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**THE JUDAH INVESTMENT  
TRUST AGREEMENT**

Dated: December 21, 2006

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TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
I : TRUST FUND .....	1
II : THE JUDAH INVESTMENT TRUSTS .....	2
III : SPECIAL DISTRIBUTION RULES .....	8
IV : TRUSTEES' INVESTMENT AND ADMINISTRATIVE POWERS.....	12
V : RESTRICTIONS ON POWERS .....	22
VI : IRREVOCABILITY; MODIFICATION .....	23
VII : TRUSTEE DESIGNATIONS, RESIGNATIONS AND REMOVALS.....	28
VIII : ACTION BY TRUSTEES .....	31
IX : LIABILITY AND INDEMNITY OF TRUSTEES .....	33
X : DEFINITIONS AND RULES OF CONSTRUCTION .....	34

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 transfers to the Trustees the property listed on Schedule A annexed hereto. The Trustees acknowledge receipt of such property and agree to hold such property 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 Settlor and the Beneficiaries, the dispositive terms of which are set forth in Article II. This Trust may be identified as the "JUDAH INVESTMENT TRUST A."

The Settlor may transfer additional property to the Trustees. Each property that is the subject of an additional transfer to the Trustees shall be held by them in a separate Trust for the benefit of the Settlor and the Beneficiaries, the dispositive terms of which are also set forth in Article II. Each such property shall be described in a Schedule which shall be signed by the Settlor and the Trustees and affixed to this Trust Agreement. Such Schedule shall also set forth (1) a name for the Trust, (2) the percentage or method to be used to establish the Initial Annuity Payment and each subsequent annuity payment applicable to such Trust, and (3) the day on which the Trust Term of the Trust shall end.

This Trust Agreement may be identified as the "JUDAH INVESTMENT TRUST AGREEMENT." The Trusts together may be identified as the "JUDAH INVESTMENT TRUSTS." 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 X or where they first appear.

## II: THE JUDAH INVESTMENT TRUSTS

Following are the dispositive provisions of each of the JUDAH INVESTMENT TRUSTS.

(A) *Trust Term.* The term of each Trust (the "Trust Term") shall commence on its Trust Creation Date. The term of the JUDAH INVESTMENT TRUST A shall continue until the day before the second (2<sup>nd</sup>) anniversary of its Trust Creation Date. The term of each other Trust held under this Trust Agreement shall end on the day set forth in the Schedule applicable to such Trust.

(B) *Annuity.* (1) During the period running from the Trust Creation Date to the day before the first (1st) anniversary of the Trust Creation Date, the Trustees shall pay to the Settlor an amount equal to the Initial Annuity Payment applicable to the Trust in such installments as may be convenient to the Trustees, provided, however, that the entire Initial Annuity Payment shall be paid to the Settlor no later than the day before the first (1st) anniversary of the Trust Creation Date. During the period running from the first anniversary of the Trust Creation Date to the day before the second (2nd) anniversary of the Trust Creation Date, unless otherwise specified in the Schedule applicable to the Trust, the Trustees shall pay to the Settlor an amount equal to one hundred twenty (120%) percent of the Initial Annuity Payment, provided, however, that the entire Annuity Payment shall be paid to the Settlor no later than the day before the second (2nd) anniversary of the Trust Creation Date. The payments the Trustees are required to make to the Settlor are referred to as "Annuity Payments," and each required payment is referred to as an "Annuity Payment." The Trustees' obligation to pay the Annuity Payments to the Settlor shall not terminate on the Settlor's death.

(2) In determining the amount of each Annuity Payment, assets shall be valued at their values as of the Trust Creation Date as finally determined for federal gift tax purposes.

