

# Contract and Declaration of Trust

This Indenture Authorizes  
Its' Trustees  
to Perform Under the Name Of

[NAME OF TRUST]

an Irrevocable Contractual Family Preservation  
Pure Trust Organization and Private  
Retirement Plan

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## **Cheat sheet**

Craft answers to the following questions. Then you can use the Find Change command to insert the answers in the document.

Please read the entire document before you begin. Imagine how your answers will fit into the context of the document.

1. [NAME OF SETTLOR]
2. [NAME OF TRUSTEE 1]
3. [NAME OF TRUSTEE 2]
4. [NAME OF TRUST]
5. [ADDRESS OF TRUST 1]
6. [ADDRESS OF TRUST 2]
7. [SITUS]
8. [BENIFICARY 1]
9. [BENIFICARY 2]
10. [SUCCESSOR TRUSTEE]
11. [SUCCESSOR BENIFICARY]

## **Article 1**

### **Terms**

1. For the purpose of this Contract, unless the context indicates otherwise, words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular; words importing the masculine gender include the feminine as well; words used in the present tense include the future as well as the present; "Trustees" includes any person authorized by this contract or the minutes thereof to perform the duties of the office; the term "Trustees" in this instrument shall be deemed to include the original and all successor Trustees; "oath" includes affirmation, and "sworn" includes affirmed.

## **Article 2**

### **Creation, Offer and Acceptance, Consideration and Exchange**

1. BE IT KNOWN THAT, in return for \$21 in lawful silver and other valuable consideration, the following, Irrevocable Contractual Family Preservation Trust Organization and Private Retirement Plan, hereafter, referred to by the term, "trust estate", is hereby, entered into on this \_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_, pursuant to the people's common law right to contract, as protected by the 1787 Constitution for these United States of America, Art. 1, §10, the obligation of which cannot be impaired, Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (Wheat)) by and between, [NAME OF SETTLOR], herein referred to as Settlor, and [NAME OF TRUSTEE 1] [NAME OF TRUSTEE 2] herein referred to as Trustees, all parties contracting in *sui juris*\*(see, *Definitions at the end of this document*) capacity and being of lawful age and competent to enter into this contract, hereby contract and agree as follows:
2. WHEREAS Settlor for purposes as stated herein, is desirous of irrevocably relinquishing his ownership of, and title to, certain property, real and personal, tangible and intangible, to certain Trustees as named herein, in exchange for valuable consideration consisting of 100 Beneficial Interest Certificates, "Beneficial Interest" and "right to proceeds", of said property; such interest having no immediately determinable "fair market value", not being a sale or gift but an exchange, without a gain or profit for any party to this contract, and
3. WHEREAS, Trustees, as named herein, is/are desirous of holding legal title to, and managing such property constituting the corpus of this "trust estate", for the benefit of the Beneficial Interest Holders, and providing such services as defined herein in exchange for compensation as contracted for between such parties as described in the minutes herein, the Settlor offers and Trustees accept twenty one (21) (American)

dollars in lawful silver money and other valuable consideration as defined in Memorandum of Exchange and in the minutes thereto.

4. This contract is hereby entered into knowingly, intentionally and voluntarily, with a full disclosure of facts.

### **Article 3**

#### **Name and Domicile**

1. This "trust estate" shall be known hereafter as [NAME OF TRUST].
2. This "trust estate" shall have its principal domicile in [SITUS]. It shall be lawful for this "trust estate" to operate from any state, nation or country, foreign or domestic. Fed. Constitution, Art. IV, §2, Farmers' Loan and Trust Co. v. Chicago, et al., 27 Fed Rep. 146, 149, Shirk v. City of La Fayette, 52 Fed. Rep. 857, Roby v. Smith, 131 Ind. 342, 345-6; 15 L.R.A. 792, 794-5, 9 Federal Statutes Annot. Pp. 178-9.

### **Article 4**

#### **Legal Object or Purpose**

1. The primary purpose of this "trust estate" is to contractually preserve the family estate by the transferring legal title of family property, assets and businesses to delegated Trustees having the contractual power to hold, protect, preserve, conserve and enlarge by best efforts, the corpus of the contractual "trust estate", for the benefit of the family of the Settlers or for the Beneficial Interest Holders of Settlers choice.
2. This "trust estate" is created with the objective of enhancing the family estate by utilizing this instrument as a Contractual Business Organization, with the inherent advantages and the protections provided by such structure and to obtain freedom from regulatory restrictions and limitations imposed by statutory, corporate or partnership structures.

156 ALR, 50, 179, 191, Advantages of Business Trusts. The advantages of a Business Trust include freedom of the members [Beneficial Interest Holders] from personal liability imposed upon partners, and the fact that the trust does not dissolve, as does a partnership, upon the transfer of a share or upon the death, insanity, or bankruptcy of a member. It is intended for the purpose of carrying on some kind of business or commercial activity for profit. Title to the capital of the organization is vested in Trustees, who usually manage its affairs. It is merely an adaptation of a trust, for the purpose of carrying on a business enterprise. The chief advantages of this form of organization are their comparative freedom from regulation and from corporate taxation.

13 Am Jur 2d, 379, Paragraph 51 "One of the objectives of business trusts is to obtain for the trust associates, most of the advantages of corporations, without the

authority of any legislative act and with the freedom from the restrictions and regulations generally imposed by law upon corporations.”

3. This Contractual "trust estate" was further created to obtain constitutional protections not available to entities operating under in artificial corporate capacity. (156 ALR Pg. 51, para. 3.)
4. This "trust estate" is also an active Private Retirement Plan for "Beneficial Interest Holders". All subject matter or corpus held in this "trust estate" and all distributions derived thereof, present or future, including, but not limited to that which is held, controlled, or in the process of distribution by this Private Retirement Plan, for the payment or benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a retirement plan are exempt from attachment, in order that, Beneficial Interest Holders, "...may look forward, with anticipation, to a retirement with financial security and dignity, and without fear that this period of life will be lacking in the necessities to sustain them as human beings within our society.”
5. In addition to the above stated objectives and purposes, parties to this contract desire the lawfully recognized tax advantages over a corporation, which are available to this contractual "trust estate".

“Since the business trust has its origin in the common-law right of the parties to enter into a contract and does not spring from a franchise granted by the state, it has been held that the constitutional authority to levy excises (income tax on the exercise of privileges) upon commodities, a term including corporate franchises, does not empower the legislature to impose an excise tax on business trusts.” 266 Mass 590, 163 NE 904, 63 ALR 192. 13 Am Jur 2<sup>nd</sup> 85.

## **Article 5**

### **Nature of this Contractual "Trust Estate"**

1. This "trust estate" shall be irrevocable. No legal title relinquished by the terms of this contract shall revert directly back to the Settlers under any circumstances. This clause may not be amended.
2. This "trust estate" is an irrevocable voluntary, contractual true trust organization, wherein legal title and equitable title, lien and/or interest is divided and held by separate parties. Legal title is held by Trustees, acting as principals with full control and management powers, subject to the terms of this contract and an equitable obligation to the Beneficial Interest Holders; and wherein, the equitable lien and/or interest is held by separate, unassociated Beneficial Interest Holders, having no mutual rights or obligations and having no contractual relation to each other; with no voice whatsoever in the business, affairs, management or operation of this contractual organization, holding no titles or offices. This "trust organization" is pure contractual

relationship, free from control of the Beneficial Interest Holders. Further, there is no relationship or partnership among the Trustees, who lack Beneficial Interest or between the Trustees and the cestui que trusts as the Beneficial Interest Holders.

"The distinction between a director [of a corporation] and a Trustee is essential. A Trustee is a man who deals with property as principal and as master, subject only to an equitable obligation to account to some persons to whom he stands in the relation as Trustees and who are *cestui qui trust* [beneficiaries or Beneficial Interest Holders]. The office of [corporate] director is that of a paid agent or servant of the company..." Opinion in Smith v. Anderson, L.R. 15, Ch. D. 247, 275-6. Also see: Taylor v. Davis, 110 U.S. 330, 334, 335; 28 L. Ed. 163, 165 Lachett v. Rumbough, 45 Fed. Rep. 23, 29

"There is no analogy between an instrument which establishes an agency and one which creates a trust. Where an agency exists, the principal may at any moment interfere; and at all times he is, in legal contemplation, in control of the business. This is not so when a party has parted with the title to his property and has created a trust which vests in the Trustees the right to manage the business as the proprietor thereof, he being accountable to the beneficiary, who is not Trustee's principal, but a mere *cestui que trust* (beneficiary), under the terms of the trust instrument." Opinion of Corliss, Cj. J, Wallis-Stone Mercantile Co. v. Grover, 7 N.D. 460, 474; 41 L.R.A. 252, 257.

