant of his or her genetic father (a) unless the father (i) marries his or her mother or was married to his or her mother at any time during the period starting at the time of such individual's conception and ending at the time of his or her birth, (ii) adopts the individual at any time, or (iii) acknowledges his paternity of such individual in a signed instrument filed with any court or governmental agency or delivered to any Trustee during such father's lifetime, or (b) unless subsection (5) applies.

(4) Except as provided in subsection (5), an individual who is the genetic child of parents who were not married to each other at the time of his or her birth shall be deemed to be a descendant of his or her genetic mother unless she has no legal rights as a parent of such child under local law.

(5) An individual who is the genetic child of a parent who was deceased at the time of such individual's conception shall be deemed to be a descendant of such parent only if (i) such individual was born within the two (2) year period after such parent's death and before the Perpetuities Date, (ii) such parent gave permission for the use of his or her genetic material to the surviving parent in connection with the conception of such individual by such parents in an instrument that was signed by the deceased parent, and (iii) such deceased parent (if living) would have had legal rights as a parent of such child upon his or her birth under local law.

(6) An individual who is deemed to be a descendant of his or her adoptive parent by reason of adoption shall be deemed to be a descendant of all ancestors of such parent.

An individual who is deemed not to be a descendant of a parent of his or hers who consented to his or her adoption by another shall be deemed not to be a descendant of any ancestor of such consenting parent unless such individual is a descendant of such ancestor without regard to his or her relationship to such consenting parent. An individual who is deemed not to be a descendant of his or her parent pursuant to subsection (3) or (4) shall be deemed not to be a descendant of any ancestor of such parent unless such individual is a descendant of such ancestor independent of his or her relationship to such parent.

(D) ***Survivorship.*** Any beneficiary whose entitlement to property (whether income or principal and whether outright or in trust) under this Trust Agreement depends upon his or her surviving the occurrence of some event who dies under such circumstances that it is difficult or impossible to determine whether or not he or she was alive upon the occurrence of such event shall be deemed for all purposes of this Trust Agreement to have died prior to the occurrence of such event.

(E) ***Undisposed of Property.*** If upon the occurrence of any event any share of a terminated Trust shall not be completely disposed of by the other provisions of this Trust Agreement, then such undisposed of share shall be paid to those individuals who would have inherited it from the Settlor, and in the same proportions in which they would have shared it, had the Settlor then died intestate, unmarried, the owner of it, and a resident of the State of New York.

(F) ***Assignment of Trust Interests.*** No disposition, charge, or encumbrance of the income or principal of any Trust, or any part thereof, by way of anticipation, alienation, or otherwise shall be valid or in any way binding upon the Trustees. No beneficiary of any Trust may assign, transfer, encumber or otherwise dispose of the income or principal of such Trust, or

any part thereof, until it shall be paid to such beneficiary by the Trustees. The preceding provisions of this section shall not apply in the case of an exercise of a power of appointment. No income or principal of any Trust, or any part thereof, shall be liable to any claim of any creditor.

(G) **Judicial Intervention.** Under no circumstances shall § 7-1.6 of the EPTL or any similar provisions of law apply to any Trust.

(H) **Statutory Reimbursement.** Under no circumstances shall § 7-1.11 of the EPTL or any similar provisions of law apply to any Trust if its application to such Trust would cause any portion of the Trust Fund of such Trust to be subject to the claims of the Settlor's creditors.

(I) **Distributions to Trusts.** If the Independent Trustees of a Trust (the "original Trust") have the discretion to pay a portion (or all) of the Trust Fund of the original Trust (the "permitted portion") to or for the benefit of any one or more beneficiaries of such Trust (the "original discretionary beneficiaries"), such Independent Trustees may exercise such discretion by directing the payment of any part or all of the permitted portion to the trustee or trustees of another trust for the benefit of one or more of the original discretionary beneficiaries (the "recipient trust"), provided, however, that (i) the recipient trust does not direct or permit payments to or applications by the trustees for the benefit of any Person other than one or more of the beneficiaries of the original Trust, (ii) the recipient trust does not reduce any fixed income interest of any income beneficiary of the original Trust, (iii) the recipient trust ends no later than the Perpetuities Date, and (iv) the Independent Trustees give each beneficiary of the original Trust written notice of his, her or its intention to make such direction at least thirty (30) days before making the direction. For purposes of clause (i) of the preceding sentence, the

beneficiaries of the original Trust shall include all beneficiaries of such Trust, whether original discretionary beneficiaries, income-only beneficiaries or remaindermen, and for purposes of clause (iv) of the preceding sentence, the beneficiaries of the original Trust shall include only those persons who are competent and to whom current distributions from such Trust may be made. Notwithstanding the first sentence of this section, the terms of the recipient trust may provide any one or more of the original discretionary beneficiaries with a power of appointment exercisable in favor of one or more individuals, regardless of whether any such individual is a beneficiary of the original Trust.

(J) ***Power to Postpone.*** (1) This Trust Agreement gives each Primary Beneficiary of a Trust under Article III certain powers beginning on the date on which he or she attains the age of twenty-five (25) years or beginning with the first calendar year following the calendar year in which the Primary Beneficiary attained the age of twenty-five (25) years.

(a) The Independent Trustees of a Trust under Article III may postpone the age or ages at or after which the Primary Beneficiary of such Trust may acquire such powers, taking into account any prior postponements pursuant to this section. A postponement pursuant to this paragraph shall be effected by a written instrument signed by the Independent Trustees of such Trust and delivered to the Primary Beneficiary at any time prior to the Primary Beneficiary's acquisition of such power.

(b) The Independent Trustees of a terminating Trust under Article II or III may, prior to funding a Trust under Article III, postpone the age or ages at or after which the Primary Beneficiary of such Trust would acquire such powers. A postponement pursuant to this paragraph shall be effected by a written instrument signed by the Independent Trustees of the

terminating Trust and delivered to such Primary Beneficiary no later than thirty (30) days after the occurrence of the event upon which the terminating Trust terminates.

(c) The Independent Trustees of a Trust under Article III may suspend or terminate the Primary Beneficiary's right to direct payment and/or the Primary Beneficiary's power of appointment under such Article, notwithstanding that either or both powers may have been previously exercised by the Primary Beneficiary. A suspension or termination pursuant to this paragraph shall be effected by a written instrument signed by the Independent Trustees of such Trust and delivered to the Primary Beneficiary prior to the Trust's termination.

(2) A postponement, suspension or termination pursuant to this section may be made by the Independent Trustees only if they determine that there is a compelling reason therefor, such as a serious illness or disability of such Primary Beneficiary, a pending divorce, potential or pending creditor claims, potential tax disadvantage to such Primary Beneficiary or his or her family, or similar substantial cause.

(K) *Exercise of Powers of Appointment.* With regard to any power of appointment granted under this Trust Agreement that may be exercised by the Will of the holder of the power, the Trustees may rely on any instrument purporting to be a certified copy of the Will of the holder of the power. Commencing six (6) months after the death of the holder of the power, the Trustees (if they have no actual notice of the existence of a purported will of the holder that exercises such power) shall incur no personal liability for administering the Trust as though the holder had not exercised the power. If the Will that exercises the power is subsequently discovered, any disposition of the Trust property by the Trustees shall be without prejudice to the rights of any appointee to recover the property from any Person to whom the Trustees have paid assets of the Trust or from the Trustees (in their capacities as Trustees) to the

extent of any remaining Trust property. The exercise in DEBRA's Will of a power of appointment granted under this Trust Agreement shall be valid only if DEBRA is the Settlor's spouse at the time of DEBRA's death.

## V: ADDITIONS

(A) **General Provisions Regarding Additions.** The Settlor or any other Person may add property to any Trust (i) by lifetime transfers of additional property; (ii) by Will; (iii) by naming the Trustees as beneficiaries of one or more life insurance policies; or (iv) by any other means; provided that, except as otherwise provided in section (B), the Trustees, in their sole discretion, may decline to accept all or any portion of the additions, and may, in their sole discretion, accept conditional transfers or additions. If the Trustees agree to accept any additions, they need not retain any property in the form received. The Trustees shall add any property that they accept to the Trust designated by the donor, or failing such designation, this property shall be allocated ratably to all Trusts then held under this Trust Agreement.

(B) **Pour-Over Additions From Related Trusts.** (1) Notwithstanding the provisions of section (A), the Trustees of a Trust shall accept any property that is directed to be paid to such Trust under the provisions of the Settlor's Will or any Related Trust (a "Pour-Over").

