

Specialized Trust Provisions -- Robert H. Kroney

For the Annual Advanced Drafting: Estate Planning Course Presented in Austin TX Oct 31-Nov 1, 2002 sponsored by Texas Bar CLE

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I. [Marital Agreement on Residence.](#)

DECLARATION OF RESIDENCE AS SEPARATE PROPERTY

AGREEMENT between _____ ("Husband") and _____
("Wife") effective this _____ day of March, 200____.

RECITALS

A. Husband and Wife were married _____.

A. Husband and Wife are parties to Agreement in Contemplation of Marriage dated _____.

A. Husband purchased a residence at _____ (the "Residence") on _____ with his separate property.

A. Husband and Wife wish to confirm that the Residence is Husband's separate property, that Husband made the down payment with his separate property funds, that the loan through _____ to purchase the property is Husband's separate property obligation, and that all mortgage payments will be made from Husband's separate property.

A. Nothing herein shall affect Wife's legal rights to occupy the Residence upon the death of Husband under Texas law.

NOW, THEREFORE for good and valuable consideration, Husband and Wife agree:

1. The Residence is Husband's separate property and estate.

1. Husband shall provide the following from his separate property and estate:

a. Purchase money payments including mortgage payments attributable to the Residence.

a. All taxes attributable to the Residence.

a. All maintenance and repair attributable to the Residence.

1. Wife shall have no liability under the Purchase Money Mortgage note.

* * * * *

II. Trust Agreement Article on Trust Protection.

A. Protection of [Beneficiary]. [Beneficiary] acknowledges that she has previously been impaired in a manner that she was unable to conduct regular business affairs. The purpose of this Article is to protect [Beneficiary] if she should become Incapacitated or Impaired in such a manner that she cannot handle her financial affairs or conduct her regular business affairs.

A. Incapacitated. All references to [Beneficiary] as being "Incapacitated" means any physical or mental condition which substantially impairs her ability to conduct her financial and/or regular business affairs.

A. Impairment From Alcohol and/or Drugs. All references to "Impairment" of [Beneficiary] mean any physical or mental condition of [Beneficiary] which substantially impairs her ability to conduct her financial or regular business affairs. Impairment also includes any physical or mental condition of [Beneficiary] arising out of an addiction to substances and/or alcohol which substantially impairs her ability to conduct her regular business affairs.

A. Evidence of Incapacity or Impairment. Evidence of Incapacity or Impairment is provided by (a) the written certificate of two Co-Trust Protectors; or (b) the written certificate of [Parent]; or (c) the written certificate of a successor Trustee. If a Trustee (other than [Parent]) makes a written certification, within ninety (90) days thereafter, such Trustee shall obtain the written certificate of at least one Trust Protector in order to continue application of the limitations of this Article to the trust estate beyond the 90 day period. [Parent], the Trustee, and the Trust Protectors have absolute discretion in determining if [Beneficiary] is Incapacitated or Impaired for purposes of this Article and in providing any written certificate of such Incapacity or Impairment. Such certification shall be binding on [Beneficiary].

A. Procedure for Occurrence of Incapacity or Impairment. If [Parent], the Trustee, or the Trust Protectors, in their sole and absolute discretion, determine that [Beneficiary] is Incapacitated or Impaired in a manner which affects her ability to manage her financial affairs and to conduct regular business affairs, then [Parent], the Trustee, or the Trust Protectors shall give written notice to [Beneficiary] and to the Trustee of the determination of such Incapacity or Impairment.

A. Effective Notice. Notice of Incapacity or Impairment to [Beneficiary] shall be deemed effective (i) when [Parent], Trustee or the Trust Protectors deposit the written notice in the U.S. Mail, certified mail, return receipt requested, addressed to [Beneficiary]'s last known home address, or (ii) when [Parent], the Trustee, or the Trust Protectors have [Beneficiary]'s acknowledgment of receipt of notice, regardless of how notice is provided, or (iii) when [Parent], the Trustee, or the Trust Protectors hand deliver the written

notice to [Beneficiary]. Upon effective notice, the provisions of this Article shall be activated and, so long as such Incapacity or Impairment exists, these provisions shall override and supersede any other provision of this trust agreement which may conflict with this Article.

A. Distributions to [Beneficiary]. During the period of Incapacity or Impairment, distributions of income and principal to [Beneficiary] shall be limited to her Needs determined by the Trustee in its sole and absolute discretion.

A. Protection of the Trust Estate. The Trustee may take any action the Trustee deems necessary and appropriate during a period of Incapacity or Impairment to protect the trust estate from [Beneficiary] individually, or from any persons having a claim against [Beneficiary], to include without limitation, the transfer of the trust estate to any jurisdiction within or without the United States as necessary to protect the trust estate. The Trustee, in its sole discretion, in exercising its powers to transfer the trust estate to another jurisdiction, may modify and amend the trust estate as necessary to comply with the laws of the state or other jurisdiction to which the trust estate is transferred. Further and without limitation, the Trustee may restructure the assets of the trust in any manner that the Trustee deems appropriate and necessary to protect the trust estate from [Beneficiary] and any person having a claim against [Beneficiary], including creating any form of business interest and transferring all or any portion of the trust estate to that business interest including without limitation, the restructuring of the trust estate assets into a limited partnership so that all or a portion of the entire trust estate is held as a limited partnership interest.

