

TRUST AGREEMENT
[BENEFICIARY] DISCRETIONARY TRUST

THIS AGREEMENT made effective as of the ___ day of _____, _____.

BETWEEN:

[TRUSTEE], a corporation incorporated pursuant to the laws of _____ (hereinafter the "Trustee")

OF THE FIRST PART

- and -

[BENEFICIARY], of the City of _____, in _____ (hereinafter the "Settlor" and "Beneficiary")

OF THE SECOND PART

WHEREAS the Settlor is desirous of establishing an irrevocable trust to be known as the [BENEFICIARY] DISCRETIONARY TRUST, for the benefit of the Beneficiary and has agreed to transfer or pay over to the Trustee, as hereinafter defined, the property set out in Schedule "A" hereto and may hereafter transfer or pay over or cause to be transferred or paid over to the Trustee further real and personal property which may hereafter be transferred or paid over to the Trustee by persons other than the Settlor, all of which is to be held by the Trustee upon the trusts and with and subject to the powers and provisions hereinafter declared and contained.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, the sum of ONE DOLLAR (\$1.00) paid to the Original Trustee (as hereinafter defined) by the Settlor (the receipt and sufficiency of which is hereby acknowledged) and the mutual covenants and agreements herein contained it is hereby covenanted and agreed by and among the parties hereto as follows:

1. DEFINITIONS

In this Trust Agreement, and in any instrument supplemental or ancillary hereto, unless the context otherwise requires, the following words shall have the following meanings respectively:

- (a) "Accumulating Income" shall have that meaning assigned to it in the *Income Tax Act*.
- (b) "Beneficiary" means [BENEFICIARY] in his capacity as Beneficiary and not as Settlor.
- (c) "Division Date" shall mean the first to occur of the following dates:
 - (i) the death of the Beneficiary;
 - (ii) the date which is one day prior to the twenty-first (21st) anniversary of the execution date of this Trust Agreement; or

- (iii) such date as the Trustee may in his absolute discretion determine by instrument in writing signed by the Trustee and delivered to the Beneficiary.
- (d) "Incapacitated Trustee" or "Incapacitated Beneficiary" means a Trustee or Beneficiary under the Trust, as the case may be, who:
 - (i) is declared by Court Order to be incompetent by reason of insanity, mental illness, or mental disability or for whom a legal representative or Committee has been appointed;
 - (ii) is declared bankrupt or insolvent, but only until such time as he is unconditionally and absolutely discharged from bankruptcy or determined not to be insolvent;
 - (iii) makes an assignment or files a proposal in bankruptcy but only until such time as he is absolutely and unconditionally discharged from bankruptcy in the event his proposal fails or until such time as his proposal in bankruptcy has been fully and satisfactorily completed and his debts thereby discharged;
 - (iv) makes an assignment for the general benefit of his creditors or seeks relief or protection from his creditors under any legislation in that regard but only for so long as his property or assets are subject to the claims of such creditors;
 - (v) is, or all or substantially all of whose property is, the subject matter of a receiving order but only for so long as such receiving order shall remain in force and effect;
 - (vi) being a corporation, shall enter into liquidation, compulsory or voluntary, and not being merely a voluntary liquidation for the purposes of amalgamation or reconstruction; or
 - (vii) being a corporation, takes the benefit or files a proposal under the *Bankruptcy and Insolvency Act* or a plan of arrangement under the *Companies Creditors Arrangement Act*, or any replacement legislation for or in respect of same.
- (e) "Income Tax Act" or any reference to a specific provision or specific provisions thereof shall mean the *Income Tax Act*, as amended from time to time, including any Rules or Regulations passed thereunder, or such provision or provisions, as the case may be, as amended from time to time, or any legislation of the Parliament of Canada from time to time in force of like or similar effect.
- (f) "Original Trustee" means [TRUSTEE].
- (g) "Person" shall mean and include any individual, corporation, partnership, firm, association, organization, foundation, trust, government or governmental authority of any jurisdiction whatever.
- (h) "Preferred Beneficiary" shall have that meaning assigned to it in the *Income Tax Act*.
- (i) "Scheduled Property" shall mean the property specified in Schedule "A" hereto.
- (j) "Settlor" shall mean [BENEFICIARY] in his capacity as Settlor and not as Beneficiary.

- (k) "Trust" shall mean the trust known as the [BENEFICIARY] Discretionary Trust established under this Trust Agreement.
- (l) "Trust Agreement" or "Agreement" shall mean this agreement of trust.
- (m) "Trust Fund" shall mean the Scheduled Property and any further, substituted or additional property which the Settlor or any other person or persons may donate, sell, assign, transfer, appoint or vest in the Trustee to be held upon the trusts and with and subject to the powers and provisions hereof and any property substituted therefor, and property into which the aforesaid property may be converted, together with all capital accretions to and all income from such property; and any property acquired by the Trustee pursuant to the terms hereof but excluding all amounts which have been paid or distributed therefrom (whether out of capital or income) in the normal course of administration of the Trust pursuant to the provisions of this Trust Agreement.
- (n) "Trustee" shall mean and include the Original Trustee as well as any successors thereto, appointed in accordance with the provisions hereof.