"The Massachusetts or business trust, which is also called a common-law trust, is essentially a *contractual* business organization cast in the form of a trust..." 88 American Law Reports, 3d, 711, paragraph 2; see also 13 Am Jur, 2nd, 375, paragraph 1; 156 American Law Reports, 27.

3. This Contractual "trust estate" is a creation of common right, maintaining all powers available at the common law and usurping no corporate privileges exclusive to that type of entity. It is not a creature of franchise or privilege and is not a separate artificial corporate entity, distinct from its Trustees.

As the franchise, the distinguishing feature of the corporation is the artificial personality distinct from the individuals composing it, there can be no usurpation of corporate function unless there be an assumption of such distinguishing personality. "What distinguishes corporations from other bodies is their independent personality; and no society [entity] which does not arrogate to itself this [artificial] character can be fairly said to assume to act as a corporation." State on Inf. v. Business Men's Athletic Club, 163 S.W. 901, 907, Law of Companies, 5<sup>th</sup> Ed., p. 134, The Legality of Trusts, Pol. S. Quar., V.3 p. 610.

"The most particular and the strictly essential characteristic of a corporate body, which makes it to be such, and not some other thing in legal contemplation, is the merging of the individuals composing the aggregate body into one distinct, artificial existence." (Id. Warner v. Beers, 23 Wend. p. 155. See also 174-6)

2. This "trust estate" comes under the realm of equity and is a creation of the people's right to contract under the common law, the obligation of which is non-impairable, pursuant to Art. I, §10 of the Constitution of the United States. This "trust estate" does not owe its existence to, is not dependent upon, and accepts no powers, benefits or privileges from any statute, corporate or otherwise. It is not subject to those statutes or Codes governing and regulating corporations, statutory grantor revocable trusts, statutory associations, statutory partnerships, other statutory entities or District of [NAME OF TRUST] entities. This "true" contractual "trust estate" is not an artificial entity, distinct from its' Trustees. The "trust estate" does not merge natural Citizens into one distinct, artificial existence. The "trust estate", therefore, assumes the rights guaranteed and protected by the Constitution of the United States, applicable to the Citizens of the several states. Such rights include, but are not limited to, the entitlement to the same Privileges and Immunities in all of the several states as are available in its principle domicile. It is, thereby, lawful for this "trust estate" to operate from any state, nation or country, foreign or domestic. Fed. Constitution, Art. IV, §2, Farmers' Loan and Trust Co. v. Chicago, et al., 27 Fed Rep. 146, 149, Shirk v. City of La Fayette, 52 Fed. Rep. 857, Roby v. Smith, 131 Ind. 342, 345-6; 15 L.R.A. 792, 794-5, 9, Federal Statutes Annot. Pp. 178-9.

“The fact that a business trust is not regarded as a legal entity distinct from its Trustees, if a true trust...may result in this advantage to the trust, which a corporation does not possess: The trust consists of individuals...who are Citizens, and who, therefore, are entitled to certain rights and immunities such as those guaranteed by the privileges and immunities clause [Art. IV, §2, Cl.1] of the federal Constitution, which do not apply to corporations.” - 156 ALR (American Law Review) Pg. 51, paragraph 3.

5. Further, the "trust estate" created herein, retains all other individual unalienable rights of the majority of Trustees, being, unless otherwise noted in the minutes, de jure sovereign Citizen(s) of natural birth in one of the several freely associated compact states of the American Union. No rights are waived at any time.
6. Pursuant to Art. I, §10 of the Constitution of the United States any impairment of, interference with, violation of, or infringement upon any provision of this contract by any officer, employee, official or agent of the Government, either of the executive, legislative, judicial or any administrative branch thereof, shall constitute interference with contract and a Constitutional infringement and violation subject to civil remedy.

A Pure Trust is established by contract and any law or procedure denying or obstructing contract rights of such trust, by definition, also impairs contractual obligation and, therefore violates the United States Constitution. Smith v. Morse, 2 CA 524



7. Any natural person(s) or Corporation(s), foreign or domestic, may be a Trustee or Trustees of this "trust estate"; and any natural person(s), corporation(s), foreign or domestic, any other "trust estate" or "trust estates", or any other lawfully recognized entity may be a Beneficial Interest Holder of this "trust estate".
8. The "trust estate", herein, shall be "complex" in nature and the Trustees shall have absolute discretionary powers in the management and operation thereof and shall have the sole discretion and authority to convert property to money and to distribute the net proceeds thereof or to distribute the property itself, as specified in the minutes or other proceeds to cestui que trusts; it being expressly understood and agreed the Trustees may, at their uncontrolled discretion, defer or postpone such distribution, except that the same shall not be postponed beyond the termination date of this "trust estate". During such postponement and until such conversion, the interest of the Beneficial Interest Holders shall be considered personal property and a priority equitable lien against the property within the corpus of the "trust estate".
9. The death of any or all Settlers, Trustees and/or Beneficial Interest Holders shall not operate to annul or dissolve this "trust estate" or to revoke any existing contracts created pursuant to the terms of this instrument. Further assets in this "trust estate" shall not be affected by any Settlers, Trustees or Beneficial Interest Holders personal bankruptcy or divorce and such assets shall further not be affected by any incapacity of any parties to this contractual "trust estate".

## **Article 6**

### **Corpus**

1. The initial corpus of the "trust estate", created herein shall consist of \$21 in silver as lawful money and other property specifically listed on Memorandum of Exchange and legally conveyed into this "trust estate" in exchange for 100 Beneficial Interest Certificates. The "trust estate" is to be held by Trustees, for the benefit of its Beneficial Interest Holders and shall be administered by Trustees as provided herein.  
Perry on Trusts, I, §§67, 287; and Underhill on Trusts, p. 57, Amer. Ed. states: "Every kind of valuable property, both real and personal, that can be assigned at law may be the subject matter of a trust...The person that creates the trust may mold it into whatever form he pleases."
2. All parties agree that the Trustees shall receive legal title to trust property listed on Memorandum of Exchange attached hereto, immediately by the execution of this contractual "trust estate" as well as any time thereafter by, but not limited to, sale, gift, conveyance, exchange, barter, and/or assignment.
3. Additional property received after the contract's execution shall be deemed to be transferred to Trustees, in addition to the initial corpus of this "trust estate" without

a need for any further formal acceptance by Trustees. Such additions to the "trust estate" shall be listed on Schedule "A" hereto but shall not require Minutes or Resolutions by the Trustees. However, the Managing Trustees, solely, or the entire Board of Trustees may complete Minutes accepting property into the corpus of the "trust estate" if they so desire.

4. All transfers and conveyances of property, real and/or personal, in any county in any of the several states, shall be considered to be a tax-free exchange with no consideration provided. No additional assessments, fees, supplemental fees, property taxes or money or valuable consideration in any other form shall be required to be paid, other than the standard filing fee for a tax free exchange.

## **Article 7**

### **Duration of the "Trust Estate"**

1. This "trust estate" shall terminate twenty-one years after the death of the last surviving original Trustees existing at the creation of this "trust estate". Upon termination, all vested interest in all remaining assets and subject matter constituting the corpus of this "trust estate" shall be fully distributed. The Trustees shall not be required to make final distribution in accordance with the percentage of Beneficial Interest assigned to each Beneficiary at the execution of this trust, but shall determine each distribution at their sole discretion. The Trustees may provide for an earlier termination date, provided that termination has no effect whatsoever on any contracts, obligations or liabilities of the "trust estate" outstanding as of the date of such termination.

## **Article 8**

### **Appointment and Acceptance of Trustees**

1. The execution of this "trust estate" by Settlers and Trustees shall constitute a "Contract and Deed of Appointment" of the Trustees named herein and an "Acceptance of Appointment", by such Trustees.

## **Article 9**

### **Indenture Conveying Assets to Trustees and Consideration for Exchange**

1. Settlers and Trustees agree by signatures hereon, that upon the execution of this contract, all property and assets constituting the corpus of the "trust estate", together with all property and assets hereafter transferred to and received by them, are irrevocably, assigned, transferred and conveyed to the Trustees named herein who shall hold legal title to the said property and assets for the benefit of the Beneficial

Interest Holders. Trustees shall have no rights to any equitable, Beneficial Interest distribution.