(2) If a Pour-Over is directed to be made to a Trust under a particular Article of this Trust Agreement to or for the benefit of an issue of the Settlor and more than one such Trust is then in existence, and the instrument or instructions governing the Pour-Over do not otherwise specify, such Pour-Over shall be allocated among such Trusts in such amounts or proportions, and to the exclusion of any one or more of them, as the Independent Trustees, in their sole discretion, shall direct.

(3) For purposes of this section, a Pour-Over to a trust for the primary benefit of an issue of the Settlor under this Trust Agreement shall be given effect even though such Trust has yet to be created under this Trust Agreement or has previously terminated. In that event, the Trustees shall accept such Pour-Over and administer it under the terms of this Trust Agreement as though such Trust had previously been created or had never previously terminated, as the case may be.

(4) As used in this section, the term “Related Trust” means (i) a trust held under a trust agreement created by the Settlor during the Settlor’s lifetime or under the Settlor’s Will, or (ii) a trust held under any successor instrument amending or restating one or more trusts described in clause (i).

(C) ***Additions as Principal.*** All receipts of a Trust through Additions shall be characterized as principal for accounting purposes. For purposes of this Article, an “Addition” shall mean an addition (other than a Pour-Over) made to the Trust under Article II by an individual by a transfer during such individual’s lifetime.

## **VI: TRUSTEES’ INVESTMENT AND ADMINISTRATIVE POWERS**

(A) ***Overriding Limitation on Powers.*** The provisions of this Article are expressly subordinate to the overriding provisions of Article VII.

(B) ***General Powers.*** The Trustees shall have all powers and discretion conferred generally upon fiduciaries by EPTL § 11-1.1 and by other provisions of law. Without limiting the foregoing, the Trustees shall also have the following powers and discretion as to all property of whatever kind at any time held by them, including income held by them, until final distribution, which they may exercise as they deem advisable:

(1) To sell, purchase, exchange, invest and reinvest in bonds, preferred or common stocks, mortgages, mutual funds or money market funds, interests in any kind of investment trust, partnership or limited liability company, or other evidences of rights, interests or obligations, secured or unsecured, foreign or domestic, or any other property, real or personal and whether or not in the nature of a wasting asset, without any duty to diversify investments, and fully free of any and all restrictions imposed by law upon the investment of funds held by a fiduciary; and to retain the same for any period of time without liability therefor;

(2) To employ such one or more agents, accountants, custodians, experts and counsel, legal or investment (including any firm with which any of the Trustees may be affiliated), as the Trustees shall determine, to delegate discretionary powers to them, to rely upon information or advice furnished by them, and to compensate them out of the Trust Fund of the Trust or Trusts on behalf of which the engagement was made (and not out of the Trustees' commissions);

(3) To improve, lease for any term (whether or not such term is beyond the term of the administration of the Trust which is the lessor or the term fixed by any law) to any Person including the Settlor, partition or otherwise deal with or dispose of any real or personal property or any interest therein; to demolish or to make alterations in and extraordinary improvements to any building now or hereafter located on any such property; to construct new buildings; and to enter into contracts or grant options (for any period) as to any of the foregoing;

(4) To consent to the modification, renewal or extension of any note, whether or not secured, or any bond or mortgage, or any term or provision thereof, or any guarantee thereof, or to the release of such guarantee; to release obligors on bonds secured by mortgages or to refrain from instituting suits or actions against such obligors for deficiencies; to use property held under this Trust Agreement for the protection of any investment in real property or in any mortgage on real property;

(5) To abandon any property, real or personal, that they deem to be worthless or not of enough value to warrant keeping or protecting; to abstain from the repairs, maintenance and upkeep of such property, and from the payment of taxes, water rents, and assessments regarding such property; to permit such property to be lost by tax sale or other proceeding, or to convey it for nominal or no consideration;

(6) To exercise or dispose of any or all options, privileges or rights of any nature appurtenant or incident to the ownership of any property, including but not limited to rights to vote, assent, subscribe or convert; to become a party to, or deposit securities or other property under, or accept securities issued under, any voting trust agreement;

(7) To assent to or participate in any reorganization, readjustment, recapitalization, liquidation, partial liquidation, consolidation, merger, dissolution, sale or purchase of assets, lease, mortgage, contract or other action or proceeding by any corporation and, in that connection, to subscribe to new securities, to exchange any property for any other property, and to pay any assessments or other expenses; to delegate discretionary powers to any reorganization, protective or similar committee;

(8) To borrow money from any party, including the Settlor or any of the Trustees, for any purpose whatsoever, and to give or not to give security for the loan;

(9) To consent, or to decline to consent, to the election (including any that is now in effect) by any corporation to be taxed under subchapter S of the Code or any comparable provision under state law;

(10) To make any loans, either secured or unsecured, in such amounts, and upon such terms as to interest and repayment, and to such Persons (including, but not limited to, the Personal Representatives of any estate and the trustees of any trust), as they determine in their discretion, and, in the case of a loan to any estate or trust, irrespective of whether any beneficiary, Personal Representative or trustee of any such estate or trust is a beneficiary or Trustee under this Trust Agreement; provided that all loans, other than loans from a Trust to a beneficiary of that Trust to whom current distributions of income may be made, shall be made at a reasonable rate of interest, and provided further that only the Independent Trustees may participate in any decision to lend property at less than a reasonable rate of interest;

(11) To purchase assets at their fair market value from any estate or trust, upon such terms and conditions as they shall determine, and irrespective of whether any beneficiary, Personal Representative or trustee of such estate or trust is a beneficiary or Trustee hereunder;

(12) To sell, liquidate, incorporate or carry on (for any period) any business which is or was conducted by the Settlor or in which the Settlor is or was interested as shareholder, partner or otherwise;

(13) To hold property in the name of a nominee or unregistered or in such form as will pass by delivery;

(14) To remove all or part of the assets or change the situs of administration of any Trust from one jurisdiction to another jurisdiction, and to elect, by an instrument signed by the Trustees of such Trust and filed with the records of such Trust, that the law of such other jurisdiction shall thereafter govern the same to such extent as may be necessary and appropriate, at any time or from time to time (and any number of times) as they deem advisable;

(15) To satisfy any disposition (other than a specific disposition) or effect any distribution of income or principal with any property not otherwise specifically disposed of, including an undivided interest in property, in kind or in cash or partly in each to any one or more beneficiaries, whether or not the same kind of property is distributed to other beneficiaries having comparable interests;

(16) To credit receipts (including, but not limited to, gains from the sale or exchange of property) and to charge expenditures and other disbursements to or between income and principal in such amounts and proportions as the Trustees deem advisable, without regard to any prior allocation made at any time and notwithstanding any contrary provision of law;

(17) To open and maintain bank accounts and brokerage accounts, including margin accounts;

(18) To do any and all acts, to exercise any and all rights, to enter into any and all proceedings, contracts (including contracts containing guarantees, warranties, representations and indemnifications of any kind or nature), and other instruments (whether or not specified above and including but not limited to the preparation and filing of any and all registration statements and papers, documents and instruments of whatever kind and nature with the Securities and Exchange Commission and the payment of any and all expenses in that connection) necessary or proper in their opinion in the administration of any Trust as fully as if they were the absolute owners of such property;

(19) To mortgage or pledge any or all of the assets of any Trust (herein, the "Pledging Trust") as security for any loan to, or otherwise in connection with any transaction involving, (i) the Pledging Trust or any other trust the Beneficiaries of which are the same as the Beneficiaries of the Pledging Trust, (ii) a Beneficiary, or (iii) any Entity in which the Pledging Trust, any trust described in clause (i), above, or a Beneficiary has an interest; to guarantee the debt or any other obligation or liability of the Pledging Trust, any trust described in clause (i), above, a Beneficiary or any Entity in which the Pledging Trust, any trust described in clause (i), above, or a Beneficiary has an interest; to indemnify any lender or other party against any claim, loss, obligation, liability or expense of any nature in connection with any loan to, or other transaction a participant in which is (w) the Pledging Trust, (x) any trust described in clause (i), above, (y) a Beneficiary or (z) any Entity in which the Pledging Trust, any trust described in clause (i), above, or a Beneficiary has an interest; and to pledge any or all of the assets held in the Pledging Trust as security for any such indemnity, provided that only the Independent Trustees may participate in the exercise of this power and that, for purposes of this provision, a Person shall be deemed to be a Beneficiary of a trust only if the trustee of such trust may make current distributions to him or her; and

(20) To engage on behalf of any Trust in any type of security, commodity or currency transaction (including, without limitation, short sales,

purchases on margin and over-the-counter and private transactions); to buy and sell any type of option contract (including, without limitation, so-called puts, calls, and straddles), or any combination of any types of option contract, relating to securities, commodities or currencies; to purchase quantities of any commodity or currency for present or future delivery; to borrow all or any part of the purchase price; and in the case of any such commodity purchase, to make all arrangements that the Trustees of such Trust deem advisable for the storage, maintenance and preservation of the commodity so purchased, and to pay all storage expenses, carrying charges and other expenses incurred in connection therewith out of such Trust; and to sell quantities of any commodity or currency for present or future delivery.