A. Trust Protectors. Until [Parent]'s death or incapacity, [Parent] shall exercise all of the powers and discretions of the Trust Protectors (herein so called) unless [Parent] shall decline to act, in which event the Trust Protectors shall be appointed, as follows:

1. [Parent] and [Beneficiary], acting jointly, may at any time appoint Trust Protectors to act either immediately or in the future.

1. After [Parent]'s death or incapacity, if no Trust Protectors have been appointed by [Parent] and [Beneficiary] in 1., above, then [DR-1] and [DR-2] are appointed Co-Trust Protectors.

1. If either [DR-1] or [DR-2] fails or ceases to serve as Co-Trust Protector and no other successor Trust Protector is named, then the remaining Trust Protector shall appoint a successor Co-Trust Protector for the vacant position.

1. The Trust Protectors, acting jointly if two Co-Trust Protectors are serving, shall have the authority to appoint successor Trust Protectors to act either immediately or in the future. If only one Trust Protector is then serving, that Trust Protector shall have the authority to appoint a successor Co-Trust Protector for the vacant position.

1. If the Co-Trust Protector positions become vacant and no successor Co-Trust Protectors are appointed to act, then the Trustee shall appoint successor Co-Trust Protectors as necessary to maintain the minimum number of Trust Protectors at two.

1. Each designation of a Trust Protector shall be by a written instrument delivered to the appointed Trust Protector and filed with the trust records. Any such designation may be revoked, altered, or amended by subsequent designations similarly delivered prior to its effective date. Any person entitled to appoint a successor Trust Protector shall have the power to make such appointment for a period of 30 days before that person shall be deemed to have failed to make such appointment.

A. Liability. [Parent], the Trustee, and the Trust Protectors shall have no liability to any person for acting or failing to act under this Article, except for fraud. Neither [Parent], the Trustee, nor the Trust Protectors

shall have any liability to [Beneficiary] or any other person or entity for exercising their discretion in making written certification of Incapacity or Impairment.

A. End of Incapacity or Impairment. Upon the Trustee's receipt of a certificate from the Trust Protectors that [Beneficiary] has regained her capacity to manage her financial and business affairs, then the limitations provided in this Article shall cease to apply.

* * * * *

II. Trust Distributions if Beneficiary is Spendthrift.

A. Distributions: The Trustee in its sole and absolute discretion may make distributions to [Beneficiary] solely for his health, maintenance, and support ("[Beneficiary]'s Needs"). Prior to making any distributions to [Beneficiary], Settlor directs the Trustee to take into consideration the following directions and factors:

1. Settlor previously transferred substantial funds to [Beneficiary] through lifetime transfers, and therefore, Settlor believes that [Beneficiary] should have sufficient funds for his lifetime if such funds were properly managed.

1. Settlor believes since [Beneficiary] has wasted substantial funds which Settlor previously transferred to [Beneficiary], that [Beneficiary] would waste any further funds available to him. Settlor objects to such waste and desires to limit such waste.

1. The Trustee shall not make any distributions to [Beneficiary] until [Beneficiary] delivers his personal financial information to the Trustee, as set forth in Subparagraph B.

1. Before making any distributions to [Beneficiary], the Trustee shall use due diligence to make a determination that (i) [Beneficiary] no longer has any personal assets available for [Beneficiary]'s Needs, and (ii) such distributions are for [Beneficiary]'s Needs. The Trustee shall be reimbursed by the trust estate for any expenditures it may incur in making a determination of [Beneficiary]'s assets available and [Beneficiary]'s Needs, including but not limited to, reimbursement for any investigation fees, attorneys' fees, litigation expense, or court costs incurred. The Trustee shall not be subject to any liability for its determination, except for willful misconduct or fraud.

1. The Trustee shall not make any distributions to [Beneficiary] for [Beneficiary]'s Needs until the Trustee confirms that all assets previously transferred to [Beneficiary] have been expended or that such assets cannot be expended because such assets cannot be readily converted to cash.

1. The remaindermen of [Beneficiary]'s Trust shall be considered the primary beneficiaries and trust income shall be accumulated for the remaindermen so long as the Trustee determines that any personal assets are available to [Beneficiary] to provide for [Beneficiary]'s Needs.

A. [Beneficiary]'s Financial Information. Before the Trustee may make any distributions to [Beneficiary], [Beneficiary] shall provide his personal financial information to the Trustee for the current year and the three previous years, including all federal income tax returns filed, any personal financial statements, bank statements, investment account statements, property tax records, mortgage notes, all other financial records, the names of [Beneficiary]'s financial advisors, the name of [Beneficiary]'s certified public accountant, and any other financial information requested by the Trustee. The Trustee is directed to withhold all distributions to [Beneficiary] until such time that [Beneficiary] provides such information to the Trustee, and the Trustee has a reasonable time to review such financial information.