2. In exchange Settlers and/or individuals or entities of Settlers choice shall receive all or a percentage of 100% of the Beneficial Interest issued for this “trust estate”, encompassing a “right to proceeds” in the form of “Beneficial Interest”, “equitable interest” and a priority equitable lien in, but not Legal Title to, all property encompassing all of the corpus and subject matter of this "trust estate". This shall be first and superior to all other liens against the subject matter or corpus of this "trust estate".
3. Trustees shall not be required to give any surety or fidelity bond for the performance of duties, or to be appointed by or accountable for the administration of this trust to any court, except as otherwise noted herein.
4. If Settlers of this irrevocable "trust estate" assigns all Beneficial Interest to other individuals and/or entities, he may be appointed as Trustees of this said "trust estate", holding legal title, but not equitable interest to assets held within. The principles affirmed in the Supreme Court decision of *Helvering v. St. Louis Union Trust Co., et al.*, 296 U.S.C. 39, 56 S.Ct. 74, which are applicable to this contract shall prevail, wherein there, as here. "The legal title, possession, and control of the trust estate passed irrevocably from the Settlers as an individual to himself as Trustee, the effect is no different than if the Trustee had been another person." Cf. *Reinecke v. Trust Co.*, 278 U.S. 339, 346 , 49 S.Ct. 123, 66 A. L.R. 397."Property invested in the Contract Trust Organization must be fixed and irrevocable. Thus the Settlers may be legally recognized as a different person even when he/she may be the same human being..." *Becker, Collector of Internal Revenue v. St. Louis Union Trust Co.*, 296 U.S. 48, 50, 80 L Ed 35, 56 Sup Ct 78.
5. The Settlers exchanging assets into this "trust estate" may hold all or part of the Beneficial Interest Certificate issued or, in the alternative, Settlers may be Trustees. However, said Settlers may not be both a Trustee and also hold any Beneficial Interest in this "trust estate" at the same time, to the extent that legal and equitable title would merge.
6. Settlers who are husband and wife, shall be considered to be operating in their sole, separate, and individual capacity as Trustees, even where they were, prior to the exchange of assets into the “trust estate,” joint-owners of property or domiciled in a community property State. Thereby, when in the best interests of the preservation of the family estate or for other purposes, either Spouse may be a Trustee and the other spouse may be a Beneficial Interest Holder, without a merger of legal and equitable title.

7. For the purpose of securing privacy, an owner of property exchanged into "trust estate" may verbally or by application, appoint a third party as Settlers or Creator on this Contract of Trust. All transactions will be conducted as if this third party were the actual owner of any property exchanged into this "trust estate".

## **Article 10**

### **Adversarial Trustees Interest**

1. Unless otherwise specified in the minutes, the majority of the Trustees may not be directly related to the Beneficial Interest Holders of this "trust estate" meaning, the majority of Trustees may not be the father, mother, brother, sister, son, daughter, of the Beneficial Interest Holders.

## **Article 11**

### **Appointment of Protector and Responsibilities**

1. The Settlers is authorized to appoint a "Protector" of this "trust estate". Protector may not be a Trustee or Beneficiary herein at the same time he is a Protector of this "trust estate".
2. The Protector may remove Trustees from office and appoint a Successor Trustee or Trustees if Protector deems such action to be in the best interest of the Beneficial Interest Holders.
3. The Protector may, upon the death, resignation or removal from office, of any Trustees, appoint replacement Trustees if there are not enough remaining adversarial Trustees to effectively manage the "trust estate".

## **Article 12**

### **Removal or Death of a Trustee**

1. Any Trustee of this "trust estate" may resign from office by executing and tendering to Co-Trustees, a written resignation, acknowledged before a Notary Public, at least 15 days before effective date.
2. In the event of the death, removal from office or resignation of any Trustees, remaining Trustees may assume powers granted to previous Trustees and/or the remaining Trustees. Managing Trustees may pre-appoint Successor Trustees through the Minutes herein or may appoint new Trustees by a majority vote.

## **Article 13**

### **Successor Trustees Powers and Duties**

1. If it is determined additional Trustees are needed to replace Trustees who die, resign or are removed from office, he may be replaced by minutes signed by a majority of the remaining Trustees. Successor Trustees shall have all powers and duties of the Trustees hereunder. Under the appointment of, and acceptance by, such Successor Trustees, legal title to any property, assets and corpus comprising the "trust estate" shall forthwith be conveyed without the necessity of executing or filing any papers or any further act.

## **Article 14**

### **Rights, Limitations and Immunities of the Beneficial Interest Holders**

1. No association, partnership or joint stock company is created by the substance of this contract, either between the Beneficial Interest Holders, themselves, or between such Holders and the Trustees, or between the Trustees, themselves. Beneficial Interest Holders are not partners, having no relationships inter se. They have no mutual rights or obligations and are unassociated, having no contractual relation to each other and have no voice whatsoever in the business, affairs or operation of this contractual trust organization, herein called the "trust estate", holding no titles or offices.

"The deed of trust does not have the effect to make the script Holders [Beneficial Interest Certificate Holders] partners. It does not contemplate the carrying on of a partnership business upon the joint account of the grantor [Settlors] and script-Holders and, in this respect, the case is unlike Gleason v. McKay, 134 Mass. 419, and Phillips v. Blachford, 137 Mass. 510. See also, Everett v. Drew, 129 Mass. 150, 151, Johnson v. Lewis, 6 Fed. Rep. 27, 28, Smith v. Anderson, L.R. 15 Ch. D. 247, 275-6, 284-5, Cox v. Hickman, 9 C.B.N.S. 47, 98-9; 8 H. of L. Cases, 268, 312, and Wells-Stone Merchantile Co. v. Grover, 7 N.D. 460, 41 L.R. 252

2. Beneficial Interest Holders shall maintain "Beneficial Interest" in, but not Legal Title to, all property encompassing all of the corpus and subject matter of this "trust estate". He has the right to receive benefits and disbursements, if and when the majority of Trustees, in their sole discretion, declare a distribution of profits to the Beneficial Interest Holders. The Beneficial Interest Holders have no legal title to any of the property within the corpus of this "trust estate". The only other right maintained by the Beneficial Interest Holders is the right to sue for equitable relief for abuses by the Trustees herein. The Beneficial Interest Holders shall have absolutely no rights, relative to the management, control or distribution of property of this "trust estate" and have no control over the Trustees, including but not limited to, no right to call

for a partition or division of the "trust estate" corpus. This "trust estate" is pure and contractually free from the control of the Beneficial Interest Holders.

3. In order that Trustees shall manage the assets of the "trust estate" without undue restrictions, the doctrine of "equitable conversion" shall be applied to beneficiary's interest. Therefore, when any portion of the corpus of the "trust estate" is directed to be sold, transferred or conveyed by Trustees, the interest of the Beneficial Interest Holders shall be converted from an equitable lien in the property to merely a personal property interest in the proceeds, or a right to the benefits of the property, at the discretion of the Trustees. Concurrently, with the sale, transfer, conveyance or exchange of the property by Trustees such interest shall revert to an equitable lien and Beneficial Interest in the property or funds obtained through the said sale, transfer, or conveyance.
4. Trustees shall have no power to bind the cestui que trusts as Beneficial Interest Holders, personally by any act, neglect or default, and no Beneficial Interest Holder shall be personally liable as a partner or principal, or otherwise, for any express or implied contract made by the Trustees, or made in any way on behalf of the "trust estate" or for any tort committed by any Trustees or by any officer or agent working under them, or on their behalf of them, or in any way connected with this "trust estate" or its' administration.

## **Article 15**

### **Nature of Beneficial Interest Certificate**

1. The Beneficial Interest Certificates shall maintain the following attributes:
  - a) ANTI-ALIENATION CLAUSE. The right to future Beneficial Interest distributions from this "trust estate" shall not be transferable or assignable, at law, in equity, or under administrative, legislative, admiralty or statutory law. Beneficial Interest may not be transferred, devised, assigned pledged or subject to execution, levy, attachment, garnishment or other legal process or to the operation of any bankruptcy or insolvency law. This section may not be amended.
  - b) Percentage of Beneficial Interest is not necessarily a right to an equally proportionate distribution of the "trust estate", such being determinable solely at discretion of the majority of Trustees.
  - c) There is no private or public market through which the Beneficial Interest Holders may sell or exchange Beneficial Interest Certificates.
  - d) Beneficial Interest Certificates shall be immune from attachment under all circumstances.