(C) ***Reliance on Statement of Financial Resources.*** If the Trustees and/or Independent Trustees of a Trust consider the financial resources of a beneficiary in exercising their power to determine that distributions should be made from such Trust to or for the benefit of such individual, then they may, without further investigation, rely upon any written statement made by such individual, or on such individual's behalf, as to the nature and extent of such individual's financial resources.

(D) ***Exoneration of Third Parties.*** (1) No Person dealing with the Trustees shall be bound to see to the application or disposition of cash or other property transferred to them or to inquire into the authority for or propriety of any action by the Trustees.

(2) Every Person contracting or otherwise dealing with the Trustees of a Trust shall look only to the funds and property of such Trust for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Trust Agreement, in whole or in part, and the Trustees shall not be individually liable therefor even though the Trustees did not exempt themselves from individual liability when entering into any contract, obligation or transaction in connection with or growing out of such Trust.

(E) ***Consolidation of Trust Property.*** The Trustees shall not be required to segregate physically the property of multiple Trusts, but may, in their discretion, maintain any part or all of the trust property of any two or more Trusts in one or more consolidated funds, in

which event the division of each such consolidated fund into the various shares or parts comprising it need be made only on the Trustees' books of account.

(F) ***Combination and Division of Trusts.*** (1) The Trustees may combine any two or more Trusts having identical terms and identical beneficiaries and administer the combined Trusts as a single Trust.

(2) The Trustees may divide any Trust into two or more separate Trusts of equal or unequal size, each having terms identical to the terms of the original Trust.

(3) If, pursuant to any authority granted in this Trust Agreement, the Trustees direct that (a) any Trust shall be divided into two or more separate Trusts or (b) any share of any Trust shall be held in more than one Trust, then the Trustees shall determine which property then allocated to or held in such Trust or share shall be allocated to each such separate Trust.

(G) ***Powers Relating to Closely Held Business and Investment Interests.*** (1) As to each and any Entity, public or private, in which the Trustees, as such, hold or acquire, directly or indirectly, an equity interest, if the fair market value of such interest of the Trustees when aggregated with the fair market value of the equity interests in such Entity of the trustees of all other trusts of which the Settlor or DEBRA is the settlor, exceeds one percent (1%) of the fair market value of such Entity, such Entity being hereinafter referred to as "the Closely Held Entity," the Trustees are hereby authorized to retain the shares thereof or interest therein for as long as they deem to be in the best interests of any Trust, regardless of the fact that such shares or interest might produce no income, regardless of any duty to diversify investments, and notwithstanding any other fiduciary obligation which might require them to dispose of such shares or interest.

(2) With respect to each and every Closely Held Entity, the Trustees of any Trust are authorized, to the extent permitted by law, to exercise their rights and powers as holders of the shares or other interests in such Closely Held Entity to effect its continued operation, or the sale or other disposition of its assets or business, or, in their sole discretion, to sell, exchange, offer for redemption, or otherwise dispose of the shares of or other interests in the Closely Held Entity owned by any Trust, or to effect the liquidation or dissolution of the Closely Held Entity, at such time or times and upon such terms and conditions as the Trustees, in their sole discretion, shall determine.

(3) The Trustees may participate in the management of any Closely Held Entity to the extent that their interest therein permits. They are expressly authorized (without limiting the generality of the foregoing), in their sole discretion, to select, vote for and remove directors of the Closely Held Entity (if the Closely Held Entity is a corporation); to name or change officers, managing personnel and/or operating personnel; to reduce, expand, limit or otherwise change the Closely Held Entity's trade or business, or any property or investment that it holds; to require surety bonds of employees and/or officers and specify the amount of such bonds and the bonding company; to employ accountants or engineers to appraise or evaluate the Closely Held Entity's business or assets; to employ investment or legal counsel, including any firm with which a Trustee may be affiliated; to charge the costs of such services against the interest in the Closely Held Entity owned by any Trust, or to require the Closely Held Entity to pay such costs; to contribute additional working capital or to subscribe to additional stock as they may see fit; and to take all steps and perform all acts which they shall deem necessary or advisable in connection therewith.

(4) Notwithstanding the provisions of the preceding subsection, the Trustees shall not be bound or required to take part in the management of any Closely Held Entity. They may delegate their managerial authority (including any authority to determine the payment or non-payment of dividends or other distributions) to others, whether by means of employment agreements or other arrangements, and they may enter into voting trusts and grant irrevocable proxies, as they deem advisable. In the event of such delegation, the Trustees shall not be liable for any act or omission by the directors or other Persons charged with such management, unless they know or have reason to know of any act of dishonesty, misappropriation or misapplication of moneys or other property on the part of such directors or other Persons. No Person having an interest hereunder shall be entitled in any way to compel, control or forbid the exercise in any particular manner of any voting or other right with regard to the Closely Held Entity which may at any time be vested in the Trustees.

(5) Any one or more of the Trustees may act as officer, partner, director, manager or senior employee of the Closely Held Entity (each such capacity being hereinafter referred to as a "Management Position"), and the Trustees are specifically authorized to participate in the election or appointment of any Person or Persons, including themselves (whether individually and/or as Trustees), to any Management Position. Any Trustee who serves in a Management Position shall be entitled to receive compensation for such services notwithstanding that the Trustees may themselves (whether individually and/or as Trustees) be in a position to determine, or control the determination of, the amount of such compensation, and no such Person shall be required to furnish any bond in connection with any such service in a Management Position.

(6) The Settlor is aware that conflicts of interest may arise by reason of a Trustee's serving as such while simultaneously serving in a Management Position, or by reason of a Trustee's owning or purchasing an interest in the Closely Held Entity in his, her or its own right, and the Settlor intends that the Trustees shall, in all respects, be free to exercise the powers and discretion herein conferred as fully and unrestrictedly as if there were no conflicting interests. Consequently, the Trustees are hereby expressly exempted from the adverse operation of any rule of law which might otherwise apply to them in the performance of their fiduciary duties solely by reason of self-dealing or other conflict of interest ("conflict of interest rules").

In particular, the Trustees are authorized to enter into any transaction with any Closely Held Entity that any Trust could enter into with any unrelated third Person, without regard to any conflict of interest rule. The transactions described in the preceding sentence shall include, without limitation, (i) the purchase of property from, sale of property to or exchange of property with any Closely Held Entity and (ii) the borrowing of money or other property from or lending of money or other property to any Closely Held Entity. The Trustees may employ, on behalf of any Trust, agents, accountants, custodians, experts and legal or investment counsel who may also perform comparable services for the Closely Held Entity or for any one or more of the Trustees individually. In addition, any Trustee may purchase, sell, exchange or otherwise deal in or dispose of shares of or interests in the Closely Held Entity for his, her or its own account without regard to any conflict of interest rule, or any other rule that might otherwise require such Trustee to first offer the opportunity to enter into that transaction to any Trust of which he, she or it is a Trustee.

(7) To the greatest extent permitted by law, no Trustee holding a Management Position in a Closely Held Entity shall be required to account for the acts and proceedings of

such Closely Held Entity to any Person at any time interested in any Trust, regardless of whether the interest of such Trust in such Closely Held Entity, alone or in conjunction with other trusts of which such Trustee is a trustee, is a controlling interest.