A. Distribution Instructions: In making distributions to [Beneficiary] for [Beneficiary]'s Needs, the Trustee is specifically directed to take into consideration Settlor's directions as provided in Subparagraphs A and B

above and the Distribution Instructions in Article V hereof; provided, any conflict shall be resolved in favor of this Section.

es. Except as otherwise provided herein, and except for distributions for [Beneficiary]'s Needs, in making discretionary distributions to any beneficiary, the Trustee may take into consideration, to the extent the Trustee deems advisable, any other income or resources known to the Trustee to be available to that beneficiary for the stated purposes. With respect to distributions for [Beneficiary]'s Needs, the Trustee is specifically directed to take into consideration any other income or resources known to the Trustee to be available to [Beneficiary] for [Beneficiary]'s Needs. Settlor directs that to the extent that [Beneficiary] has any personal assets available to provide for [Beneficiary]'s Needs, the Trustee shall not make any distributions to [Beneficiary] until such assets are exhausted or until the Trustee determines that such assets cannot be readily convertible to cash to provide for [Beneficiary]'s Needs.

* * * * *

II. Grantor Trust Provisions to Acknowledge Incompetent Grantor/Beneficiary.

A. Purpose. [Beneficiary] has determined that he lacks the business acumen, knowledge, and ability to properly manage and protect his assets. [Beneficiary] is aware that he has previously been manipulated unfairly by others resulting in losses which he does not want to repeat in the future. Accordingly, [Beneficiary] has determined that it is in his best interest to transfer his properties and estate into an irrevocable trust and appoint the Trustee designated herein to manage his financial affairs and property for him. [Beneficiary] recognizes the responsibilities and difficulties which he imposes upon the Trustee with respect to his properties and estate. Notwithstanding the foregoing, [Beneficiary] requests the Trustee to serve and protect his property and estate and specifically relieves the Trustee of liability for taking responsibility and managing his properties as Trustee in accordance with the terms and conditions of this Trust Agreement.

A. Protection of [Beneficiary]. Notwithstanding the distribution provisions above, the Trustee, in its sole discretion, may limit distributions to [Beneficiary] if the Trustee believes in its sole discretion, that such limitation is in [Beneficiary]'s best interest. Further, the Trustee may take any action the Trustee deems appropriate and necessary to protect the trust estate from [Beneficiary] individually, or from any person having a claim against [Beneficiary], including without limitation, (i) to transfer the trust estate to any jurisdiction within or without the United States as necessary to protect the trust estate; (ii) to modify and amend this trust instrument as necessary to comply with the laws of such other state or other jurisdiction to which the trust estate is transferred; and (iii) to restructure the assets of the trust in any manner without limitation that the Trustee deems appropriate and necessary to protect [Beneficiary] and the trust estate from any person having a claim against [Beneficiary], including creating any form of business interest and transferring all or any portion of the trust estate to such business interest including but not limited to limited partnerships or limited liability companies so that all or a portion of the trust estate is held by such entity.

* * * * *

Directions of Contingent Beneficiary to Distribute Trust Property to Partnership.

DIRECTIONS OF BENEFICIARY TO DISTRIBUTE TRUST ASSETS TO ABC, LTD

A. [Mother], Deceased, established a testamentary trust, the [Mother] FAMILY TRUST ("Family Trust"), in her Last Will and Testament, dated _____.

A. Upon the death of [Son], [Grandson] if then living shall receive an outright distribution from the Family Trust.

A. [Grandson] is a limited partner in ABC, Ltd., a Texas limited partnership (the "Partnership").

A. [Grandson] desires that all beneficial interest due to him from the Family Trust upon the death of [Son] be delivered to the Partnership.

NOW THEREFORE, for good and valuable consideration:

1. All distributions of any property from the Family Trust to which [Grandson] is entitled at the death of [Son] be distributed to the Partnership.

1. [Grandson] agrees and acknowledges that all distributions pursuant to this direction are in full and complete satisfaction of [Grandson]'s interest in such property held by the Family Trust.

[Grandson], Individually, as beneficiary of the [Mother] FAMILY TRUST, and as a
Limited Partner of ABC, Ltd.

ACCEPTED:

_____, as President of ABC, Inc., General Partner of ABC,
Ltd.

[Son], as Co-Trustee of the [Mother] FAMILY TRUST

* * * * *

II. Grantor Trust - Distributions on Incapacity of Grantor. Providing for a second wife:

A. Distributions on Incapacity of Settlor. During any period Settlor is incapacitated, the Trustee shall administer the trust estate and the [Last-Name] Business Interests as provided herein. It is Settlor's intent that during Settlor's incapacity, the Trustee provide for Settlor and manage the [Last-Name] Business Interest in the same manner as was the case before Settlor's incapacity, including but not limited to, the specific provisions of Section 3.1 above.