- e) Beneficial Interest conveys no rights or powers pertaining to the management, administration, operation, or control of this "trust estate" and no voting rights relative to decisions concerning the operation or management of this "trust estate".
- f) Beneficial Interest Certificates are representative of a non-transferable equitable lien against the corpus of this "trust estate" and of Beneficial Interest therein, and of a right to future distribution, if and when, such distribution is authorized by Trustees.
- g) Beneficial Interest Certificates have no fair market value to the Holder for accounting, transfer fee or for other purposes and are non-taxable, non-assessable and non-negotiable personal property.
- h) Death, insolvency or bankruptcy by any Beneficial Interest Holders shall not dissolve this 'trust estate'.
- i) In the event of the death of a Beneficial Interest Holder, his Beneficial Interest shall revert back to the Trustees for immediate re-distribution as authorized by minutes signed by the majority of Trustees.
- j) The death of a Beneficial Interest Holder shall not entitle his creditors, or the heirs or legal representatives thereof, the right to demand any portion of the Beneficial or equitable interest in this "trust estate" or to an accounting thereof, or to take any action in the courts or otherwise.
- k) Upon the death of a Beneficial Interest Holder, or upon his voluntary surrender of his interest in such, his rights shall immediately terminate and said interest shall revert back to the Trustees to be reissued as determined at the sole discretion of the majority of said Trustees. The death of a Beneficial Interest Holder shall not terminate this "trust estate" and said Beneficial Interest may not thereafter pass on by probate or operation of law to any heir or legatee.
- l) "An equitable owner of land may establish a homestead in his interest." Allen v. Hawley, 66 Ill. 164; Hewitt v. Rankin, 41 Iowa 35; Tarrant v. Swain, 15 Kan. 146; Jelinek v. Stepan, 41 Minn. 412, 43 N.W. 90, Smith v. Chenault 48, Tex. 455.
- m) Unless otherwise noted in minutes, no Trustee or Beneficial Interest Holder was born in a territory over which the United States is sovereign and are none are "citizens subject to its jurisdiction" as such term is defined in 26 C.F.R. 1.1-1(c).
- n) Unless otherwise stated in the minutes, beneficial interest distributions are made to Beneficiaries pursuant to 26 U.S.C.A. §871(b)(2), 26 C.F.R. §1.871-1 (b)(1)(i), and 26 CFR §1-871-7(1).

## **Article 16**

### **Trustees Powers and Duties**

1. The execution of this contract shall provide the authority for Trustees to hold and administer this "trust estate," for the preservation and conservation of the corpus therein for the benefit of the Beneficial Interest Holders. Pending final conversion and distribution of property, Trustees are vested with and shall have all management and control rights, powers and privileges as if they were proprietors or fee simple owners of the same property, subject only to an equitable obligation to the Beneficial Interest Holders and the specific limitations herein contained. Trustees are authorized to enter into contracts of all kinds on behalf of this "trust estate" and to bind the "trust estate" to the performance thereof, and to manage and control all property held within this "trust estate", real, personal, mixed, tangible and intangible, moveable or immovable, of any description and of whatever kind and wheresoever situated, including (without limiting the generality thereof) real property, automobiles, other motor vehicles, equipment, machinery, office fixtures, furniture, cash, precious metals, bank accounts, accounts receivable, stocks, bonds, commodities, causes of actions, liens, claims, trade-marks, trade names, trade secrets, patents and copyrights, which are held within this "trust estate", having such powers as, but not limited to, sale, use, leases, rents, transfers, mortgages, borrowing, exchanges, bartering, building, developments, improvements, repairs, easements, management, investments and any and all arrangements, contracts and dispositions of the trust property, or any part thereof.
2. The enumeration of certain powers of the Trustees shall not limit its general or implied powers.
3. The Trustees shall have the power to pay all debts, bills and expenses properly incurred by this "trust estate" and deemed necessary in the execution of their duties, from the bank/brokerage account of the "trust estate".
4. Trustees are authorized to do or delegate, in any lawful manner, all things that are incidental, necessary and proper to carry fully into effect all of the purposes herein enumerated or powers hereby conferred.
5. Trustees shall have the power to manage and invest any part of the "trust estate" in any kind of property or venture which persons of prudence, discretion and intelligence might invest in for their own account. Such investments are not restricted to only those that are permitted for statutory or corporate entities. Such investments may not result in any form of personal gain to Trustees.
6. The Trustees shall have full power to invest and reinvest the assets of the "trust estate", its profits, surplus or avails, subject to the terms of this instrument



7. Trustees, at their discretion, may contract for the labor of managers, agents, secretaries, bookkeepers, or any other workers that they think proper and expedient, for the efficient management of this "trust estate", and said Trustees may prescribe their powers and duties.
8. Trustees or Beneficial Interest Holders shall not be responsible for any misconduct, errors or omissions of any such contracted laborers, workers or agents who are retained with reasonable care. The Trustees shall have the power to borrow money, on behalf of this "trust estate" for the purpose of providing such "trust estate" with operating and development capital, to purchase any real estate necessary for the needs of this "trust estate", for investment purposes, or for any purposes deemed expedient and necessary for the benefit of this "trust estate". These loans may be private or commercial, unsecured or secured, on such terms and conditions as said Trustees shall deem best, and Trustees have the power to bind this "trust estate" and its assets to the payment of such indebtedness and may secure the repayment of such loans by mortgage or trust deed and may pledge and encumber any property of said "trust estate", whether real, personal or mixed, for the security of the indebtedness so incurred. Trustees may also loan money to the "trust estate" to be paid back at prevailing average interest rates.
9. Except as noted in §16.10 below, neither the Trustees, nor the Beneficial Interest Holders, shall be, in any manner, personally liable by virtue of any contract, note, bond, deed of trust, mortgage or other instrument or contract of any kind executed under the terms of this paragraph, but the same shall fully bind the property of said "trust estate" for the performance thereof.
10. Trustees may, at their sole discretion, but without any obligation whatsoever, to do so, provide a personal guarantee and/or pledge his personal assets for a loan in the name of this "trust estate".
11. All written conveyances of real property filed with the county recorder or clerk shall name the "trust estate", the date such "trust estate" was executed and the name of the Trustees.
12. Real Property, personal property, motor vehicles and other assets held in this "trust estate" may be transferred, sold and purchased solely upon the signatures of the Trustees, when a properly executed Power of Attorney delegating such Trustees such powers has been executed. In such situations the signatures of the Trustees shall be deemed the approval of all Trustees.
13. The Trustees, having all of the constitutional rights of a Citizen of one of the several states, may be assignees of the original Land Patent for any and all real property held in this "trust estate", for the purpose of securing "Allodial Title" thereon, and Trustees are authorized to file all necessary documents to bring forward said Land Patent to be held in their name as Trustees of this "trust estate" for the protection of the equitable

interest of the Beneficial Interest Holders. This patent shall be listed under the assets of the "trust estate" under Schedule "A" of this instrument.