(8) For purposes of this section, (i) the Trustees will be deemed to hold an interest in an Entity if they hold, as such, a direct or an indirect interest in such Entity, and (ii) the Trustees will be deemed to hold an indirect interest in an Entity if they hold, as such, a direct interest in another Entity that owns a direct or indirect interest in such Entity. The extent of such indirect interest shall be measured by the multiplication of percentage interests through a chain of Entities. For example, if the Trustees hold a direct interest in an Entity (“Entity A”) the fair market value of which constitutes fifty percent (50%) of the fair market value of Entity A and Entity A owns a direct interest in another Entity (“Entity B”) the fair market value of which constitutes thirty percent (30%) of the fair market value of Entity B, such Trustees would be deemed to hold an indirect interest in Entity B the fair market value of which constitutes fifteen percent (15%) of the fair market value of Entity B.

(H) ***Special Investments and Risk.*** The Trustees shall have broad latitude to make and retain investments in real and personal property that are not ordinarily considered suitable for fiduciaries under the usual fiduciary investment standards and that may be speculative and involve unusual risks, including, without limitation, interests in any kind of business venture or enterprise, real estate development, minerals, commodities, and natural resources. The Trustees, at any time or from time to time as they deem advisable, in their sole discretion, may initiate such investments on behalf of any Trust, even though there may be a risk of loss to such Trust by reason thereof.

Any investment may (notwithstanding any law or rule of law making trustees' powers non-delegable or any other law) take the form of the securities of a corporation, a general or limited partnership interest, membership in a limited liability company, an interest in a joint venture, a future interest in property, shares of beneficial interest in a business trust, or any other form of investment, direct or indirect, even though there may be a limited market, or, in practice, no effective market, for the disposition of such investment. To this end, the Settlor authorizes the Trustees of any Trust to enter into any such investments with the trustees of any other trust.

(I) ***Term and Remainder Interests.*** The Trustees may make investments in the form of term interests in property (the right to possess or to receive income from property for a designated number of years or for the life of a designated individual) or in the form of remainder interests in property (the right to receive property after the expiration of a preceding interest in such property).

(J) ***Advisors; Delegation.*** The Trustees are specifically authorized to rely on the advice of investment counsel or other appropriate advisors (including any firm with which any Trustee may be affiliated). They may, pursuant to a contract or contracts with an investment counsel or other appropriate advisor, delegate all or a portion of their investment powers to such investment counsel or other appropriate advisor (notwithstanding any law or rule of law making trustees' powers non-delegable or any other law), and, if they do so, they shall not be liable for losses incurred by reason of such delegation or incurred in acting or refraining from acting in reliance on the advice of such investment counsel or other appropriate advisor except for their own failure to exercise care, skill and caution in (i) selecting and periodically reviewing such investment counsel or other appropriate advisor, (ii) establishing the scope and terms of the delegation and (iii) controlling the overall cost by reason of the delegation.

(K) ***Residential Property and Tangible Personal Property.*** (1) The powers conferred by this section are in addition to, and not in limitation of, the powers set forth in the preceding provisions of this Article.

(2) The Trustees of any Trust may retain or purchase any residential property, including residential property that is occupied or intended for occupancy by any one or more of the beneficiaries of such Trust, and may develop or make improvements in or repairs to any residential property owned by such Trust including residential property that is occupied or intended for occupancy by any one or more of the beneficiaries of such Trust. In addition, the Trustees of such Trust shall permit any one or more of the beneficiaries of such Trust to occupy any residential property owned by the Trust upon such terms and conditions (as to the payment of rent, repairs or otherwise) as the Independent Trustees of such Trust deem appropriate.

(3) The Trustees of any Trust may retain or purchase any item of tangible personal property, including tangible personal property for the use of any one or more of the beneficiaries of such Trust, and shall permit any one or more of such beneficiaries to use any such item of tangible personal property upon such terms and conditions (including any relating to insurance and preservation) as the Independent Trustees of such Trust deem appropriate.

(4) For purposes of this section, the beneficiaries of a Trust at any particular time shall include only those Persons to whom current distributions from such Trust may be made, and the term “residential property” shall include real property (together with buildings, fixtures, and improvements thereon), interests in condominium units (including common areas), and cooperative apartments (together with proprietary leases and shares of stock relating thereto).

(L) ***Settlor's Power to Reacquire Trust Assets.*** The Settlor at any time or from time to time may acquire or reacquire any portion of the Trust Fund of the Trust under Article II by substituting therefor other property of an equivalent value, valued on the date of substitution. Notwithstanding any other provision of this Trust Agreement, the Settlor may exercise this power without the consent of the Trustees. Although this power is exercisable by the Settlor in a non-fiduciary capacity without the consent of any of the Trustees, the Trustees, if they believe that the property the Settlor seeks to substitute for trust property is not in fact property of equivalent value, shall seek a determination by a court of competent jurisdiction to assure that the equivalent value requirement of this section is satisfied. The Settlor, at any time, may release this power. Any release under this section shall be irrevocable and shall be made by instrument in writing signed by the Settlor and delivered to each Trustee.

(M) ***Settlor's Power to Borrow.*** The Settlor at any time or from time to time may borrow any portion of the Trust Fund of the Trust under Article II. If the Settlor borrows the Trust Fund, or any portion thereof, the Independent Trustees shall determine the rate of interest to be charged, which rate shall not be less than a reasonable market rate of interest at the time the loan is made, and shall determine whether or not the loan should be secured. The Settlor, at any time, may release this power to borrow. Any release under this section shall be irrevocable and shall be made by instrument in writing signed by the Settlor and delivered to each Trustee.

(N) ***Self-Dealing.*** The Settlor authorizes financial transactions, both direct and indirect, between the Trust held under Article II and any Trustee of such Trust with the consent of DEBRA if DEBRA is then competent, and between a Trust held under Article III and any Trustee of such Trust with the consent of the Primary Beneficiary of such Trust but only if

the Primary Beneficiary is competent and is at least twenty-five (25) years of age (including, without limitation, purchases, sales and leases of property, loans, agreements, and employment and compensation for services), notwithstanding any rule of law relating to self-dealing, provided only that the interested Trustee act in good faith and that the consideration paid by the Trust or by the Trustee be reasonable.

## **VII: RESTRICTIONS ON POWERS**

Notwithstanding any contrary provision of this Trust Agreement:

(A) ***Limitation on Settlor's Powers.*** No power granted to the Settlor under any provision of this Trust Agreement shall be exercisable by the Settlor if the possession of such power would result in the treatment of the Settlor's transfer of any property to the Trustees as incomplete in whole or in part for gift tax purposes or would cause any property so transferred to be included in the Settlor's gross estate for federal estate tax purposes. If the Settlor is serving as a Trustee, the Settlor may not participate in the exercise of any Trustee power under Article II(B).

(B) ***Satisfaction of Legal Obligations.*** As to any Trust, neither the principal nor the income of such Trust may be used to satisfy an enforceable legal obligation of any individual other than an individual to whom, or for whose benefit, current distributions of the Trust Fund of such Trust may be made.

(C) ***Distributions to or for the Benefit of Trustees.*** (1) No Trustee shall participate in a decision to distribute property for his or her benefit or to himself or herself in any capacity whatsoever (other than distributions that are mandatory under this Trust Agreement and distributions for his or her health, education, support and maintenance), including, but not

limited to, the capacity as a custodian for the benefit of his or her child under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any jurisdiction.

(2) No Trustee shall participate in a decision to use the property of any Trust in such a manner as to discharge any obligation of such Trustee, including, without limitation, any obligation of support.

(D) **Modifications.** No Trustee shall participate in a decision to modify the terms of any Trust in such manner as would increase or decrease his or her powers over or interests in such Trust. No Trustee shall participate in a decision to modify the terms of any Trust in such manner as would or might increase his, her or its compensation from such Trust.

(E) **Change of Law.** No Trustee shall participate in a decision to remove all or part of the assets or change the situs of administration of any Trust from one jurisdiction to another jurisdiction, or to elect that the law of such other jurisdiction shall govern such Trust or its administration if such removal, change of situs or election would have the effect of altering any beneficial interest under this Trust Agreement.

(F) **Powers of Appointment.** No holder of any power of appointment (other than a power expressly exercisable in favor of the holder, the holder's estate, the holder's creditors or the creditors of the holder's estate) shall exercise such power (i) in favor of himself or herself, his or her estate, his or her creditors, or the creditors of his or her estate, (ii) in such manner as to discharge any obligation of such Person, including, without limitation, any obligation of support or (iii) in exchange for any consideration in money or money's worth, including, but not limited to, an agreement by another Person to exercise a power of appointment in the holder's favor. Notwithstanding the previous sentence, the holder of a power of appointment over the property in a Trust may exercise that power in favor of another trust if (a)

the holder's interest in such trust is no greater than his or her interest in such Trust and (b) the holder's powers over such trust are no greater than his or her powers over such Trust. No holder of any power of appointment shall exercise such power to create a trust or to appoint property to a trust if the duration of such trust could, by its terms, extend beyond the Perpetuities Date.