(3) The Initial Annuity Payment applicable to the JUDAH INVESTMENT TRUST A shall be such percent of the initial fair market value of the Trust Fund as finally determined for federal gift tax purposes that, when increased by twenty (20%) percent each subsequent year in accordance with the provisions of subsection (1), results in the Settlor's right to receive the Annuity Payments having a value equal to NINETY-NINE and NINETY-NINE HUNDREDTHS PERCENT (99.99%) of the fair market value of the Trust Fund of the Trust as finally determined for federal gift tax purposes. The Initial Annuity Payment applicable to any other Trust held under this Article shall be equal to the percentage set forth or described in the Schedule applicable to such Trust as described in Article I multiplied by the initial fair market value of the Trust Fund of such Trust as finally determined for federal gift tax purposes or shall be determined in accordance with a method set forth in such Schedule.

(C) *Mandatory Income Payments to Settlor.* (1) Each year the Trustees shall distribute to the Settlor an amount equal to the excess of the Trust Accounting Income over the Annuity Payment payable to the Settlor in such year.

(2) For purposes of this Article, 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 Article, 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 Article, 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 Article, 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 Article, 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 Article, 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.

(D) *Source of Payment.* (1) The Annuity Payments shall be paid from Trust Accounting Income (as defined in this Article) and to the extent Trust Accounting Income is

insufficient, from income and, to the extent income is insufficient, from principal. Any income of a Trust for a taxable year not so paid shall be added to principal.

(2) The Trustees shall not issue (a) a note or other debt instrument, (b) an option, or (c) any other similar financial arrangement in satisfaction of their obligation to pay the Annuity Payments.

(E) *Adjustment.* If the initial fair market value of the Trust Fund of a Trust is incorrectly determined by the Trustees, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustees shall pay to the Settlor in the case of an undervaluation, or shall receive from the Settlor in the case of an overvaluation, an amount equal to the difference between the amounts properly payable and the amounts actually paid, plus, if required by the Code, interest, compounded annually, computed for any period at the rate of interest that the federal income tax regulations prescribe for such Trust for such computation for such period. Similarly, if the value of assets other than cash distributed by the Trustees in satisfaction of an Annuity Payment is incorrectly determined by the Trustees, then within a reasonable period after the value of such assets is finally determined for federal gift tax purposes, the Trustees shall pay to the Settlor, in the case of an undervaluation, or shall receive from the Settlor, in the case of an overvaluation, an amount equal to the difference between such Annuity Payment and the value of the assets actually distributed in satisfaction of such Annuity Payment, plus, if required by the Code, interest compounded annually, computed for any period at the rate of interest that the federal income tax regulations prescribe for such Trust for such computation for such period.

(F) *Termination.* Each Trust shall terminate on the last day of its Trust Term. Upon such termination, the Trustees shall dispose of the Trust Fund remaining after payment of

all of the Annuity Payments and any interest thereon (the "Trust Fund Balance") as provided in this section. Any disposition of the Trust Fund Balance pursuant to this section shall be subject to an obligation to repay to the Trustees any amount that the Trustees are required to pay to the Settlor pursuant to section (E) of this Article. The Trust Fund Balance shall be disposed of as follows: If the Settlor is not living on the last day of the Trust Term and any portion of the Trust Fund is includible in the Settlor's gross estate for federal estate tax purposes, the portion so includible shall be paid (i) to such one or more Persons, other than the Settlor, the Settlor's estate, the Settlor's creditors or the creditors of the Settlor's estate, 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), as the Settlor shall appoint by Will or by a written instrument that is delivered to the Trustees at a time when the Settlor is competent, that makes specific reference to this section, and that is signed and acknowledged by the Settlor, or, to the extent the Settlor fails to exercise this power of appointment, (ii) to DEBRA if DEBRA is then the Settlor's spouse. The balance of the Trust Fund shall be paid (i) to the trustees then in office of the trust known as the "BLACK 2006 FAMILY TRUST," for the benefit of the Settlor's spouse and the Settlor's issue living from time to time, created under article II of a trust agreement executed on the date hereof, by and between the Settlor, as settlor, and the Settlor and JOHN J. HANNAN, as trustees, known as the "BLACK 2006 FAMILY TRUST AGREEMENT," who shall add the same to the principal of the BLACK 2006 FAMILY TRUST and dispose of the same therewith, or if the BLACK 2006 FAMILY TRUST is not then in existence, (ii) in equal shares to the Settlor's Children living on the last day of the Trust Term, or if none of the Settlor's Children is living on such day, (iii) to the Settlor's issue living on such day, per stirpes, provided that the share of each such issue shall not be paid to him or her

