

**2017 AMENDED AND RESTATED
LSS SUPPLEMENTAL NEEDS POOLED TRUST AGREEMENT**

THIS 2017 AMENDED AND RESTATED LSS SUPPLEMENTAL NEEDS POOLED TRUST AGREEMENT is effective as of the 17th day of March, 2017, amends and restated the LSS Supplemental Needs Pooled Trust Agreement originally dated February 6, 2009, as further amended and further amended and restated, and shall be referred to as (the “Trust Agreement”) and is by and between LUTHERAN SOCIAL SERVICE OF MINNESOTA, a Minnesota non-profit corporation, as Settlor and as Trustee, hereinafter called the “Settlor” and “Trustee.”

**ARTICLE 1
CREATION OF TRUST**

1.01 Definitions. The following capitalized terms shall have the definitions set forth below; other defined terms are defined elsewhere in this Trust Agreement.

- (a) “Assets” will include both principal and income.
- (b) “Beneficiary” will mean a “disabled person” as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)), or who qualifies under Minnesota Statutes §501C.1205, as amended, to be a recipient of benefits and services under this Trust Agreement.
- (c) “Qualified Beneficiary” is also the same person who is the Beneficiary of the Sub-Account of the Trust during his or her lifetime for purposes of providing Notice as set forth under Minnesota Statutes § 501C.0103(m). In the event of the death of the Beneficiary for whom a Sub-Account was initially established, then the individuals or entities entitled to the Remainder Share shall then be considered the “Qualified Beneficiaries” for purposes of providing Notice as set forth under Minnesota Statutes § 501C.0103(m).
- (d) “Effective Date” means the date of this Trust Agreement set forth above.
- (e) “Grantor” means a parent, (if the Beneficiary is a child over age 18, or a parent who does not have a support obligation to the Beneficiary), grandparent, or a court-appointed Guardian or Conservator of a Beneficiary, or any other person or entity, {other than (a) a Beneficiary himself or herself; (b) the beneficiary's spouse; or (c) anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment who establishes a Sub-Account within the Trust for the benefit of a Beneficiary, or who contributes his, her, or its own assets to an existing Sub-Account of the Trust for the benefit of a Beneficiary, whether such

contribution is by gift, will, beneficiary designation, contract, or agreement, or pursuant to court order.

- (f) “Joinder Agreement” means the individual and separate written agreement between the Trustee and a Grantor by which the Grantor establishes a Sub-Account for the sole benefit of a Beneficiary.
- (g) “Legal Representative” means legal guardian, conservator, or agent acting under a durable Power of Attorney, representative payee, custodian, or other legal representative or fiduciary of a Beneficiary named in the Joinder Agreement with whom the Funds Manager and Trustee is authorized to communicate the Beneficiary’s interest.
- (h) “Property” means any cash, investments, accounts, or other assets of any kind that the Grantor transfers to the Trust to be added to the Sub-Account for the Beneficiary’s benefit, with preapproval of the Trustee.
- (i) “Public Benefits” or “Government Assistance” may be used conjunctively, interchangeably or separately within this Trust Agreement, and will mean all services benefits, medical care, financial assistance and any other assistance of any kind that may be provided by any local, state or federal agency, to or on behalf of a Beneficiary. Such Public Benefits and Government Assistance benefits include, but are not limited to, the Supplemental Security Income program (“SSI”), the Old Age Survivor and Disability Insurance program (“OASDI”), Social Security Disability Insurance program (“SSDI”), and any Medicaid/Medical Assistance program, together with any additional, similar, or successor public programs.
- (j) “Remainder Share” means that portion of the Sub-Account that is designated according to the Joinder Agreement to be paid over to Lutheran Social Service of Minnesota, as Trustee, upon termination of the Sub-Account.
- (k) “Sub-Account” means a trust account established, held and maintained for the sole benefit of a Beneficiary which includes assets provided by, and which may include assets added by, any person or entity {other than (a) a Beneficiary himself or herself, (b) the beneficiary's spouse, (c) a parent, grandparent with a support obligation to Beneficiary, or (d) anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment} for the benefit of a Beneficiary, whether such contribution is by gift, will, beneficiary designation, contract, or agreement, or pursuant to court order.

- (l) “Supplemental care” and “supplemental needs” may be used conjunctively, interchangeably or separately within this Trust Agreement and the terms will always mean care that is not otherwise provided, or needs that are not met, by any Public Benefits or Government Assistance that might be otherwise available to any Beneficiary.
- (m) “Trust” means the LSS Supplemental Needs Pooled Trust established pursuant to this Trust Agreement.
- (n) “Trust Fund Manager” or “Funds Manager” means a bank or trust company that is doing business in the State of Minnesota as per Article 8 and is investing the Property of the Trust for the Trustee and the Trust Beneficiaries.
- (o) “Trustee” means Lutheran Social Service of Minnesota (“LSS”), or its successor organization, or any successor Trustee to LSS as may be provided in this Trust Agreement.

1.02 Name and Creation. This Trust, named the “LSS Supplemental Needs Pooled Trust,” is hereby created and established by the Settlor as a pooled trust with a charitable remainder trust with the intention that all Sub-Accounts in the Trust shall be structured as supplemental needs third party funded trusts meeting the requirements established under Minnesota Statutes §501C.1205.