14. Trustees shall have the power to manage and improve all lands and other property and to erect, pull down, alter and repair buildings thereon and to make such outlay as it shall think proper for the said purposes and to insure buildings or the rents or rental value thereof against loss or damage by fire, theft or other casualty and to insure against liability for damage to person or property arising from anything happening upon the said lands or on account of the condition thereof.
15. Trustees shall have the power to grant or create any easement or other right or privilege over or in relation to any lands that are a part of this "trust estate", and to release any easement or restrictive covenant agreement or provision over or affecting any other land for such consideration and terms as it deems fit.
16. Trustees shall have the power to grant leases at will, let or lease for improvement, or otherwise, all or any part of the real estate held by them at any time under this "trust estate" for any term, even for a term beyond the possible termination of this trust, either with or without option of purchase, and to release, exchange, subdivide, to partition and to make allowances to and arrangements with tenants and others and to accept surrenders of leases and tenancies.
17. Trustees shall have the power to collect rents, and profits of the "trust estate" or any part thereof, and may, out of said rents and profits, and out of the "trust estate", if necessary, pay all costs, charges, expenses, and every indebtedness connected with or growing out of the execution of this "trust estate", as well as all interest on borrowed money, taxes, assessments, and public charges of every kind and nature whatsoever.
18. Trustees shall have the authority to apply to any court of competent jurisdiction for direction as to their powers, duties, obligations and rights and, when exercising such powers, they need not notify the *cestui que trust* as Beneficial Interest Holders, or make any of them parties to any such proceeding; but the said Trustees may apply for, and receive, such direction without any notice to the Beneficial Interest Holders, who shall be as conclusively bound thereby as though they had been notified and parties to the proceeding.
19. Trustees shall have the power to collect, sue for and receive all moneys at any time becoming due to this "trust estate"; to begin, prosecute defend or settle suits at law, in equity, law, or in small claims court, in the name of this "trust estate", and may compromise or refer to arbitration any claim in favor of or against said "trust estate".
20. Trustees may, bring any suit or action that, in their sole judgment, shall be deemed necessary for the protection of the "trust estate", or for the purpose of enforcing any contract or obligation for the benefit of the "trust estate". Trustees may also defend

any suit or action against said "trust estate". The Trustees may represent the "trust estate" as Trustees *qua Trustee* as if they were acting *in propria persona*. Although the Trustees *qua Trustee* may be party to any suit or proceeding to enforce any obligation or liability affecting this trust estate, he shall not, on that account, be held personally liable. Instead, he is a party only insofar as is necessary for him to represent the "trust estate". Trustees may, in the alternative, contract an attorney to represent such "trust asset", however, unlike an artificial corporate entity, the "trust estate" is not required to be represented by an attorney. Trustees are also expressly authorized to compromise or settle any suit, claim or controversy in which the said "trust estate" is interested, as to them seems best, and to discharge the same.

21. Trustees are authorized to pay all judgments, attorney fees, court costs, legal fees, settlements, and other costs from the bank account of the "trust estate".
22. In case of the loss or destruction of any Beneficial Interest Certificate issued hereunder, the Trustees may, under such terms as they may deem expedient, issue a duplicate Certificate.
23. The terms and provisions of this trust may be amended, modified or added to at any time, by the minutes or an instrument in writing signed and assented to in writing by the majority of Trustees (except as regards to the irrevocability of the "trust estate", the limitations of the Beneficial Interest Holders, the liability immunities of the Trustees and the Beneficial Interest Holders, and except where it is otherwise stated that a particular clause may not be amended).
24. To insure the privacy and integrity of this Contract, it is not required that this Contract, or any amendments or modifications thereto, be filed with the County Recorder, the County Clerk or any other entity subject to public scrutiny.
25. When the intent of this "trust estate" is to preserve family assets for the benefit of all children of the original Settlers, and when there are no Beneficial Interest Holders other than the original Settlers children, and/or his or her spouse; upon the birth of a new child, Trustees may authorize a voluntary re-call of all Beneficial Interest Certificates and re-assign the percentage of such interest proportionally, adding the interests of the new child.
26. Trustees shall have full power and authority to insure and keep any and/or all of the trust property insured against fire, breakage, theft and all other casualties, and the "trust estate", Trustees and any agent thereof insured against accidents, in such amounts as he may determine, and to pay the premiums therefore.
27. The Trustees may delegate investment and management functions that prudent Trustees of comparable skills could properly delegate under the circumstances. The Trustees shall exercise reasonable care, skill and caution in selecting an agent,

establishing the scope and terms of the delegation, consistent with the purposes and terms of the "trust estate" and periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

28. Trustees shall, at all times, be under a duty to preserve, conserve and protect the subject matter or corpus of this "trust estate" against all collateral attacks, both public and private.
29. Trustees shall manage and administrate this "trust estate", maintaining, at all times, an undivided loyalty to Beneficial Interest Holders. Trustees shall exclude from consideration any advantage to themselves, to other Trustees or to any third person from whom they may indirectly benefit.
30. Trustees agree to conduct the affairs of this "trust estate", in an honest and ethical manner and in conformance to the terms and conditions set forth herein and in the minutes.
31. In investing and managing "trust estate" assets, the Trustees shall incur only those costs that are appropriate and reasonable in relation to the "trust estate" assets, the purpose of the "trust estate", and the skills of the Trustees.
32. Trustees may, by minutes, take consequential actions as deemed necessary to appropriately protect the integrity of the "trust estate" and the interest of the Beneficial Interest Holders.
33. Trustees shall make reasonable efforts to verify facts relevant to the investment and management of "trust estate" assets. The Trustees may invest in any kind of property or type of investment that is consistent with the foregoing standards.
34. No property may be released to satisfy any debt or liability incurred, personally by a Trustee or a Beneficial Interest Holder, which is claimed in the name of a Trustee or Beneficial Interest Holder of this "trust estate" or which is erroneously claimed in the name of the "trust estate" or which deems that the "trust estate" is an "alter-ego" or "nominee" for the "trust estate". Trustees shall immediately notify the creditor or agency of their error and of Trustees duty to not relinquish such property. This prohibition includes but is not limited to any bill, notice, lien, or levy by any private or governmental party. Any Trustees who releases property held within this "trust estate" for any debt or purported debt or obligation, not legally incurred in the name of "trust estate" or who relinquishes property not properly subject to lien or levy, shall be liable in his/her personal capacity for any and all damages inflicted upon the effected party. This section may not be amended.

West Key 136.5 - Trusts - Construction and Operation - Estate of interest of Trustees and Cestui Que Trust/ Rights and remedies of creditors of Trustees. Wilshire Credit Corp. v. Karlin, 988 F. Supp 570. D. Md. 1997. "Assets of trust

established for benefit of Settlor's children were beyond reach of Settlor's judgment creditor, since Settlor did not retain any ownership interest in corpus of trust and there was no allegation of fraud in establishment of trust."

"Even if alter ego doctrine were applicable to properly established trusts, alter ego principles could not be invoked to allow Settlor's judgment creditor to recover debt from assets of trust established for benefit of Settlor's children since creditor alleged no fraudulent conduct other than fact that Settlor dominated trust while failing to honor their legal obligations...Principles of fundamental equity and fairness do not compel invalidation of trust for benefit of children in favor of creditors of Settlor, simply because trust's third-party Trustees may have been less than diligent in discharge of their duties."

West Key 153. Interest remaining in Settlor or Creator or Trust. W.D. Mo. 1997. "Family trusts" give Settlor complete access to trust property so that Settlor can use it for self support." *Dean v. U.S.* 987 F. Supp. 1160.

West Key 4857. Collection - Levy and Distrain. Property subject to distraint.

W.D. Mo. 1997. "...Irrevocable trust was not alter ego of delinquent taxpayers and therefore IRS wrongfully levied on trust assets..."

"Fact that both delinquent taxpayers drove cars owned by irrevocable trust for their personal use and that one taxpayer lived in family home was insufficient to characterize trust as alter ego of taxpayers for tax lien purposes."

35. Trustees representing the "trust estate" are entitled to receive compensation in accordance to a contract or minutes signed and approved by the majority of Trustees. Such compensation constitutes contractual earnings for Trustees duties and not Beneficial Interest. By contract or by minutes approved by the majority of Trustees, a Trustee may also live in a home held within the "trust estate", drive an automobile or utilize other assets held within the "trust estate" as a part of such earnings or benefit. Trustees may also waive any such compensation. The amount of such earnings or benefits shall be confidential.
36. None of the subject matter, corpus, income, disbursements or distributions of this "trust estate" shall be subject to attachment for the personal debts of the Trustees and/or Beneficiaries.
37. Trustees, of this "trust estate", by majority approval, may change the name, domicile or mailing address at any time, via minutes, if they deem that such change will be in the best interest of protecting the assets of said "trust estate".
38. In the event any sums due to the "trust estate" are erroneously paid to the Trustees, in his personal name, without reference to the "trust estate" he shall immediately assign

such sums to the "trust estate". Said Trustees are authorized to endorse the check in their personal name for deposit only into the bank account of the "trust estate".