outright, but shall instead be held in a separate trust for his or her benefit under this Trust Agreement upon the terms set forth in article III of the BLACK 2006 FAMILY TRUST AGREEMENT and any other relevant provisions of the BLACK 2006 FAMILY TRUST AGREEMENT that would govern such trust if it were held under the BLACK 2006 FAMILY TRUST AGREEMENT.

(G) *No Additions.* No additional contributions may be made to any Trust after the initial contribution to such Trust as described in Article I. If the Settlor, notwithstanding this provision, makes any direct or indirect transfer to any Trust other than the transfer of the property described in Article I, the Trustees shall promptly return to the Settlor the property that was the subject of the transfer or an amount equal to the fair market value of the property that was the subject of the transfer.

(H) *No Payments to Others.* No payment or application of any portion of the Trust Fund of any Trust shall be made at any time before the termination of such Trust to or for the benefit of any person other than the Settlor.

(I) *No Commutation.* The interests of the Settlor shall not be subject to commutation.

(J) *Overriding Provision.* It is the Settlor's intention that the Settlor's right to receive the Annuity Payments qualifies as a "qualified annuity interest" within the meaning of § 2702(b)(1) of the Code and the Treasury Regulations promulgated thereunder. Accordingly, no authorization or direction or other provisions contained in this Trust Agreement that would prevent the Settlor's right to receive the Annuity Payments from so qualifying shall apply to any Trust, it being the Settlor's intention that any court having jurisdiction over this Trust Agreement construe it accordingly. The Settlor understands that if the Settlor dies before any date or dates

on which any payments are required to be made to the Settlor or by the Settlor under this Trust Agreement or before any of such required payments have been made, such payments shall be made to or by the Settlor's Personal Representatives.

(K) *Modification.* Any provision of this Trust Agreement to the contrary notwithstanding:

(1) the Trustees shall modify this Trust Agreement in any manner required for the sole purpose of ensuring that the Settlor's right to receive the Annuity Payments qualifies as a "qualified annuity interest" within the meaning of § 2702(b)(1) of the Code and the Treasury Regulations promulgated thereunder; and

(2) the Independent Trustees shall have such power to modify the terms of this Article, other than this section (K), in the manner provided in Article VI as (i) will not cause the Settlor's right to receive the Annuity Payments to be disqualified as a "qualified annuity interest" within the meaning of § 2702(b)(1) of the Code and the Treasury Regulations promulgated thereunder; (ii) will not cause any change in the valuation of any interest in a Trust for federal gift or estate tax purposes; and (iii) is permitted by Article VI (without regard to paragraph (m) of subsection (B)(1) of Article VI).

### III: SPECIAL DISTRIBUTION RULES

(A) *Beneficiaries Under a Legal Disability.* (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) 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.

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

(B) *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 X(A)(20), 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 of a Trust held under Article II 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.

(C) *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.

(D) *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.

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

(F) *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.

(G) *Exercise of Powers of Appointment.* With regard to the power of appointment granted under this Trust Agreement that may be exercised by the Will of the Settlor, the Trustees may rely on any instrument purporting to be a certified copy of the Will of the Settlor. Commencing six (6) months after the death of the Settlor, the Trustees (if they have no actual notice of the existence of the Will of the Settlor that exercises such power), shall incur no personal liability for administering the Trust as though the Settlor 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 of a power of appointment granted under this Trust Agreement by the Will of DEBRA shall be valid only if DEBRA is the Settlor's spouse at the time of DEBRA's death.

