

**TRUST AGREEMENT**  
**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 -

[SETTLOR], 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.

## 2. INTERPRETATION

- 2.1 In this Trust Agreement any personal pronoun relating to the Trustee for the time being, or to the Settlor, or to a Beneficiary shall be read and construed as the gender and number of the party or parties referred to as the particular instance may require.
- 2.2 Words importing the singular number only shall include the plural and vice versa. Words importing the masculine gender shall include the feminine gender. Words importing individuals shall include firms and corporations, and vice versa.
- 2.3 In the event that there is only one Trustee, then any reference to one or more trustees shall be read and construed as meaning that Trustee. In the event that there is more than one Trustee, a reference to one Trustee shall be read and construed as meaning all such Trustees.

## 3. ESTABLISHMENT OF TRUST

- 3.1 The Settlor hereby donates, transfers and delivers to the Trustee the Scheduled Property, which property shall form part of the Trust Fund.
- 3.2 The Settlor directs and the Trustee covenants and agrees that the Trust Fund shall be held upon the trusts and subject to the powers and provisions herein contained.
- 3.3 The Trustee shall have the authority (exercisable in his unfettered discretion) at any time during the continuance of the Trust hereby created to accept such additional property (real or personal) which the Settlor or any other person or persons may hereafter transfer to the Trustee, either personally or by testamentary act or disposition.
- 3.4 If any of such further or additional property is so donated, transferred or delivered to or is vested in the trust hereby created, subject to the obligation of the Trustee to fulfill any conditions attached thereto, then the Trustee shall upon acceptance of such property comply with such condition.

### *Reservation of Power*

- 3.5 Subject to paragraph 3.6 hereof the Settlor hereby reserves no powers or rights or benefits hereunder and the Settlor shall receive no benefits of any nature or kind whatever and without restricting the generality of the foregoing, the Settlor shall not be entitled to receive any income or capital of the Trust Fund at any time, and any and all provisions of this Trust Agreement shall always be construed so as to exclude any possibility of any benefit of any nature or kind whatsoever accruing to the Settlor.
- 3.6 The Settlor may not be a Trustee, but may at any time on thirty (30) days advance notice terminate and replace one or more of the Trustees in accordance with the terms of this Agreement.
- 3.7 For greater certainty, the Trust Agreement shall at all times be construed as follows:
- (a) except to the extent of any payment of principal or interest on any loans made by the Trustee on behalf of the Trust, no portion of the Trust Fund shall at any time revert to the Settlor (in his capacity as Settlor) or to any other person from whom property or substitutions therefor was directly or indirectly received;
  - (b) no portion of the Trust Fund shall at any time pass to any person or persons determined by the Settlor subsequent to the creation of the Trust;
  - (c) the consent of the Settlor shall not be required on any disposition of any portion of the Trust Fund;

- (d) no property forming any part of the Trust Fund shall be held on condition that, during the lifetime of the person from whom the property or substitutions therefor was directly or indirectly received, the property shall not be disposed of except with the consent or in accordance with the direction of the Settlor;
- (e) no amount, whether in respect of income or capital, shall, during the lifetime of the Settlor, be distributed, allocated or otherwise designated to or in respect of a beneficiary who is a spouse of the Settlor or a minor unless such distribution, allocation or designation would not result in attribution of any income or gain to the Settlor for the purposes of the *Income Tax Act*;
- (f) in the event of any conflict between the provisions of this Article 3 and any other provision or provisions of this Trust Agreement, then the provisions of this paragraph shall supersede such other provision or provisions.

#### ***Trust Irrevocable***

- 3.8 It is declared that this Trust is irrevocable and that the Settlor in his personal capacity or in his capacity as Settlor, is divested of any power whatsoever to revoke this Trust.

#### ***Name of Trust***

- 3.9 This Trust shall be known and designated, where convenient, as the [BENEFICIARY] Discretionary Trust and the Trustee may, in his discretion, in that name hold title to or ownership of any or all of the property from time to time forming part or all of the Trust Fund, carry out any transactions on behalf of the Trust and enter into any contracts or arrangements or otherwise exercise any of the powers, discretions and authorities hereunder conferred upon him.

#### ***Decisions by Trustees***

- 3.10 In the event that there is more than one Trustee, all decisions respecting the Trust, and the exercise of any of the powers and authorities of the Trustees or any discretion permitted to be exercised hereunder shall require a simple majority decision of the Trustees.
- 3.11 The fact that a Trustee is interested financially or otherwise in the result of any exercise of a discretion vested in the Trustee shall not prevent him from the real exercise of such discretion and every benefit received by a Trustee shall not be in lieu of any compensation to which the Trustee may be entitled for acting as Trustee.

#### ***Residence***

- 3.12 The Trust shall for the purposes of the *Income Tax Act* be resident only in \_\_\_\_\_.

#### **4. DISTRIBUTION OF TRUST FUND**

- 4.1 Until the Division Date, the Trustee may pay and apply the whole or such part or parts of the income and capital of the Trust Fund as the Trustee shall from time to time in his absolute discretion determine, to or for the benefit of the Beneficiary at such time or times, in such manner, in such amounts and in such shares or proportions as the Trustee shall in his absolute discretion from time to time determine advisable for any reason, including without limiting the generality of the foregoing for the maintenance, education, entertainment, advancement, welfare, support, comfort, benefit or well being of the Beneficiary. Any income not so paid or applied as aforesaid in any fiscal period shall be accumulated and added to the capital of the Trust Fund and treated as part thereof.
- 4.2 Until and at the Division Date, for the purpose of ensuring that taxable capital gains (as defined in the *Income Tax Act*) required to be paid by the Trust shall be kept to a minimum, but without in any way limiting any discretion conferred upon the Trustee by this Agreement, the Trustee is hereby authorized and empowered:

**THIS IS A 16-PAGE DOCUMENT, including schedules.**