1. To Settlor. The Trustee shall distribute to or for the benefit of Settlor so much of the income and principal of the trust estate as the Trustee deems appropriate to provide for Settlor's Needs and Best Interests to maintain Settlor in the lifestyle to which he is accustomed. The Trustee shall distribute to Settlor from the trust or borrow from one or more of the [Last-Name] Business Interests whatever sums the Trustee in its sole discretion deems desirable for the benefit of Settlor. Settlor's Needs and Best Interests shall be considered more important than the trust estate or any [Last-Name] Business Interests.

1. To the Incapacity Trust.

a. Cash Distribution. So long as [Wife] is a Qualified Beneficiary, the Trustee shall distribute \$1,000,000 in cash each year to the trustee of the Incapacity Trust, payable on the fifth day after Settlor is determined to be incapacitated and on the same day of each year thereafter for so long as Settlor remains

incapacitated, to be held and administered as provided in the Incapacity Trust by the trustee of the Incapacity Trust.

a. Supplemental Distributions. The Trustee is further authorized to make supplemental distributions to the Incapacity Trust as the Trustee deems necessary and appropriate to fund the payments provided in the Incapacity Trust. The determination of the Trustee to make supplemental distributions shall be in the sole and absolute discretion of the Trustee.

a. Residences Distribution. The Trustee shall provide additional cash to the trustee of the Incapacity Trust in order for that trustee to pay all expenses for Residences, including utilities, taxes, maid service, yard and lawn maintenance, and all general maintenance expenses.

1. Insurance Premiums. The Trustee shall pay all medical, dental, and life insurance premiums for policies in force on Settlor. Further, the Trustee, in its sole discretion, may acquire additional medical, dental, and life insurance policies on Settlor as the Trustee deems appropriate.

1. Medical and Dental Expenses. The Trustee shall pay all medical and dental expenses for Settlor not reimbursed by insurance, including but not limited to, payments for drugs and medicines, and for any and all medical treatments, including experimental or unconventional medical treatments.

1. Income Taxes and Income Tax Returns. Trustee is authorized, in its sole discretion, to file joint or separate federal income tax returns with [Wife], and to cause such joint or separate tax returns to be prepared and filed. Trustee shall pay all federal income tax due, including estimated tax payments.

1. Loans to Children. The Trustee may make loans to any of the Children, secured or unsecured, upon such terms and conditions as the Trustee determines in its sole and absolute discretion. Settlor desires that the Children obtain loans directly from funds available from ABC, Ltd. or from another [Last-Name] Business Interests. However, in the sole discretion of the Trustee, such loans may be made from the trust estate to any Child. Settlor directs Trustee to look to the manner, amounts, and reasons that Settlor made such loans to the Children while Settlor was Trustee for guidance in making loans to Children during Settlor's incapacity. The Trustee, in the Trustee's sole discretion, in its capacity as (i) Trustee or (ii) an officer or director of ABC, INC. (which is the general partner of the [Last-Name] Business Interests), is specifically authorized to make loans and/or partnership distributions from any of the [Last-Name] Business Interests to the partners, which include the Children, taking into consideration the Children's and their descendants' support requirements during Settlor's incapacity.

1. Gifts to Children. The Trustee may make gifts to the Children (outright or in trust); provided that such gifts are annually limited to the maximum federal gift tax exclusion amount determined under Section 2503(b) of the Code in effect at the time of gift and Qualified Educational and Medical Payments.

1. Gifts to Grandchildren. The Trustee may make gifts to Settlor's grandchildren (outright or in trust); provided that such gifts are annually limited to the maximum federal gift tax exclusion under Section 2503(b) of the Code in effect at the time of the gift for each grandchild and Qualified Educational and Medical Payments.

1. Trust Management. During Settlor's incapacity, the Trustee, as (i) Trustee or (ii) an officer or director of ABC, INC. (the general partner of most of the [Last-Name] Business Interests), shall manage the trust estate, including without limitation, the [Last-Name] Business Interests in a substantially similar manner as Settlor managed the trust estate and [Last-Name] Business Interests while Settlor served as Trustee.

1. Regaining Capacity. In the event Settlor regains his capacity after a period of incapacity, upon the written request of Settlor, the acting Trustee shall resign provided Settlor provides Trustee with a

complete release and indemnity for its actions as Trustee during Settlor's incapacity pursuant to Section 7.10.

* * * * *

II. Administration of Grantor Trust During Incapacity.

A. Management of Trust During Settlor's Incapacity or Death. During any period that Settlor is incapacitated and following Settlor's death, the Trustee is instructed to maintain the trust assets with the same or similar investments and securities, and to follow the same management style that Settlor exercised while he was a Trustee. To accomplish this goal, the Trustee shall follow these guidelines:

1. Office. From Settlor's date of death until a date which is two years after Settlor's death, Trustee shall take steps necessary for the Trustee to act as President of ABC, INC., President of DEF, INC. (doing business as GHI, INC.), as well as any other [Last-Name] Business Interests. On a date which is two years and one day from the date of Settlor's death so long as the Children have released [Advisor-1] and/or [Advisor-2] pursuant to Section 7.10, the Children, by majority vote, shall determine who shall manage the [Last-Name] Business Interests until Division Date.