(G) ***Limitation on DEBRA's Powers.*** Notwithstanding anything to the contrary in the Trust Agreement, DEBRA shall not exercise any powers granted to DEBRA under the Trust Agreement either in DEBRA's individual capacity or in DEBRA's capacity as Trustee, other than investment and administrative powers given to Trustees under Article VI and the withdrawal power given to DEBRA under Article V, for a period of thirty (30) days after the Settlor makes a transfer to the Trust held under Article II.

(H) ***Power to Remove Trustees.*** No Person shall exercise his or her power to remove a Trustee of any Trust because of such Trustee's exercise or failure to exercise a power which, if held by the Person exercising the removal power, would result in any portion of the Trust Fund of such Trust being included in such Person's gross estate for federal estate tax purposes.

### **VIII: IRREVOCABILITY; MODIFICATION**

(A) ***Irrevocable by Settlor.*** This Trust Agreement and the Trusts may not be altered, amended, revoked or terminated by the Settlor, in whole or in part.

(B) ***Scope of Independent Trustees' Modification Power.*** (1) At any time or from time to time during a Modification Period, the Independent Trustees, by unanimous consent of all of the Independent Trustees, may modify the terms of this Trust Agreement and any of the Trusts, provided, however, that no modification shall violate any of the following prohibitions:

(a) No portion of the Trust Fund of any Trust may be paid to or applied for the benefit of any individual other than a Beneficiary at any time while any Beneficiary is living, except as provided in paragraph (c) of this subsection.

(b) No portion of the Trust Fund of any Trust may be paid to or applied for the benefit of any entity other than a Permitted Entity and other than a Qualified Charitable Organization at any time while any Beneficiary is living.

(c) Neither the Settlor nor the Settlor's estate may ever be the recipient of any portion of the Trust Fund of any Trust, individually or as guardian, conservator, committee, receiver, trustee, custodian under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any jurisdiction, or in any other capacity on behalf of any Person, provided that the Settlor may be the recipient of the Trust Fund of any Trust to the extent that it is paid to the Settlor as reimbursement for any income taxes paid by the Settlor as a result of any income of such Trust being taxable to the Settlor under § 671 of the Code provided that such reimbursement must be made within one (1) year of such payment, and provided further that no such modification may be made if the existence of the power to make this modification or if the making of this modification would cause any portion of the Trust Fund of any Trust to be subject to the claims of the Settlor's creditors.

(d) Neither the Settlor nor any Beneficiary may ever be authorized to remove a Trustee except as provided under the provisions of Article X, which may not be amended except to further restrict or eliminate such authority.

(e) The date upon which any Trust terminates may not be later than the Perpetuities Date.

(f) The definitions of the terms “Beneficiary,” “Beneficiaries,” “Permitted Entity,” “Permitted Trust,” “Settlor’s Children,” “Settlor’s issue,” “issue” and “spouse” may not be changed. For purposes of this provision, the provisions of Article IV(C) shall be deemed to be part of the definition of “issue.”

(g) The definition of the term “Perpetuities Date” may not be modified with respect to any particular Trust if the power to effect such modification would itself violate the rule against perpetuities applicable to such Trust at the time of such modification and may not be modified in any manner that would violate the rule against perpetuities applicable to such Trust at the time of such modification.

(h) The definition of the terms “Independent Trustees” and “Related Person” may not be modified except to add to the class of Trustees who are not Independent Trustees.

(i) The provisions of section (A) may not be changed.

(j) The provisions of this section (B) may not be changed, except to further restrict the modification powers conferred upon the Independent Trustees.

(k) The provisions of Article VII may not be changed, except to further restrict the powers of the Trustees.

(2) Notwithstanding subsection (1), no modification power may be exercisable by the Independent Trustees if, or to the extent that, the possession of such power would result in the treatment of any of the Settlor’s transfers to the Trustees as incomplete for federal gift tax purposes or would cause any property so transferred to be included in the Settlor’s gross estate for federal estate tax purposes.

(C) ***Exercise of Modification Power.*** Any modification authorized by this Article (i) shall be in writing, (ii) shall be signed and acknowledged by all of the Independent

Trustees, (iii) shall state the date upon which it is to become effective, which date shall not be earlier than thirty (30) days after the date a copy of such writing has been delivered to the Settlor or to DEBRA if the Settlor is not living or is under a disability, and (iv) shall be filed with the trust records maintained by the Trustees. Any modification may be revoked by unanimous consent of all of the Independent Trustees at any time prior to its effective date but only during a Modification Period, and, unless such modification specifically provides that it is to be irrevocable, at any time after its effective date during a Modification Period. Revocation of a modification (i) shall be in writing, (ii) shall be signed and acknowledged by all of the Independent Trustees then serving (whether or not they are the ones who made the modification), (iii) shall state the date upon which it is to become effective, which date shall not be earlier than the date a copy of such writing has been delivered to the Settlor or to DEBRA if the Settlor is not living or is under a disability, and (iv) shall be filed with the trust records maintained by the Trustees. A copy of each modification and revocation of modification shall be delivered to each Trustee who is not an Independent Trustee.

(D) ***Release or Suspension of Modification Power.*** Even though the Independent Trustees' power of modification under this Article is a fiduciary power, the Independent Trustees may, at any time, completely (or partially) release the power or they may suspend it for a specific period of time. Any such release or suspension (i) shall be effected in the same manner as a revocation of a modification, as provided in section (C), (ii) shall be irrevocable, and (iii) shall bind all Trustees serving at any time.

(E) ***Special Rule Regarding Amendments to Article II(A).*** Notwithstanding anything in this Trust Agreement to the contrary, if both the Settlor and DEBRA are either deceased or under a disability, the Independent Trustees shall have the power to amend the Trust

Agreement to eliminate the provision regarding mandatory distributions to the Settlor pursuant to section (A) of Article II, and may do so without giving prior written notice to any Person. Any amendment authorized by this section (i) shall be in writing, (ii) shall be signed and acknowledged by all of the Independent Trustees, (iii) shall be effective on the date of signature, and (iv) shall be filed with the trust records maintained by the Trustees.

(F) ***Administrative and Technical Modifications.*** Notwithstanding any other provisions of this Article, the Trustees of any Trust (other than the Settlor) may modify the administrative and technical provisions of such Trust at any time or from time to time as the Trustees deem appropriate for the proper administration of such Trust, and the Independent Trustees of any Trust may modify the provisions of Article IV(F) as it applies to such Trust at any time or from time to time as the Independent Trustees deem appropriate taking into account the best interests of the beneficiaries of such Trust or any one or more of them. The authority to modify pursuant to this section may not be exercised in any manner that would alter any beneficial interest in any Trust (except that a modification of Article IV(F) that might be deemed to be an alteration of a beneficial interest may nevertheless be made) or that would disqualify any Trust for an income or transfer tax deduction or exclusion for which it would otherwise qualify. Any modification authorized by this section: (i) shall be in writing signed and acknowledged by all of the Trustees (other than the Settlor) or Independent Trustees, as the case may be, of the Trust to which such modification relates, (ii) shall state the time at which or the event upon which the modification is to be effective and (iii) shall be filed with the trust records maintained by the Trustees.

## **IX: ACCOUNTING BY TRUSTEES**

(A) ***Settlement of Accounts by Agreement.*** (1) The Trustees of any Trust may from time to time settle their accounts with respect to that Trust by agreement with each legally competent individual who is a beneficiary of such Trust and with the legally appointed guardian, conservator, or similar fiduciary, however denominated in the jurisdiction appointed (in each case other than the Settlor), of each beneficiary of such Trust who is under a legal disability. For purposes of the immediately preceding sentence, a “beneficiary” of a particular Trust means (i) a Person to whom current distributions may be made from that Trust, or (ii) a Person to whom a share of such Trust would be payable if such Trust were to terminate on the date of settlement of the Trustees’ account.

(2) Such agreement shall bind all Persons, whether or not then living or under a legal disability, then or thereafter entitled to any property of the Trust accounted for, whether principal or income, and shall completely release and discharge the Trustees for the acts and proceedings so accounted for.