39. A contractual "trust estate" is not legally required to file a Fictitious Name Statement or a DBA although the Trustees may do so at their sole discretion.
40. The Trustees shall also be entitled to reimbursement and indemnification from the property of the "trust estate" for all their proper expenses, liabilities and traveling expenses.
41. If the Trustees ever makes any advancements of money on account of this trust, or, by reason of acting as Trustees, is held liable for and pay any sums of money as damages and/or costs for breach of contract, injury to person or property, fines or penalties under any law or otherwise, or become liable for any assessment as a result of holding title to any property in this trust, he may reimburse himself from the income or principal of the "trust estate" for any disbursements, advancements, or payments he makes in this or any other connection, together with all his expenses and reasonable attorney's fees in the premises.
42. Should the Trustees ever be held personally liable contrary to the provisions of this instrument, he shall be entitled to indemnity from the "trust estate". If the "trust estate" should ever be insufficient to provide for such indemnity and to satisfy any claim of the Trustees, such claim shall be given preference and priority over any and all other claims or liens. Provided, the Trustees may make a written contract with a third party to the contrary, but only if the Trustees voluntarily signs a declaration of intentions to this effect.
43. The Trustees may adopt and use a common seal.

## Article 17

### Limitation of Liability

1. Notice is hereby given to all third parties extending credit to, contracting with, or having claims against this "trust estate", that they may only look to the funds and property of the "trust estate" for payment or for settlement of any claims or damages.

"The right of making a contract, whereby those who tender it stipulate not to be bound beyond the amount of some specific pledged fund, must be a natural right growing out of the very nature of contracts." Warner v. Beers, 23 Wendell, 103, 151.

2. No recourse shall be had against any Trustees or Beneficial Interest Holders for any contract, instrument, obligation, or agreement made by the Trustees, pursuant to the terms of this agreement or by any officer or agent of the Trustees, by reason of anything done or omitted to be done by them either directly or indirectly, by legal or equitable proceeding, or otherwise, except only to compel the proper application or distribution of the trust estate by the Beneficial Interest Holders.

..."...Of course, the parties may agree that the Trustees shall not be held personally on the contract, but that only the trust estate itself shall be chargeable with the debt. In such a case the Trustees is not bound but the fund [trust estate] is." Wells-Stone Mercantile. Co. v. Grover, 7 N.D. 460, 463, 464; 41 L.R.A. 252, 253, 254, Bank of Topeka v. Eaton, 100 Fed. Rep. 8.

If a true trust has been created, the Beneficial Interest Holders are not liable on the obligation incurred by the Trustees or managing agents appointed by the Trustees. Hussey v. Arnold, 70 NE 87; Mayo v. Moritz, 151 Mass. 481, 484-524.

See also;--Odd Fellows Hall Association v. McAllister, 153 Mass. 292, 297; Broadway Nat. Bank v. Wooks, 165 Mass, 312, 316; Hewitt v. Phelps, 105 U.S. 393; 400 26 L.Ed. 1072; Brown v. Eastern Slate Co., 134 Mass. 590, Norton v. Phelps, 54 Miss, 467, S.C. Ames' Cases on Trusts, 420 (2<sup>nd</sup> Ed) and cases cited. Story's Eq. II, §978 n. (c) and cases cited, Liability of trust estates for Contracts Made for Their Benefit, 15 Am Law Rev. 449; Underhill on Trusts and Trustees, §§347, 348.

3. Trustees shall provide parties interacting with them notice of this clause in such form as he finds suitable. Provided, Failure to provide notice does not render the Trustees, or Beneficial Interests Holder liable.
4. Trustees shall not be liable for any loss to the "trust estate" arising from acts or omissions which are not committed recklessly, intentionally or in bad faith, or for errors in judgment, or as a consequence of the failure, depreciation or loss of any

investment made in good faith, or of any mistake or omission made in good faith, or of any matter or thing except willful and individual fraud and wrongdoing.

17.5. Trustees shall also not be liable for torts or contractual violations committed by any manager, worker, agent or sub-trust. Provided, That the Trustees may be held personally liable by any Beneficial Interest Holder for acts caused by his own gross negligence, neglects, and defaults that constitute a breach of trust, or acts not authorized in this instrument that are committed in bad faith. This clause shall not be applicable to breaches concerning deliberately releasing property not lawfully subject to seizure or to breaches of the Constitution. This section may not be amended.

## **Article 18**

### **Trustees Banking Powers**

1. Trustees shall have the power to open bank accounts or brokerage accounts in the name of the "trust estate" and be the signers thereon.
2. Wherein Trustees are securing the bank account or brokerage account, not for his own personal benefit, but as a fiduciary obligated to the Beneficial Interest Holders, Trustees are not authorized to utilize his personal social security number for the opening such accounts, but must utilize the *trust identification number*, assigned to the "trust estate" and included on the cover page herein, or, in lieu of such ID number, Trustees are authorized to open accounts by filing and executing a W-8 Form on behalf of the "trust estate".
3. Trustees shall also have the power to open such bank or brokerage accounts with a "Certification of Trust" document or with a copy of the following pages of this Contract and Declaration of Trust:
  1. A copy of the cover page with trust identification number, name of "trust estate" and Seal.
  2. A copy of the signature page, listing the names, signatures and notarization of all Trustees and the date of execution of the Contract of Trust and;
  3. A copy of the Power of Attorney Minutes authorizing the Trustees to be the sole signer or signers on the bank account on behalf of the "trust estate".
4. Trustees shall open all such banking or brokerage accounts in the name and address of the "trust estate" but may, at his discretion, when ordering checks, have printed, immediately above the signature line, their name, followed by a comma and their fiduciary Title as 'Trustees'.



## **Article 19**

### **Delegation of Authority through Power of Attorney**

1. Trustees may re-delegate duties and fiduciary responsibilities granted herein to Managing Trustees or to General Manager(s), with the written approval of the majority of Trustees. This shall be accomplished through a Contractual Power of Attorney from delegating Trustees to said Managing Trustees or General Manager(s).
2. Said delegated Trustees or General Manager(s) shall be deemed to be the acting principal(s), representing the interest of the Beneficial Interest Holders, through such Power of Attorney.
3. The Power of Attorney shall not be effected by subsequent disability or incapacity of delegating principal.
4. Any person or persons upon whom any power of attorney is conferred by this Contract may, by written document, release and revoke any such power or powers so conferred on him. Such power of attorney will be terminated upon the date such revocation contract is signed or at any later date expressed in the said revocation and all parties effected by such revocation shall be immediately notified.

## **Article 20**

### **"Foreign Estate Trust"**

1. This "trust estate" has no income derived from any source within or effectively connected to a "trade or business" within the District of Columbia, U.S. Virgin Islands, Puerto Rico, Guam, or any other federal area, enclave, or reservation owing its existence to Art. I, §8, Cl. 17 of the Constitution, as such term is defined for the purposes of Subtitle A of 26 U.S.C.A and its implementing regulations and is a "foreign estate trust" as such term is defined in 26 U.S.C. 7701(a)(31).

26 U.S.C. §7701 (a) (26) (TRADE OR BUSINESS):

Includes the performance of the function of a public [government] office.

§7701(a) (31) "FOREIGN ESTATE OR TRUST":

The terms "foreign estate" and "foreign trust" mean an estate or trust, as the case may be, the income of which, from sources without the United States, which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under Subtitle A" [26 U.S.C. (1988)].

## Article 21

### Tax Liabilities

1. Trustees are authorized to pay all constitutionally sufficient taxes imposed upon this contractual "trust estate" by law, including but not limited to, real property and motor vehicle taxes on property held within this "trust estate". This Contractual "trust estate" has no tax requirements under the Corporate Excise Act of Aug. 5, 1909, 36 Stat. at L. chap. 6, pp. 11, 112-117, U. S. Comp. Stat. Supp. 1911, pp. 741, 946-951, Sec. 38 and for income tax purposes is a non-taxable organization, as supported by the following Supreme Courts.

**Black's Law Dictionary, 6<sup>th</sup> Ed., trust estates as Business Companies:** "...In Eliot v. Freeman, 220 U.S. 178, 31 S.Ct. 360, 55 L.Ed. 424, it was held that such a trust was not within the corporation tax provisions of the tariff act of Aug. 5, 1909."