1. Active Management. Other than as set forth in such Paragraph (1) above and (3) below, the Trustee shall actively manage all [Last-Name] Business Interests.

1. Supervision. Subject to Subparagraph (1) above, The Trustee shall manage, oversee and supervise all leasing, maintenance, and construction operations. However, after Settlor's death or incapacity, the Trustee shall not manage, oversee or supervise ABC, INC.'s involvement in the widget equipment business, which shall be entirely managed by [Son], both after Settlor's incapacity or death, until such time as the assets and employees of ABC, INC. which are used in the widget business are transferred to [Son] as provided in Section 8.2H below.

1. Operation. Settlor directs the Trustee to manage and operate the [Last-Name] Business Interests in substantially similar manner as Settlor would manage and operate the [Last-Name] Business Interests.

* * * * *

II. Trust Clauses on Distribution Management.

A. Free of Creditor. The trust estate shall be free from control or interference of any creditor of a beneficiary or of any spouse or former spouse of a beneficiary.

A. Separate Property. It is Husband's intent that all distributions of both income and principal to any beneficiary be deemed gifts and constitute the sole and separate property of the beneficiary receiving the distribution. Further, it is Husband's direction that the trust estate shall never be subject to equitable distribution by any court under the laws of any state.

A. No Spousal Rights. No spouse or former spouse of any of Husband's descendants or subsequent spouse of Wife shall ever have any rights under this trust agreement. No spouse or former spouse of any of Husband's descendants or subsequent spouse of Wife shall ever have the right or power to receive any trust accounting, nor shall any spouse or former spouse ever have any access to the books and records of the trust or any Trustee, whether individually, or in any fiduciary capacity.

* * * * *

II. Release Provisions for Trustees.

A. Release of [Advisor-1] and [Advisor-2]. If [Advisor-1] and/or [Advisor-2] serve as Trustee, Settlor directs that [Advisor-1] and [Advisor-2], upon his ceasing to serve as Trustee, shall be entitled to a full, final and complete release by [Wife] if she is a beneficiary of the trust or if [Wife] is not a beneficiary of the trust, by the Children. If [Advisor-1] and/or [Advisor-2] do not receive a full, final, and complete release within 30 days after requesting such release, then [Advisor-1] or [Advisor-2] shall, at his option and at the expense of the trust estate, have the right to obtain a full, final and complete release by filing a final accounting with the court having jurisdiction over the trust estate. Expenses to be paid by the trust estate shall include all expenses, including but not limited to, attorneys' fees, costs and expert witness fees incurred by [Advisor-1] and/or [Advisor-2] to obtain court approval of his final accounting, release, and discharge. Such expenses shall be apportioned against the various trusts and shares as the Trustee considers appropriate, taking into account those beneficiaries who refused to give [Advisor-1] and/or [Advisor-2] a full, final, and complete release.

* * * * *

II. Exculpation Provisions for Trustees.

A. Exculpation. Settlor, [Advisor-1] and [Advisor-2] shall not be liable for any act or omission as Trustee or successor Trustee except theft of trust assets. Settlor, [Advisor-1] and [Advisor-2] shall, while serving as Trustee, to the greatest extent permitted by Texas law at the time this clause is construed, be exculpated from any liability whatsoever for any alleged abuse of discretion, tort, breach of fiduciary duty and/or breach of trust caused by any act or omission in the administration of each trust created hereunder. Settlor, [Advisor-1] and [Advisor-2] shall not be held personally liable to any other person, firm, or corporation for any damages directly or indirectly arising out of any act or omission committed in the administration of any trust created hereunder. This exculpation shall not, however, protect [Advisor-1] and [Advisor-2] from any liability for theft of trust assets.

A. Delegation of Duties. No Trustee shall be liable (i) for relying on any certification, statement, or report of any officer, director, general partner or manager of any entity which is owned in whole or in part by the trust estate, or (ii) for making any delegation with reasonable care that is authorized under this agreement. When the Trustee's action is subject to another person's consent, consultation, or direction, the Trustee shall not be personally liable for any loss that results from any delay or failure to act due to this requirement, or from following any direction that the Trustee is required to follow. Further, the Trustee shall not be precluded from buying from, selling to, or otherwise conducting trust business with any officer, director, general partner or manager of such entity, notwithstanding an apparent conflict of interest.

A. No Punitive or Exemplary Damages. Settlor, [Advisor-1], and [Advisor-2] shall not be liable for any punitive or exemplary damages for any act or omission committed in the administration of any trust created hereunder.