(B) ***Judicial Settlement of Accounts.*** Nothing contained in this Article shall preclude the Trustees from seeking a judicial settlement of their accounts.

(C) ***Change of Beneficial Interest Prohibited.*** Notwithstanding any contrary provision of this Article, no settlement of the Trustees’ accounts by agreement shall release and discharge the Trustees if an effect of such agreement is to enlarge the beneficial interest of any beneficiary under this Trust Agreement or to shift any beneficial interest under this Trust Agreement as between beneficiaries.

(D) ***Service Upon Persons Under Disability.*** The Settlor directs that in any proceeding relating to any Trust, service upon any “person under disability” as defined in SCPA

§ 103, shall not be necessary when another Person who is a party to the proceeding has the same interest, whether concurrent or successive, as the person under disability.

**X: TRUSTEE DESIGNATIONS,  
RESIGNATIONS, AND REMOVALS**

(A) *Designation of Additional and/or Successor Trustees.* (1) The Settlor may, at any time or from time to time, designate additional and/or successor trustees of any Trust.

(2) At any time or from time to time when the Settlor is not living or is under a disability or has temporarily or permanently relinquished the power to designate trustees, DEBRA, if then competent, may designate additional and/or successor trustees of any Trust.

(3) At any time or from time to time when each of the Settlor and DEBRA is either deceased or under a disability or has temporarily or permanently relinquished the power to designate trustees, the Trustees of any Trust may designate additional and/or successor trustees of such Trust unless the Trust is held under Article III and the Primary Beneficiary of that Trust has the power to designate trustees of such Trust.

(4) At any time when the Primary Beneficiary of a Trust held under Article III is competent and is at least twenty-five (25) years of age, he or she may designate additional and/or successor trustees of such Trust, including himself or herself, provided that such power to designate trustees has not been postponed pursuant to Article IV(J).

(5) If at any time a Trust shall have no Trustee then serving and there shall be no designated successor who agrees to act as trustee by signing the written instrument required by section (G) within a reasonable period following the date such vacancy arose, any one or more of the Settlor's Children may designate himself or herself as a trustee of such Trust.

(6) If at any time the Trust held under Article II has no Independent Trustee then serving, any Beneficiary may designate a Person to serve as trustee of such Trust who would be an Independent Trustee if such Person were a Trustee.

(B) ***Procedure for Designating Trustees.*** (1) Any designation authorized by section (A): (i) shall be in writing signed by those making such designation; (ii) shall state the time at which or the event upon which it is to be effective; (iii) shall state whether the designee is to serve as a co-trustee or as a successor trustee, and if more than one Person is designated as a successor trustee, the order of succession; and (iv) shall specify the commissions payable to the Persons designated if other than the commissions prescribed by law.

(2) Except as provided in subsections (3) and (4), if inconsistent instruments of designation exist, the instrument that bears the most recent date and that makes an unrevoked designation shall govern.

(3) Any instrument of designation made by the Settlor or DEBRA, as the case may be, pursuant to subsection (1) or (2) of section (A) may provide whether, and the extent to which, it may be superseded by a designation made by any other Person. Notwithstanding any other provision of this Article, (i) no instrument of designation made by the Settlor may be revoked or superseded by any Person other than the Settlor or DEBRA (if then competent) except to the extent authorized by the Settlor pursuant to this subsection and (ii) no instrument of designation made by DEBRA may be revoked or superseded by any Person other than the Settlor or DEBRA (if then competent) except to the extent authorized by DEBRA pursuant to this subsection, except that the Primary Beneficiary of a Trust under Article III may revoke or supersede any designation of trustee of such Trust made by any Person (including the Settlor and

DEBRA) at any time when such Primary Beneficiary has the power to remove Trustees of such Trust pursuant to section (D).

(4) Except as provided in subsection (3), any instrument of designation made by a Primary Beneficiary of a Trust held under Article III may provide whether, and the extent to which, it may be superseded by a designation made by any other Person. Notwithstanding any other provision in this Article, no instrument of designation made by such Primary Beneficiary may be revoked or superseded by any other Person except to the extent authorized by such Primary Beneficiary pursuant to this subsection.

(5) Except as otherwise provided in subsections (3) and (4), any instrument of designation may be revoked at any time, as to any designee who has not taken office (but not as to any designee who has), by the Person or Persons then entitled to make a designation. Such revocation shall be in writing. In case of such revocation a new designation may be made as specified above.

(C) **Resignation of Trustees.** Any Trustee of any Trust may resign as Trustee at any time by delivering a written notice of resignation to: (i) each Trustee of such Trust, or if there is none, to the next successor trustee of such Trust; (ii) the Settlor, if then competent; (iii) DEBRA, if then competent; and (iv) the Primary Beneficiary, if any, of such Trust if he or she is then competent. The resignation shall take effect upon the date stated in the notice, whereupon all duties of the resigning Trustee shall cease, other than the duties to account and to transfer and deliver all property then held in the Trust to each remaining Trustee and/or successor trustee.

(D) **Removal of Trustees.** (1) The Settlor may, at any time or from time to time when the Settlor is competent, remove any Trustee of any Trust.

(2) At any time when the Settlor is not living or is under a disability or has temporarily or permanently relinquished the power to remove Trustees, DEBRA, if then competent, may remove any Trustee of any Trust.

(3) The Primary Beneficiary of a Trust held under Article III may, at any time or from time to time when he or she is competent and is at least twenty-five (25) years of age, remove any Trustee of such Trust, provided that such Primary Beneficiary's power to remove has not been postponed pursuant to Article IV(J).

(4) The power to remove a Trustee pursuant to this section shall be exercisable by written notice of removal delivered to the Trustees and shall take effect upon the date stated in the notice, whereupon all duties of the removed trustee shall cease, other than the duties to account and to transfer and deliver all property then held in the Trust to each remaining and/or successor Trustee. If the Trustee who has been removed was an Independent Trustee, the removal will not be effective unless the individual exercising the removal power concurrently designates a Person to serve as trustee of such Trust, such designee concurrently agrees to act as trustee of such Trust by signing the written instrument required by section (G), and such Person is then an Independent Trustee.

(E) ***Mandatory Ineligibility.*** For all purposes of this Trust Agreement, (i) an individual who is under a disability shall be ineligible to serve as trustee of any Trust, and if already in office, shall be deemed to have resigned, and (ii) an individual who was the Settlor's spouse or the spouse of an issue of the Settlor and who ceases to be such spouse, shall be ineligible to serve as trustee of any Trust, and if already in office, shall be deemed to have resigned.

(F) ***Powers of Successor Trustees.*** All powers, authority and discretion herein granted to the Trustees shall pass to and be exercisable by each successor trustee (whether or not designated by instrument) when he, she or it becomes a Trustee. No Trustee shall be obliged to examine the accounts, records, and acts of any previous Trustee under the Trust Agreement or any allocations of receipts or disbursements as between principal and income made by any previous Trustee under the Trust Agreement.

(G) ***Acceptance of Trusteeship.*** Before taking office as Trustee, each Person other than the original Trustees shall accept the terms of this Trust Agreement and shall agree to act as trustee under this Trust Agreement by signing a written instrument to that effect. A Person shall be deemed to have taken office as a Trustee when he, she or it signs that instrument (but not before his, her or its designation is to take effect by its terms).

(H) ***Records of Trustees.*** Each instrument that designates a trustee under this Trust Agreement, that revokes or amends such a designation, that signifies a Person's acceptance of the office of trustee under this Trust Agreement, that removes a Trustee or that signifies a Trustee's resignation shall be filed with the trust records maintained by the Trustees and a copy of it shall be delivered to each co-Trustee, if any.

(I) ***No Bond.*** No bond (including any bond with respect to advance payment of commissions) or other security shall be required of any Trustee, any provision of law to the contrary notwithstanding.

## **XI: ACTION BY TRUSTEES**

(A) ***Declining to Participate.*** Any Trustee, at any time or from time to time, may decline to participate in any one or more decisions to be made by the Trustees. Any such

refusal shall be set forth in a written instrument signed by such Trustee or on his, her or its behalf and delivered to each other Trustee.