**ELIOT V. FREEMAN, 220 U.S. 178, 185:** "As we have construed the corporation tax act in the previous cases (Flint v. Stone Tracy Co., ante, 342), the tax is imposed upon doing business in a corporate or quasi-corporate capacity; that is, with the facility or advantage of corporate organization...[at pg 186] The description of the corporation or joint stock association as one organized under the laws of a state at once suggests that they are such as are the creation of statutory law, from which they derive their powers and are qualified to carry on their operations. A trust of the character of those here involved can hardly be said to be organized, within the ordinary meaning of that term; it certainly is not organized under statutory laws as corporations are... The two cases now under consideration embrace trusts which do not derive any benefit from and are not [at pg 187] organized under the statutory laws... Ricker v. American Loan & T. Co. 140 Mass. 346, 5 N. E. 284. These trusts do not have perpetual succession, but end with lives in being and twenty years thereafter...Entertaining the view that it was the intention of Congress to embrace within the corporation tax statute only such corporations and joint stock associations as ... derive from that source some quality, or benefit not existing at the common law, we are of opinion that the trusts involved in these two cases are not within the terms of the act."

"Since the business trust has its origin in the *common-law right of the parties to enter into a contract* and does not spring from a *franchise granted by the state*, it has been held that the constitutional authority to levy excises (income tax on the exercise of privileges) upon commodities, a term including corporate franchises, does not empower the legislature to impose an excise (privilege) tax on business trusts." 266 Mass 590, 163 NE 904.

**MERCHANTS LOAN & TRUST CO. v. SMIETANKA, 255 U.S. 509, 41 S. Ct. 386, 15 A. L. R. 1305. (1921):** "...the word 'income' has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909...The word must be given the same meaning in all of the Income Tax Acts of Congress

that was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this Court... Pg 519. In determining the definition of the word 'income' thus arrived at, this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved, in the definitions quoted, what it believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the 16th Amendment to the Constitution. Doyle v. Mitchell Brothers Co., 247 U.S. 179, 185, 38 S. Sup. Ct. 467; Eisner v. Macomber, 252 U.S. 189, 206, 207

**STRATTON'S INDEPENDENCE, LTD. v. HOWBERT, 231 U.S. 399 pg 414, 58 L. Ed. 285, 34 Sup. Ct. 136 (1913):** "As has been repeatedly remarked, the Corporation Tax Act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation..." Flint v. Stone Tracy Co. 220 U.S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

**DOYLE v. MITCHELL BROS. CO., 247 U.S. 179. (1918):** [Pg 183] ["T]he legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit by a measure based upon the gainful returns from their [corporate] business operations and property from the time the act took effect, as was pointed out in Flint v. Stone Tracy Co., 220 U.S. 107, 145, 31 S. Sup. Ct. 342, 347 55 L. Ed. 389, Ann. Cas. 1912B, 1312. Pg 185 ...Whatever difficulty there may be about a precise and scientific definition of 'income,' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities."

**FLINT v. STONE TRACY CO., 220 U.S. 107, at 151, 152 (1911):** "The tax under consideration, as we have construed the statute [Corporate Excise Act of August 5, 1909] may be described as an excise upon the particular privilege of doing business in a corporate capacity, i.e., with the advantages which arise from corporate or quasi corporate organization; or, when applied to insurance companies, for doing the business of such companies...The requirement to pay such taxes involves the exercise of privileges, and the element of absolute and unavoidable demand is lacking. *If business is not done in the manner described in the statute, no tax is payable...*"

## Article 22

### Laws Governing this "Trust Estate"

1. Wherein the Constitution of the United States is *the Supreme Law of the Land*, pursuant to the mandates of Art. VI, §2, Cl.1 of the Constitution of the United States and as affirmed in 16 Am Jur 2d §177, late Am Jur 2d §256, and the cites quoted therein, and Norton v. Shelby County, 118 U.S. 178, the laws governing this "trust estate" are and shall be the Constitution for the United States of America of 1787, the Bill of Rights of 1791 and all laws made in pursuance thereof.

“This Constitution and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every State shall be bound thereby...The Senators and Representatives and members of the State legislatures, and all executive and judicial officers of the United States and the several States, shall be bound thereby...” Constitution for the United States, Article VI, §2, Cl. 1.

2. This "trust estate" shall maintain any and all of the same Constitutional rights as a natural born, preamble, Citizen on of the several union States of America. 4 Wheat 402, Wong Kim Ark, p. 914, quoting Dred Scott v. Sanford, 60 U.S. 393, Yick Wo v. Hopkins and Woo Lee Hopkins, 118 U.S. 356, United States v. Lee, 106 U.S. 196 at 208, Lansing v. Smith, 4 Wend., 9, 20, Glass v. Sloop Betsy, 3 Dall 6, Afroyim v. Rusk, 387 U.S. 253 (1967) People v. Herkimer, 4 Cowen (N.Y. 345, 348) and shall waive no rights at any time.
3. This "trust estate" is not subject to rules, regulations, private and special laws created for any entity having its origin and jurisdiction from any powers granted in Art. I, §8, Cl. 17, and Art. IV, §3, Cl. 2 of the Constitution for the United States, applicable exclusively to the Territorial jurisdiction of the United States Government.
4. This "trust estate" shall not be bound by any provisions of the United Nations Treaty or any other Treaty or Agreement which is contrary to the Constitution of the United States and no national emergency or Executive Order shall nullify any of the constitutional protections of this "trust estate”.

## Article 23

### Books and Records Requirements

1. The Trustees may keep proper records and accounting as deemed vital and necessary for this "trust estate".
2. This "trust estate" is not a corporation, partnership, or other collective association, as Trustees act in the capacity of a principal or proprietor, subject to an equitable

obligation to the Beneficial Interest Holders, and not as an agent. All books and records of this "trust estate" are, therefore, the personal property of the Trustees and shall not be subject to summons or subpoena. The State has no "visitation rights" to such books and records. Trustees, herein maintain all rights under the 4<sup>th</sup> and 5<sup>th</sup> Amendments and all other amendments available to Citizens of any of the several states, including but not limited to the right to the continued possession of property, absent a de jure Court Order and probable cause affidavit from a Court of Law, evidencing the commitment of a crime, and the right of to not be a witness against oneself. The following provision of "Doe" shall apply in the same manner as if the "trust estate" were a natural individual or sole proprietorship.

UNITED STATES v. DOE, 465 U.S. 605 (1984). Held...2. The act of producing the documents at issue in this case is privileged. Pp. 612-614. Doe, 465 U.S. 605, at 608, 609 "In re Grand Jury Empanelled March 19, 1980, 680 F.2d 327 (1982) [the Court of Appeals] first addressed the question whether the Fifth Amendment ever applies to the records of a sole proprietorship. After noting that an individual may not assert the Fifth Amendment privilege on behalf of a corporation, partnership, or other collective entity under the holding of Bellis v. United States, 417 U.S. 85 (1974), the Court of Appeals reasoned that the owner of a sole proprietorship acts in a personal rather than a representative capacity.

"The individual my stand upon his Constitutional rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business or to open his doors to investigation...He owes no duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the Law of the Land, long antecedent to the organization of the State, and can only be taken from him by due process of the law and in accordance with the Constitution. He owes nothing to the public so long as he does not trespass upon their rights." Hale v. Henkle, 201 U.S. 43 at 74

"It has always been recognized in this country, and is well to remember, that few if any of the rights of the people are of greater importance to their happiness and safety than the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs." Sinclair v. United States, 279 US 263, pg. 292

United States v. Davis, 636 F.2d 1028, at 1043 (5th Cir. 1981). "Their [Supreme Court] cumulative teaching is that any incriminating papers in the actual *or constructive* possession of an individual, which he holds in his individual capacity, ... and which he wrote or which were written under his immediate supervision, are absolutely protected by the *Boyd* principle from production by subpoena or equivalent process, regardless of whether they are business-related or more inherently personal in content."

3. Further, any books and records maintained must be maintained in the constructive possession the Trustees or someone under his immediate supervision at all times. This duty may not be delegated to an outside third party.

## Article 24

### Courts of Competent Jurisdiction

1. Actions and suits against this "trust estate" shall be adjudicated exclusively, in de jure constitutionally sufficient state and county courts of law and equity, within the appropriate county of one of the several states wherein the controversy arose, and in constitutional question actions or diversity of Citizenship cases only, in Constitutional, de jure, Article III, federal Court having powers of Law and Equity with a de jure Article III judge presiding, having the power to determine law and equity and merits and to make declaratory judgments concerning the rights of the parties.