A. Indemnification. **THE TRUST ESTATE SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, SUBJECT TO THE EXCULPATION PROVISIONS ABOVE INDEMNIFY AND HOLD HARMLESS SETTLOR, [Advisor-1], AND [Advisor-2] (COLLECTIVELY THE "INDEMNITEE") TOGETHER WITH HIS AGENTS, SERVANTS, PARTNERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY OF ANY KIND OR CHARACTER, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO COURT COSTS, EXPERT WITNESS FEES, ATTORNEY'S FEES, AND COSTS OF INVESTIGATION AND ACTIONS OF ANY KIND, WHETHER ARISING IN CONTRACT, TORT, BREACH OF FIDUCIARY OR OTHER DUTIES, BREACH OF CONTRACT, OR BREACH OF THIS TRUST AGREEMENT, OR BY REASON OF ANY CLAIM OF WHATSOEVER NATURE BY ANY PERSON OR ENTITY INCLUDING ANY BENEFICIARY OR POTENTIAL BENEFICIARY WHETHER THE DAMAGES ARE CAUSED BY THE**

INDEMNITEE'S INTENTIONAL CONDUCT, FAILURE TO ACT, NEGLIGENCE, OR THE JOINT NEGLIGENCE OF INDEMNITEE TOGETHER WITH ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENTION OF THE SETTLOR THAT THE INDEMNITY PROVISION CONTAINED HEREIN PROTECT THE INDEMNITEE FROM THE CONSEQUENCES OF THE INDEMNITEE'S OWN NEGLIGENCE OR MALFEASANCE OF ANY KIND WHETHER SUCH NEGLIGENCE OR MALFEASANCE IS THE SOLE OR A CONCURRING CAUSE OF THE DAMAGES OR ANY PART THEREOF. The trust estate shall defend the Indemnatee in any suit naming the Indemnatee (in a fiduciary or individual capacity) as a party. The Indemnatee shall have the sole and exclusive right to select the Indemnatee's attorneys, accountants, and other professionals and experts as may be necessary to defend the suit at the sole cost of the trust estate. Further, if the Indemnatee is an attorney or accountant, the Indemnatee is specifically authorized to use his firm's services, including the Indemnatee's services, as an attorney or an accountant and to compensate the firm for those services in addition to any other compensation to which the Indemnatee may be authorized under this Trust Agreement. Notwithstanding the foregoing, if the Indemnatee is found in a final adjudication by a court of law to have damaged the trust estate as a result of the Indemnatee's theft of trust assets, then the Indemnatee shall reimburse the trust estate for all costs associated with the Indemnatee's defense.

A. Other Trustees. Settlor intends that this Section protect Settlor, [Advisor-1] and [Advisor-2] while serving as Trustee and shall not apply to a another Trustee.

A. Corporate Trustee. Settlor intends that this Section to protect Settlor, [Advisor-1], and [Advisor-2] while serving as Trustee and shall not apply to a corporate Trustee.

* * * * *

II. Trust Provision Discussing Marital Agreement.

A. Marital Agreement; No Contest. Settlor and [Wife] are parties to a Marital Agreement dated _____. In the Marital Agreement, Settlor and [Wife], among other things, waived all of their rights of every kind with respect to the other's separate properties and agreed that each party's separate property, the income from separate property, and the income from personal services constitute the separate property of such party. Under the terms of the Marital Agreement, Settlor and [Wife] have no community estate. Therefore, all trust property contributed by Settlor and the income therefrom is Settlor's separate property.

1. Enforcement. The Trustee shall carry out the terms of the Marital Agreement at the expense of the trust estate. The determination of the terms and conditions of the Marital Agreement shall be made by the Trustee whose decision shall be final and binding on all persons interested in the trust estate.

2. Forfeiture. If [Wife] claims any interest in (i) the property held by this trust estate, (ii) property held in any other trust created by or for Settlor, (iii) property in Settlor's probate estate, or (iv) any other property owned by Settlor other than property specifically gifted to [Wife] by Settlor, Settlor absolutely revokes any benefit under this instrument to or for [Wife], declares the same void and of no force or effect, and directs that the benefits otherwise conferred upon [Wife] shall pass in the manner provided in this instrument as if [Wife] had predeceased Settlor.

1. Benefits Conditional. Each benefit conferred in this instrument is made on the condition precedent that [Wife] shall accept and agree to all of the provisions of this trust instrument, and the provisions of this Section are an essential part of each and every benefit.

1. Offset to Gifts. In the event that [Wife] claims any interest described in Paragraph 2, the Trustee shall offset any gifts to [Wife] and/or [Wife]'s Trust provided herein by the amount of any property paid or

payable to [Wife] for such claims and all expenses incurred by Settlor's representatives and the Trustee in connection with defense of such claims.

1. Clarification or Construction. The provisions of this Section shall not apply in the case of any proceeding brought by any person or any entity if the purpose thereof is solely to clarify or have construed any ambiguity found in this instrument or to seek instructions regarding any such ambiguity.

1. Prior Divorce. Settlor, having previously experienced a divorce, recognizes the complexities of termination of a marriage and accordingly, through this Trust, wishes to avoid conflict between himself and the Trustee and [Wife] in the event of the termination of his marriage with [Wife] whether during lifetime or at death.

* * * * *

II. Grantor Trust - QTIP Distributions to Second Wife, Including Minimum Payments.

A. [Wife]'s Trust. Following Settlor's death, and provided [Wife] is a Qualified Beneficiary at Settlor's death, the Trustee shall hold the remaining trust estate in a single trust ("[Wife]'s Trust"), to be administered and distributed as follows:

1. Minimum Monthly Payment. On the death of Settlor, on the first day of each month, [Wife] shall receive a Minimum Monthly Payment of \$18,000 plus the estimated income taxes on such distribution, subject to the provisions of Subparagraph 5 below, with such Minimum Monthly Payment to include net income and if net income is insufficient, trust principal.