(B) ***Release or Suspension of Powers.*** Any Trustee, at any time or from time to time, may release or suspend for a specified period of time any power conferred on such Trustee under this Trust Agreement. Except as otherwise provided in Article VIII(D), such release or suspension shall be irrevocable if the document by which the release or suspension is effected states that it shall be irrevocable and shall bind all of such Trustee's successors if such document states that it is intended to bind such successors. Any such release or suspension shall be effected by written instrument signed by the Trustee making the release or suspension and delivered to each other Trustee.

(C) ***Majority Decisions.*** Except as otherwise provided, all decisions as to any Trust authorized or required to be made hereunder by the Trustees or by the Independent Trustees shall be made by a majority of the Trustees or Independent Trustees, as the case may be, of such Trust, who are not precluded by law or this Trust Agreement from making the decision and who have not declined to participate in the decision, but their ministerial duties (such as signing of checks, execution of brokerage transactions relating to securities or commodities, and execution of applications for life insurance) may be executed by any one Trustee.

## **XII: LIABILITY AND INDEMNITY OF TRUSTEES**

(A) ***Limitation of Liability.*** Notwithstanding any contrary provision of law, no Trustee, individually or as Trustee, nor his or her heirs, executors, administrators, successors and assigns shall be liable, to any Person having an interest in any Trust, to any third party, or to such Trust for any act taken or omitted in his or her capacity as Trustee unless such act or

omission was made in bad faith and with full knowledge that such act or omission constituted a breach of his or her fiduciary obligations under this Trust Agreement. In particular, without limiting the foregoing, no Trustee shall be liable to any Person having an interest in any Trust, to any third party or to such Trust for any loss which may result from any investment of a character authorized hereunder, or its retention, unless it can be affirmatively shown that in making or retaining such investment such Trustee acted fraudulently in fact (as distinguished from any imputed, constructive or assumed fraud) or in deliberate, willful and intentional disregard of the interests of the beneficiaries of such Trust.

(B) **Indemnification.** Each Trust shall indemnify each Trustee of such Trust, individually and as Trustee, and his or her heirs, executors, administrators, successors and assigns and hold each of them harmless from and against any loss, damage or expense (including fees and disbursements for legal services) which they may suffer, sustain, incur or be called upon to pay as a result of any action, proceeding, claim or demand being made or brought against them by reason of or relating to any act or omission, investment, collection or disbursement by the Trustees (other than an act or omission that is not protected from liability under section (A)) in connection with the administration, investment, or distribution of such Trust, and shall discharge the obligations of such indemnity immediately as incurred by them, and shall pay to them on demand the expenses incurred by them in connection with any such action, proceeding, claim or demand in advance of their final disposition.

(C) **Retention of Counsel.** If any action, proceeding, claim or demand (“Claim”) is asserted or brought by any Person against any Trustee of any Trust, such Trustee may retain separate counsel (including any firm with which any Trustee is affiliated in any

capacity) or other professional advisers to defend against such Claim and may pay for such services out of the income or principal of such Trust.

### **XIII: DEFINITIONS AND RULES OF CONSTRUCTION**

(A) ***Definitions.*** For purposes of this Trust Agreement, the following terms shall have the following meanings:

- (1) “**Beneficiary**”: a particular one of the Beneficiaries.
- (2) “**Code**”: the Internal Revenue Code of 1986.
- (3) “**competent**”: an individual shall be deemed competent if he or she is living and not under a disability.
- (4) “**DEBRA**” the Settlor’s wife, DEBRA M. BLACK.
- (5) “**disability**”: except as otherwise provided, an individual shall be deemed under a disability or to have suffered a disability (i) if and for so long as such individual lacks sufficient understanding or capacity to make and communicate decisions about his or her property, his or her business affairs or matters concerning a Trust in or over which he or she holds an interest or power, (ii) if such individual is under a legal disability, as defined in this Article, or (iii) if the individual has disappeared, is unaccountably absent, or is being detained under duress in such manner as to be unable effectively and prudently to attend to his or her financial interests. The existence of a disability described in clause (i) above shall be established by the written opinion of two licensed physicians or psychiatrists that a disability (as defined in clause (i)) exists. The licensed physicians or psychiatrists shall be designated by the Trustees other than the individual whose disability is being determined, or, if the individual whose disability is being determined is the sole Trustee, by the next successor trustee or trustees under this Trust Agreement or if there are no such successor trustees, by the Person or Persons then

authorized under Article X to designate successor trustees. No Trustee shall have a duty to institute an inquiry into the possible disability of any Person, but the expense of an inquiry into the disability of a Trustee of a Trust or a beneficiary of a Trust reasonably instituted by any Person described in the immediately preceding sentence shall be paid from the Trust Fund of such Trust. Beginning on the thirty-first (31st) day following the commencement of an inquiry into the possible disability of an individual described in clause (i), such individual shall be deemed under a disability described in clause (i) unless within thirty (30) days of such commencement he or she authorizes the use and disclosure of his or her individually identifiable health information or other medical records in the manner required by the Health Insurance Portability and Accountability Act of 1996. An inquiry into the disability of an individual described in clause (i) shall be deemed to commence when the Person or Persons who have the power to designate the physicians or psychiatrists who are to establish whether such individual is under a disability deliver to such individual written notice that such an inquiry has commenced. The existence of a disability described in clause (iii) shall be determined by the Trustees other than the individual whose disability is being determined, or if the individual whose disability is being determined is the sole Trustee, by the next successor trustee or trustees under this Trust Agreement or if there are no such successor trustees, by the Person or Persons then authorized under Article X to designate successor trustees. DEBRA shall also be deemed under a disability at any time when DEBRA is not the Settlor's spouse.

(6) “Entity”: any Person other than an individual.

(7) “EPTL”: the New York Estates, Powers and Trusts Law.

(8) “GST exemption”: the same meaning as that ascribed to the term “GST exemption” in chapter 13 of the Code.

(9) “health, education, support and maintenance”: the aggregate of the meanings ascribed to the terms “health,” “education,” “support” and “maintenance” in §§ 2041 and 2514 of the Code.

(10) “Independent Trustees”: at any particular time, the Trustees other than (a) the Settlor, (b) a Beneficiary, (c) if the Settlor is living, a Person designated as trustee by the Settlor pursuant to Article X(A)(1) who is a Related Person as to the Settlor, (d) if DEBRA or the Settlor is living, a Person designated as trustee by DEBRA who is a Related Person as to DEBRA or the Settlor, (e) a Person designated as trustee who is a Related Person as to a Beneficiary then living who participated in the designation decision, (f) any individual whose possession of any of the powers and discretion conferred upon Independent Trustees under this Trust Agreement would result in any portion of the Trust Fund of any Trust in existence on the date of the Settlor’s death being included in the Settlor’s gross estate for federal estate tax purposes, or would result in any portion of the Trust Fund of any Trust in existence at such individual’s death being included in his or her gross estate for federal estate tax purposes, or would result in any portion of the Trust Fund of any Trust in existence at the death of a Beneficiary being included in his or her gross estate for federal estate tax purposes, or (g) any individual whose possession of, exercise of, or failure to exercise any of said powers (other than the power to modify section (E) of Article IV) and discretion would result in any portion of the Trust Fund of any Trust being included as a taxable gift of such individual for federal gift tax purposes at any time.

(11) “issue”: except as otherwise provided in this Article and subject to the provisions of Article IV(C) regarding adopted, out-of-wedlock and posthumously conceived children, all descendants of any degree of the designated ancestor.

(12) “legal disability”: an individual shall be deemed under a legal disability if he or she (i) is a minor, (ii) has been legally declared incompetent, or (iii) is an individual for whom a guardian, conservator or similar fiduciary (however denominated in the relevant jurisdiction) has been appointed.

(13) “Modification Period”: a time when the Settlor or DEBRA is alive and competent.

(14) “Permitted Entity”: any Entity that is (i) a Permitted Trust or (ii) an Entity all of the interests in which are owned entirely by one or more of the Beneficiaries and/or one or more Permitted Trusts. For purposes of determining whether an interest in an Entity is owned entirely by one or more of the Beneficiaries and/or one or more Permitted Trusts, if an interest in an Entity (the “subsidiary Entity”) is owned by another Entity (the “parent Entity”), the interest in the subsidiary Entity shall be treated as owned by the owner or owners of the parent Entity, and the ownership of any interest in the parent Entity by another Entity shall be similarly attributed until all ownership interests in the subsidiary Entity are established.