24.2. Judges of such de jure Courts must appointed pursuant to the Constitution of one of the several states where the matter is pending or, if a federal case by Article III of the Constitution of the United States, wherein they “hold their office during terms of good behavior” and be bound by oath to uphold the Constitution of United States. Trustees may, only by the voluntary written consent of the majority of Trustees, consent to having a case regarding this "trust estate" heard or ruled upon by Administrative arbitrators, quasi and de facto judges and/or U.S. Magistrates of territorial Courts, Municipal Judges or Municipal Magistrates, Tax Court Commissioners and other officials constituted by Article I, §8, Cl. 17, or Article IV, §3, Cl. 2 of the Constitution for the United States and under the Administrative Procedures Act, Title 5 U.S.C., §701 -706. Such de facto Courts are without proper venue or jurisdiction to hear cases brought by or for this “trust estate’ unless such jurisdictional defect is expressly waived by the majority of Trustees. If any action against this "trust estate" is filed in an improper court, contrary to this section, Trustees shall, immediately file to remove such case to the Court of proper jurisdiction. Any pleading in a Court without proper jurisdiction shall be “*coram non judice*”.

## Article 25

### Definitions

**Beneficial:** Yielding a profit, advantage, or benefit, enjoying or entitled to a benefit or profit. Applied both to estates (as “Beneficial Interest”) and to persons (as the “beneficial owner”).” Black’s Law Dictionary, 3<sup>rd</sup> Ed.

**Beneficial Interest:** “Profit, benefit or advantage resulting from a contract as distinct from the legal ownership or control. In trust law is refers to the interest of a

beneficiary in a right to the income or principal of trust funds as opposed to Trustees who holds legal title.” Black’s Law Dictionary, 6<sup>th</sup> Ed. "An interest of value, worth or use in property one does not own, EXAMPLE, the interest that the beneficiary of a trust has in the trust." Ballentine's Law Dictionary

**Beneficial Interest Holder:** The beneficiary, the party or parties who hold the Beneficial Interest Certificate, and beneficial use of property, the legal title of which is held by Trustees.

**Beneficial Use:** "The right to use and enjoy property...so as to derive a profit or benefit from it...as distinguished from a mere right of occupancy or possession. A right to enjoyment of property where legal title is in one person while the right to use such interest is in another." Christiansen v. Department of Social Security, 15 Was. 2d 465, 131 P2d 189, 191. Black's Law Dictionary, 6<sup>th</sup> Ed.

***Cestui que trust:*** French for "*he who benefits from the trust*", means the beneficiary of the trust or the person for whose benefit property is held in trust. Ballentine's Law Dictionary

**Beneficiary:** "One for whose benefit, a trust is created; a *cestui que trust*. 195 N.E. 557, 564, 97 A.L.R. 1170. A person having the enjoyment of property of which a Trustee has legal possession." Black's Law Dictionary, 3<sup>rd</sup> Edition "A person for whom property is held in trust." Ballentine's Dictionary. "A person who is entitled to the benefits of a trust which is administered by a Trustee...As it relates to trust beneficiaries, includes a person who has any present or future Beneficial Interest, vested or contingent..." Black’s Law Dictionary, 6<sup>th</sup> Ed.

**Coram non judice:** "...before one not the proper judge; acts of a court which has no jurisdiction over the person, the subject matter or process. Such acts are wholly void." - Black’s Law Dictionary, 6<sup>th</sup> Ed.

**Corpus:** All property and other assets by the Trustees within the "trust estate", also called the *res*.

**Creator:** The drafter of the contractual trust organization.

**De Jure:** Of right and just title; legitimate; just or constitutional. In this sense it is contrary to de facto.

**De Facto:** An officer, an office or government, which must be accepted for all practical purposes but which is illegal, unconstitutional or illegitimate.

**Declaration of Trust:** The act by which the person who holds the legal title to property or an estate acknowledges and declares that he holds the same in trust to the use of another person...The name is also used to designate the deed or other writing embodying such a declaration.

**Equitable Title:** Title recognized as ownership in equity although it is not legal title or marketable title.

**Fiduciary relationship:** "Based upon trust or confidence; A person who is entrusted with handling money or property for another person. A relationship between two or more persons in which one is obligated to act with the utmost good faith, honesty and loyalty on behalf of the other." Ballentine's Law Dictionary

**Foreign Laws:** "The laws of a foreign or of a sister state." People v. Martin, 38 Misc, Rep. 67, 76 N.Y.S. 953; Bank of Chillicothe v. Dodge, 8 Barb., N.Y. 233

**Foreign Situs Trust:** "A trust, which owes its existence to foreign law. It is treated for tax purposes as nonresident alien." Black's Law Dictionary, 5<sup>th</sup> Ed. (under Trust)

**General Manager:** The party appointed by the Trustees in minutes to the "trust estate" who is authorized to perform certain directed functions on behalf of the Trustees.

**Irrevocable:** "One which cannot be revoked or recalled." Commissioner of Internal Revenue v. Strong Mfg. Co., C.C.A. Ohio, 124 F.2d 360, 363

**Irrevocable Trust:** "A trust in which the Settlers permanently gives up ownership control of the trust property." Ballentine's Law Dictionary

**Inter se:** [also inter sese]. "Among themselves." Story, Partn. §405.

**Legal Title:** A title that evidences apparent ownership, as distinguished from equitable title which indicates Beneficial Interest.

**Managing Trustees:** Appointed by the other Trustees and granted their full power of attorney in the minutes to the "trust estate" to perform all functions of the Trustees of the "trust estate" on their behalf.

**Sui Juris:** "Of his own right; possessing full social and civil rights; not under any legal disability or under the power of another. Black's Law Dictionary, 4<sup>th</sup> Ed.

**Trust:** "A right of property, real or personal, held by one party for the benefit of another. See Goodwin v. McMinn, 193 Pa 646, 44 A. 1094, 74 Am. St. Rep 703; Beers v. Lyon, 21 Conn. 613; Seymour v. Freer, 8 Wall. 202, 19 L. Ed. 306; Keplinger v. Keplinger, 185 Ind. 81; 113 N.E. 292, 293; Black's Law Dictionary, 3<sup>rd</sup>. "A fiduciary relationship involving Trustees who hold trust property for the use of another called the beneficiary. Property of any description or type may properly be the subject of a trust. Trustees hold legal title to the trust property (also called the *res* or *corpus* of the trust); the beneficiary holds the equitable title. A trust is generally established through a trust instrument such as a Declaration or Deed of Trust by a person (known as Settlers) who wishes the beneficiary to receive the benefits of the property but not outright ownership. Trusts may be created either by



contract or by operation of law." Ballentines Law Dictionary. "...Any arrangement whereby property is transferred with intention that it be administered by Trustees for another's benefit. A fiduciary relationship in which one person is the Holder of the legal title to property subject to an equitable obligation to keep or use the property for the benefit of another...A trust can be created for any purpose which in not illegal...Essential elements of a trust are designated beneficiary and Trustees, fund sufficiently identified to enable title to pass to Trustees, and actual delivery to Trustees with intention of passing title." City Bank Framers' Trust Co. v. Charity Organization Soc. Of City o New York, 238 App.Div., 720, 265 N.Y. 267. Black's Law Dictionary, 6<sup>th</sup> Ed.

**Trustees:** "The person(s) who holds the legal title to trust property for the benefit of the beneficiary/ies of the trust.

**Trustees *qua* Trustee:** Latin for considered as; in the character or capacity of. For example, "the Trustees *qua* Trustee [that is in his character of Trustees] is not liable," etc.

# Signature Page

If any provision of this contract shall be found, in a de jure competent Court of law or equity, to be invalid for any reason, the remaining provisions shall stand with full, legal effect.

**IN WITNESS THEREOF**, the Settlor and Trustees, and other party(ies), by separate contract(s), have agreed to the terms, stipulations and covenants stated herein, and have acknowledged the conveyance, delivery and acceptance of certain real and/or personal property to be held in Trust according to the terms, herein. Further, our signatures below constitute the appointment and acceptance of the positions of Trustees of [NAME OF TRUST] **Financial Group**, [TRUST ID #], under such terms and conditions.

Dated on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

/s/ \_\_\_\_\_

[NAME OF SETTLOR], Settlor

/s/ \_\_\_\_\_

[NAME OF TRUSTEE 1], Trustee

/s/ \_\_\_\_\_

[NAME OF TRUSTEE 2], Trustee

/s/ \_\_\_\_\_

## ACKNOWLEDGEMENT

\_\_\_\_\_ STATE } **For verification purposes only**

} ss.

COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ before me, \_\_\_\_\_

DATE

NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC

personally appeared, \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the Citizen(s), person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public