#### IV: TRUSTEES' INVESTMENT AND

#### ADMINISTRATIVE POWERS

(A) *Overriding Limitation on Powers.* The provisions of this Article are expressly subordinate to the overriding provisions of Article V and section (J) of Article II.

(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 shall be made at 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 or effect any distribution of income or principal with any property, 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;

(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; and

(19) 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) *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.

(D) *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.

(E) *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 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.

(F) *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.

(G) *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).

(H) *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.

(I) *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 any Trust 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.

its administration if such removal, change of situs or election would have the effect of altering any beneficial interest under this Trust Agreement.

(D) *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.

#### **VI: 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. Notwithstanding the preceding sentence, if, as a matter of law, the annuity retained by the Settlor under Article II as to any Trust is, without taking this sentence into account, not a qualified annuity interest within the meaning of § 2702(b)(1) of the Code and the Treasury Regulations promulgated thereunder, the Settlor shall have the right exercisable at any time and from time to time to appoint any part of such Trust to any Person other than the Settlor, the Settlor's estate, the Settlor's creditors or the creditors of the Settlor's estate.

(B) *Scope of Independent Trustees' Modification Power.* (1) Subject to Article II(K)(2), 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) The amounts payable to the Settlor or the Settlor's Personal Representatives pursuant to Article II may not be changed.

(b) No portion of the Trust Fund of any Trust prior to the last day of such Trust's Trust Term may be paid to or applied for the benefit of any Person other than the Settlor and the Settlor's Personal Representatives. Except as provided in Article II, after the last day of such Trust's Trust Term no portion of the Trust Fund of such 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 (d) of this subsection.

(c) Except as provided in Article II, after the last day of the Trust Term of any Trust, no portion of the Trust Fund of such Trust may be paid to or applied for the benefit of any entity other than a Permitted Entity at any time while any Beneficiary is living.

(d) Neither the Settlor nor the Settlor's estate may ever be the recipient of a distribution of any portion of the Trust Fund of any Trust (other than the payments required to be made under Article II), 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.

(e) The Settlor may never be authorized to remove a Trustee except as provided under the provisions of Article VII, which may not be amended except to further restrict or eliminate such authority.

(f) The annuity to be paid by any Trust must be qualified as a "qualified interest" within the meaning of § 2702(b) of the Code and as a "qualified annuity interest" within the meaning of the Treasury Regulations promulgated thereunder.

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

(h) The definitions of the terms "Beneficiary," "issue," "Beneficiaries," "Permitted Entity," "Permitted Trust," "Settlor's Children," "Settlor's issue" and "spouse" may not be changed. For purposes of this provision, the provisions of Article III(B) shall be deemed to be part of the definition of "issue."

(i) 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.

(j) 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.

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

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

(m) The provisions of section (K) of Article II may not be changed. The other provisions of Article II may not be changed except in accordance with the overriding provisions of such section (K).

(n) The provisions of Article V 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 after the Trust Term of the Trust to which such property was transferred.

(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) *Administrative and Technical Modifications.* Subject to Article II(J) and notwithstanding any other provision of this Article, the Trustees (other than the Settlor) of any Trust 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. The authority to modify pursuant to this section may not be exercised in any manner that would alter any beneficial interest in any Trust 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) 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.

**VII: 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.

(4) If at any time any Trust 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 subsection (3), 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 other Person other than the Settlor or DEBRA (if then competent) except to the extent authorized by DEBRA pursuant to this subsection.

(4) Except as otherwise provided in subsection (3), 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: (i) to each Trustee of such Trust, or if there is none, to the next successor trustee of such Trust; (ii) to the Settlor, if then competent; and (iii) to DEBRA, if 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 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 Person 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.

#### VIII: 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 VI(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.

(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.

## IX: 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 the risk of 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.

#### **X: 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 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 VII 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 VII 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) "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 VII(A) 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 (D) of Article III) 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.

(9) "issue": except as otherwise provided in this Article and subject to the provisions of Article III(B) regarding adopted, out-of-wedlock and posthumously conceived children, all descendants of any degree of the designated ancestor.