1. Medical and Dental Insurance Premiums. The Trustee shall either distribute to [Wife] or pay on behalf of [Wife] all insurance premiums on medical insurance and dental insurance policies for the benefit of [Wife] for as long as she lives which are in effect at the date of Settlor's death, or medical or dental insurance policies which replace such policies with similar coverage. If no such policies are in effect at the date of Settlor's death then upon [Wife]'s request, the Trustee shall pay the cost of major medical and dental policies covering [Wife] for the remainder of her life, as [Wife] shall reasonably direct, provided that the major medical policy shall have a deductible no less than \$10,000.00 per year and the dental policy shall have a deductible not less than \$1,000.00 per year. The Trustee shall also pay out of the Trust proceeds, all deductible amounts paid by [Wife] on such insurance.

1. Medical and Dental Expenses. After Settlor's death, the Trustee shall either distribute to [Wife] or pay on behalf of [Wife] all medical and dental expenses for [Wife] not reimbursed by insurance, including but not limited to, deductible payments made by or on behalf of [Wife] for drugs and medicines, and conventional medical treatments. If [Wife] seeks unconventional medical treatment not covered by insurance, the Trustee shall make distributions to [Wife] for such unconventional medical treatment.

1. Residential Expenses. The Trustee shall either distribute to [Wife] or pay on behalf of [Wife] expenses associated with the Residences (hereinafter defined) and other residential property owned by [Wife]'s Trust, to include property taxes, condominium fees or assessments, and insurance. The Trustee shall pay normal and customary maintenance expenses exceeding \$2,000 per occurrence which are approved by the Trustee in advance of incurring such expense. All other expenses associated with maintaining the Residences and other residential property shall be the responsibility of [Wife], including payment of utilities, maid service, yard and lawn maintenance, and general maintenance expenses less than \$2,000 per occurrence, and other maintenance expenses not approved by the Trustee.

1. Income Taxes. The Trustee shall distribute to [Wife] or pay to the Internal Revenue Service on [Wife]'s behalf all federal or state income tax liabilities arising from distributions from this trust, pursuant to

Subparagraphs 1 through 4 above, including payment of quarterly estimated income tax payments. [Wife] shall be responsible for payment of any additional federal or state income tax liability.

1. Income. Notwithstanding any provision herein to the contrary, all net income of [Wife]'s Trust shall be distributed to [Wife] not less frequently than annually which is required to cause [Wife]'s Trust to qualify for the marital deduction in Settlor's estate for federal estate tax purposes

1. Principal. The Trustee shall distribute principal of [Wife]'s Trust, to the extent net income is insufficient, to pay: (i) Minimum Monthly Payments, (ii) medical and dental insurance premiums, (iii) medical and dental expenses, (iv) Residential expenses as set forth herein, and (v) income taxes attributable to trust distributions pursuant to Subparagraphs 1 through 4 above, all as described herein. It is Settlor's intent that the Trustee should avoid invasion of principal unless the Trustee, in its discretion, finds such invasion of principal is necessary to provide for [Wife] as set forth herein.

1. Termination of [Wife]'s Trust. [Wife]'s Trust shall terminate on the death of [Wife].

* * * * *

II. Residential Property for Use of Second Wife; and Option to Sell.

A. Residential Property. After the death of Settlor, in the event that the Trustee sells the Residence One (as defined in Section _____) or Residence Two (as defined in Section _____), the Trustee may in its discretion, and with [Wife]'s written consent, (i) lease a residential property for [Wife], or (ii) acquire and maintain other residential property for [Wife] as an asset of the trust, for the use and enjoyment of [Wife] during her lifetime. The Trustee's power to lease a residential property for [Wife] or acquire a residential property shall only be exercised to replace an existing residence and not to lease or acquire an additional residential property. Further, such replacement residential property cost shall not exceed the net proceeds received from the former residence. The Trustee may sell any such residential property and acquire a replacement residential property as often as the Trustee, in its discretion, deems appropriate and so long as the Trustee obtains [Wife]'s written consent for such sale or purchase and follows the procedures set forth in Section B, if applicable. All sales of residential property shall be at Fair Market Value (as defined in Section ____). If the Trustee leases residential property for [Wife], the Trustee may pay such costs for a lease, including but not limited to, monthly lease payments, security deposit, and insurance. However, the lease costs of such leased property shall not exceed an amount for which the former residence could be leased.

A. Option to Purchase Residences. After Settlor's death, if [Wife]'s Trust owns the Residence described below, if the Trustee elects to sell one or both Residences, and if [Wife] approves and consents in writing to such sale, the sale of such Residence shall be subject to the terms of this Section. A Residence may only be sold at Fair Market Value, which shall be determined as provided in Section _____. This Option to Purchase Residences shall only apply to Residence One and Residence Two and not to any other real property or other residential property owned by [Wife]'s Trust.