(15) “Permitted Trust”: a trust that (i) does not permit the trustees to make any payments to or applications for the benefit of any Person other than a Beneficiary or a Permitted Entity while any Beneficiary is living, (ii) if created by the Settlor, is created prior to the execution of this Trust Agreement, and (iii) has no terms which Article VIII(B) would not permit as the terms of a Trust under this Trust Agreement. A trust which otherwise satisfies the requirements of the preceding sentence shall be deemed to be a Permitted Trust notwithstanding that any Beneficiary has, or may in the discretion of a trustee be granted, a special or general power of appointment, whether exercisable during life or by Will or other instrument taking effect at death.

(16) “Perpetuities Date”: the date occurring twenty (20) years and eleven (11) months after the death of the last survivor of all of the issue of (i) the Settlor’s mother, (ii) DEBRA’s mother, and (iii) IRENEE duPONT (born December 21, 1876) late of the State of Delaware, living on the date of execution of this Trust Agreement.

(17) “Person”: any individual, corporation, partnership, joint venture, joint-stock company, trust, limited liability company, unincorporated organization, government or political subdivision thereof or other entity.

(18) “Personal Representatives”: as to a particular individual, the Person or Persons, whether denominated as executors, administrators, personal representatives or otherwise, duly authorized to administer that individual’s estate pursuant to that individual’s Will in the jurisdiction in which such Will is admitted to original probate, or pursuant to the laws governing the administration of that individual’s estate if he or she died without a Will.

(19) “Qualified Charitable Organization”: an organization that is described in §§ 170(c)(2), 2055(a) and 2522(a) of the Code, and that is an organization exempt from taxation under § 501(a) of the Code as an organization described in § 501(c)(3) of the Code on the date that any distribution is made to it under this Trust Agreement.

(20) “Related Person”: as to an individual, a Person who is related or subordinate to such individual within the meaning of § 672(c) of the Code (determined as though such individual were the grantor, as that term is used in § 672(c) of the Code).

(21) “SCPA”: the New York Surrogate’s Court Procedure Act.

(22) “Settlor”: LEON D. BLACK.

(23) “Settlor’s Children”: the Settlor’s children, BENJAMIN ELI BLACK, JOSHUA MAX BLACK, ALEXANDER SAMUEL BLACK and VICTORIA RACHEL

BLACK, all children born to the Settlor after the date of this Trust Agreement who are issue of the Settlor within the meaning of this section and all children adopted by the Settlor after the date of this Trust Agreement regardless of their ages at the time of such adoption.

(24) “Settlor’s issue” or “issue of the Settlor”: the Settlor’s Children and their issue (as defined in this section) living at any particular time.

(25) “spouse”: as to any individual, at any particular time, the person to whom such individual is married and with whom he or she is living, or, if he or she is not living, the person to whom he or she was married and with whom he or she was living at the time of his or her death, whether or not that person has remarried. For purposes of this subsection, (i) separation for reasons other than marital discord shall be ignored and (ii) an individual shall be deemed not to be married to the person to whom he or she is married (or was married at the individual’s death) if either the individual or such person has instituted an action that seeks as its relief, in whole or in part, a legal separation or an annulment or termination of the marriage, and thereafter the individual has not given written notice to the Trustees that such person shall continue to be his or her spouse for purposes of this Trust Agreement. The Independent Trustees (other than the person whose status is being determined) shall determine whether a person is or was an individual’s spouse at any particular time and any such determination shall be binding and conclusive on all persons who in any way may be affected thereby. The Settlor confirms that as of the date of execution of this Trust Agreement, the Settlor’s spouse is DEBRA.

(26) “Treasury Regulations”: the regulations promulgated by the United States Treasury Department as authorized by § 7805 of the Code.

(27) “Trust”: a particular one of the Trusts.

(28) “Trust Agreement”: this trust agreement, as it may be modified from time to time pursuant to Article VIII.

(29) “Trust Commencement Date”: with respect to a Trust directed to be held upon the termination of any Trust, the date on which such terminated Trust terminated.

(30) “Trust Fund”: as to any Trust or trust, all property (principal plus accrued, accumulated and undistributed income) that, at any particular time, belongs to such Trust or trust, as the case may be.

(31) “Trustees”: each Trustee and all Trustees serving under this Trust Agreement at any given time.

(32) “Trusts”: all separate trusts held or to be held under this Trust Agreement at a particular time.

(33) “Will”: the Last Will and Testament of an individual, whenever executed, that is duly admitted to probate.

(B) ***Rules of Construction.*** For purposes of this Trust Agreement, the following rules of construction shall apply:

(1) All references to a body of laws (such as the Code), to a body of regulations (such as the Treasury Regulations), or to any provision thereof, shall be deemed to refer to such body of laws, regulations or provision thereof, as the same may be amended from time to time, and shall be deemed to refer as well to any subsequent body of laws, regulations or provisions thereof enacted in its place.

(2) Unless otherwise specifically provided, all references to Articles refer to Articles of this Trust Agreement, all references to sections refer to sections of the Article within

which the reference occurs, and all references to subsections refer to subsections of the section within which the reference occurs.

(3) Except where the context otherwise requires, (i) words importing the masculine or feminine gender include the other and the neuter, if appropriate, and (ii) words importing the singular number include the plural number and vice versa.

(4) A document shall be deemed to have been delivered to a Person at such time as it is actually received by such Person.

(5) The titles of Articles and headings of sections contained in this Trust Agreement are included solely for purposes of identification, and shall not be used to construe any provision contained in this Trust Agreement or for any other reason.

(6) The words “will” and “shall” are used interchangeably in this Trust Agreement. Unless the context clearly indicates otherwise, when this Trust Agreement provides that Trustees will or shall take a particular action, the Trustees must take that action. When the Trust Agreement provides that the Trustees may take a particular action, the Trustees have the discretionary authority to take the action, but are not required to do so.

(C) **Governing Law.** Except as otherwise validly elected pursuant to Article VI(B)(14), all questions pertaining to the validity, construction and administration of this Trust Agreement and the Trusts shall be determined in accordance with the laws of the State of New York in effect from time to time.

(D) **Partial Invalidity.** If any provision or condition of this Trust Agreement is determined to be void or invalid, then such invalidity shall not affect any other provision or condition hereof, but the remainder of this Trust Agreement shall be effective as though such void provision or condition had not been contained herein.

IN WITNESS WHEREOF, the Settlor and the Trustees have signed this Trust Agreement on the date stated on page one.

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LEON D. BLACK, Settlor and Trustee

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JOHN J. HANNAN, Trustee

SCHEDULE A

Cash - \$10

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LEON D. BLACK, Settlor

STATE OF )  
 ) ss.:  
COUNTY OF )

On the     day of December, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared LEON D. BLACK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

STATE OF )  
 ) ss.:  
COUNTY OF )

On the     day of December, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN J. HANNAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

**Substitute Form W-9**

**To Be Completed by U.S. Grantors of U.S. Grantor Trusts With No Foreign Situs Assets**

<b>Print or type</b>	Name (as shown on your income tax return) <p align="center">LEON D. BLACK</p>		
	Business name, if different from above		
	Check appropriate box: <input checked="" type="checkbox"/> Individual/ Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership      Other ▶ .....	<input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)		
	City, state, and ZIP code		

<b>Part I</b>	<b>Taxpayer Identification Number (TIN)</b>	
<p>Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see Part I of the instructions on page 3 of the Form W-9 on the IRS website. For other entities, it is your employer identification number (EIN).</p>		Social security number                 <b>OR</b> Employer identification number 

<b>Part II</b>	<b>Certification</b>
<p>Under penalties of perjury, I certify that:</p> <ol style="list-style-type: none"> <li>The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and</li> <li>I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and</li> <li>I am a U.S. person (including a U.S. resident alien).</li> </ol> <p><b>Certification Instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN.</p>	

<b>Sign Here</b>	<b>Signature of U.S. person ▶</b>	<b>Date ▶</b>
<b>Instructions</b>		

This form should be completed by a U.S. person who, for U.S. federal income tax purposes, is treated as the owner of a trust that has its situs and all of its assets located within the United States.

The top part of the form should reflect the name and address of the grantor. Part I should reflect the grantor's taxpayer identification number. The grantor should make the certification required in Part II. Further instructions, including instructions that may be relevant to grantors that are entities, can be found on the Form W-9 posted to the IRS website.

When completed, this form or a copy thereof should be given to the trustee of the trust and kept with trust records. This form should NOT be delivered to financial institutions or other payors.