(10) "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.

(11) "Modification Period": a time when the Settlor or DEBRA is alive and competent.

(12) "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.

(13) "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 section (B) of Article VI 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.

(14) "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.

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

(16) "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.

(17) "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).

(18) "SCPA": the New York Surrogate's Court Procedure Act.

(19) "Settlor": LEON D. BLACK.

(20) "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.

(21) "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.

(22) "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.

(23) "Treasury Regulations": the regulations promulgated by the United States Treasury Department as authorized by § 7805 of the Code.

(24) "Trust": a particular one of the Trusts.

(25) "Trust Agreement": this trust agreement, as it may be modified from time to time pursuant to Article VI.

(26) "Trust Creation Date": as to each Trust held under this Trust Agreement, the date on which the property listed on Schedule A annexed hereto or the Schedule applicable to such Trust as provided in Article I has been transferred, for federal gift tax purposes, by the Settlor to the Trustees.

(27) "Trust Fund": as to any Trust, all property (principal plus accrued, accumulated and undistributed income) that, at any particular time, belongs to such Trust.

(28) "Trustees": each Trustee and all Trustees serving under this Trust Agreement at any given time.

(29) "Trusts": all separate trusts held or to be held under this Trust Agreement at any particular time.

(30) "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.

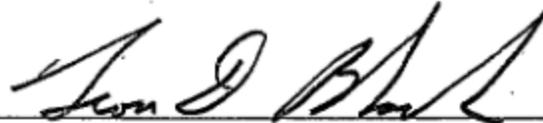
(5) The titles of Articles and headings of sections contained in this Trust Agreement are included solely for purposes of identification, and shall not be used to construe any provision contained in this Trust Agreement or for any other reason.

(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.

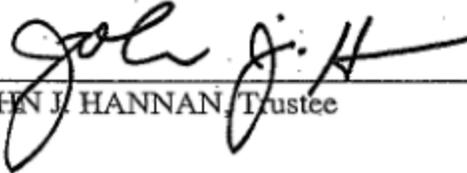
(C) *Governing Law.* Except as otherwise validly elected pursuant to subsection (B)(14) of Article IV, all questions pertaining to the validity, construction and administration of this Trust Agreement and the Trusts shall be determined in accordance with the laws of the State of New York in effect from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



LEON D. BLACK, Settlor and Trustee



JOHN J. HANNAN, Trustee

SCHEDULE "A"

the Settlor's entire limited partnership interest in Apollo Management, L.P., a Delaware limited partnership

A handwritten signature in black ink, appearing to read "Leon D. Black", written over a horizontal line.

LEON D. BLACK, Settlor

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 21st 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.

*Carly S. McCaffrey*

Notary Public  
CARLYN S. McCAFFREY  
Notary Public, State of New York  
No. 02MC4602951  
Qualified in Westchester County  
Commission Expires Oct. 31, 2009

STATE OF *New York* )  
 ) ss.:  
COUNTY OF *New York* )

On the 21st 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.

*Carly S. McCaffrey*

Notary Public  
CARLYN S. McCAFFREY  
Notary Public, State of New York  
No. 02MC4602951  
Qualified in Westchester County  
Expires Oct. 31, 2009

## Substitute Form W-9

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

Print or type	Name (as shown on your income tax return)		LEON D. BLACK
	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			

#### Part I Taxpayer Identification Number (TIN)

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).

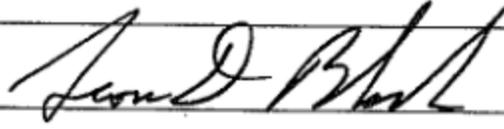
Social security number
OR
Employer identification number

#### Part II Certification

Under penalties of perjury, I certify that:

1. 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
2. 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
3. I am a U.S. person (including a U.S. resident alien).

**Certification Instructions.** 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.

<b>Sign Here</b>	Signature of U.S. person ▶ 	Date ▶ 12/21/06
<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.