A. The Residences.

1. Residence One. Land and improvements located at 111 ABC Road, Dallas, Dallas County, Texas, together with all buildings and improvements on the real property, all related appurtenances, and all related policies and proceeds of insurance, and more particularly described as approximately 10 acres of land together with all improvements located thereon, known as Dallas tract.

1. Residence Two. Condominium Residence Two owned by ABC, L.L.C., a Texas limited liability company. The membership units in the ABC, L.L.C. shall be subject to the Option to Purchase Residences.

A. [Wife]'s Consent. [Wife]'s written consent to the sale of the Residence(s) shall be required to sell the Residences with such consent being irrevocable. At the expiration of the Marketing Period (hereinafter defined) following the Option Period (hereinafter defined), if the Residence(s) have not been sold, [Wife]'s written consent shall again be required before the Residence(s) can be offered for sale. Notwithstanding the foregoing, if [Wife] is incapacitated and the Trustee determines that it is not likely that [Wife] will occupy a Residence for two years or longer, then [Wife]'s consent to the sale of the Residence(s) shall not be required.

A. Right of First Refusal. If the Trustee desires to sell one or both of the Residences and [Wife] consents to the sale, the Trustee shall follow the procedures set forth below:

1. Notice and Offer to Children. The Trustee shall give each Child written notice (the "Offer Notice") to sell the Residence to the Children at Fair Market Value (hereinafter defined). The Offer Notice shall include any Contract of Sale or Earnest Money Contract received from a third party within 60 days of the Offer Notice, regardless of any prior rejection of that contract. If the Trustees have obtained an appraisal of the Residence that appraisal shall be included with the Offer Notice.

1. Option Period. For 60 days after the Offer Notice (the "Option Period"), the Children shall have the right to purchase the Residence for its Fair Market Value for cash.

1. Fair Market Value. The Fair Market Value of the Residence shall be determined (i) by an independent MAI real estate appraiser selected by the written agreement between the Children and [Wife], as approved by the Trustee, or, (ii) if the Children and [Wife] cannot agree on an appraiser, then the Trustee shall apply to a court of competent jurisdiction to select an appraiser whose appraisal shall be approved by the court and shall be binding on the Trustee, [Wife], the Children, and their descendants, or (iii) the sale price stated in a third party Contract for Sale or third party Earnest Money Contract delivered to the Trustee and approved by [Wife].

1. Children's Exercise of Option. Within the Option Period, the Children may exercise their purchase option to purchase their pro rata share in the Residence by giving written Purchase Notice (herein so called) to the Trustee, including a fully executed Contract of Sale or a fully executed Earnest Money Contract (referred to herein as the "Child's Contract"), stating the Purchase Price and other terms. The Purchase Price and any other terms of the Child's Contract shall be, the Fair Market Value of the Residence, as defined in Subparagraph (c) above. If all three Children agree to purchase the Residence, each Child shall purchase an undivided one-third interest in such Residence. If two of the Children agree to purchase the Residence and one declines, each Child shall purchase an undivided one-half interest in such Residence. If only one Child agrees to purchase the Residence and the other two decline, such Child shall purchase a 100% interest in the Residence at Closing. Contracts on the Residences shall be on forms provided by the Dallas County Board of Realtors.

1. Closing. The Child or Children shall pay the Purchase Price in cash at Closing. The Closing shall occur within 30 days following the date of delivery of the Purchase Notice with the Child's Contract.

1. Sale to Third Party. If none of the Children elect to purchase the Residence, then the Trustee may market and sell the Residence to a third party purchaser for a period of six months following the Option Period ("Marketing Period") for a price not less than the Fair Market Value. Notwithstanding, during the Marketing Period if the Trustee receives a bona fide offer from a third party, the Children shall have the opportunity to match that bona fide offer within 72 hours of receipt of the Offer Notice from the Trustee that an offer has been received from a third party. If the Residence is not sold within the Marketing Period, then the Trustee shall again obtain [Wife]'s written consent to the sale and repeat the procedures

including first offering the Residence to the Children prior to selling the Residence to a third party purchaser.

1. Children's Rights. The foregoing shall not limit a Child's right to purchase the Residence as a third party purchaser either from the Trustee or from a third party. The Children's exercise of their right of first refusal shall be pro rata to the Children based on the number of Children electing to purchase the Residence. If the Children object to purchasing the Residence as an undivided interest, then the Children shall draw numbered lots, with the Child drawing the highest lot to be the purchaser of the Residence. If the Child who drew the winning lot does not close on the Residence within 15 days, then the remaining Children shall draw lots and the winning Child shall have 15 days to close to purchase the Residence. If the second Child does not close within 15 days, then the third Child shall have the opportunity to close within 15 days to purchase the Residence.

1. Proceeds from Sale. All proceeds from the sale of any Residence shall be payable to the Trustee of the trust and shall be held and administered as a part of this trust. The Trustee may use such proceeds to buy a replacement residence for [Wife] in her discretion.