1.03 Funding. The Settlor previously transferred, assigned, and conveyed an initial contribution of One Hundred Dollars (\$100.00) to the Remainder Share Sub-Account of the Trust. The Trust estate will consist of this contribution by the Settlor and any additional contributions in cash or property made to the Trust estate at any time by any Grantor in accordance with the provisions of this Trust Agreement.

1.04 Irrevocability. This Trust Agreement is irrevocable. Except as expressly provided herein, neither the Settlor, Grantor, nor the Beneficiaries will have any right to change, modify, amend or revoke any term or provision hereof, or to terminate this Trust Agreement or any trust created pursuant to this Trust Agreement.

1.05 Amendments. Notwithstanding Section 1.04 of this Trust Agreement, this Trust Agreement may be amended by the Trustee from time to time to effectuate its purposes and intent and/or to meet the requirements of Minnesota Statutes §501C.1205 as the same may be amended from time to time. Notice of proposed amendments will be provided to the Minnesota Department of Human Services.

ARTICLE 2 SETTLOR’S PURPOSE AND INTENT

2.01 Purpose. This Trust has been created for the purpose of providing supplemental care and special needs assistance to Beneficiaries. The Trust assets will be managed,

invested, and disbursed to promote the comfort and well-being of each Beneficiary by providing for supplemental needs. The Trustee will not make any disbursements that would have the effect of replacing, reducing or substituting any Government Assistance or other Public Benefits otherwise available to a Beneficiary or which would render the Beneficiary ineligible for Government Assistance. It is vitally important that each Beneficiary have eligibility to participate in such programs in order to maintain a level of dignity and humane care.

2.02 *Settlor's Intent.* Settlor's intent in creating this Trust is to establish a supplemental trust under the authority of Minn. Stat §501C.1205, for the benefit of the Beneficiaries of this Trust to facilitate a Beneficiary's eligibility for means-tested Public Benefits. Private, Public Benefits or Government Assistance should not be made unavailable to a Beneficiary or be terminated because of this Trust. Except as provided in paragraph 6.02 herein, assets of the Trust or of any Sub-Account cannot be used to satisfy claims of any Beneficiary's Creditors. The Trust is not intended to, and will not, be used to defeat the rights of pre-existing creditors. The Trust and Sub-Accounts are intended for Beneficiaries who need the support of public programs with limitations on the amount of income and resources a recipient may receive on their own. The provisions of this Trust are designed for a continuing conservation and enhancement of funds to be used by the Trustee to supplement, rather than supplant, financial and service benefits, including but not limited to Government Assistance, which a Beneficiary might become eligible to receive as a result of said Beneficiary's disability from any local, county, state or federal agency, or through any public or private profit or nonprofit corporations, entities or agencies.

2.03 *Beneficiaries Have No Interest in Trust Assets.* A Beneficiary will have no interest in either the income or principal of the Trust. This is not a support trust, and assets held in the Trust and in Sub-Accounts of this Trust are not intended to be the primary means of support for any Beneficiary. The Trust assets and each Sub-Account may only be used for the supplemental needs of a Beneficiary. The Trustee does not owe any obligation of support to any Beneficiary, and no Beneficiary will have any right of entitlement to the principal or income of the Trust or to any Sub-Account, except as the Trustee may direct the Trust Funds Manager to disburse, in the Trustee's sole discretion.

2.04 *Spendthrift Provisions.* This Trust is a spendthrift trust. Each Sub-Account created by this Trust Agreement shall be a spendthrift trust to the fullest extent allowed by law. No Beneficiary will have any power to sell, assign, transfer, encumber, or in any other manner to anticipate, or dispose of, his or her interest in the Trust or any Sub-Account. No portion of the Trust or Sub-Account will be subject to garnishment, attachment or other legal process by any Beneficiary's creditors. Under no circumstances may a Beneficiary compel a distribution from a Sub-Account maintained for that Beneficiary or any other part of the Trust estate. Prior to the actual receipt of trust property by an Beneficiary, no property (income or principal) distributable under any Sub-Account created by this Trust Agreement shall, voluntarily or involuntarily, be subject to anticipation or assignment by any Beneficiary, or to attachment by or to the inference or control of any creditor or assignee of any Beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any Beneficiary, and any attempted transfer or

encumbrance of any interest in such property by any Beneficiary hereunder prior to distribution shall be void.

ARTICLE 3 GRANTOR CONTRIBUTIONS

3.01 *Grantor's Intent as to Sub-Accounts.* Each Grantor, in making contributions to the Trust to fund a Sub-Account, intends to supplement, rather than supplant, financial and service benefits which a Beneficiary might become eligible to receive as a result of said Beneficiary's disability from any governmental agency or through any public or private entities or agencies, including Government Assistance. Each Grantor intends for each Sub-Account to establish a supplemental fund pursuant to Minnesota Statutes §501C.1205 and to limit the Trustee's disbursements to, or on behalf of, a Beneficiary to that respective Beneficiary's supplemental care and supplemental needs only. To the extent there is a conflict between the terms of this Trust and the governing law, the law and regulations shall control.

3.02 *Terms Applicable to Grantor Contributions.* Subject to the approval of the Trustee and the Trust Funds Manager, the Trust will be effective as to any individual Beneficiary upon contribution of Property to the Trust and the execution of a Joinder Agreement by a Grantor and the Trustee. Upon delivery of Property that is approved and accepted by the Trust Funds Manager, the Trust will be irrevocable as to such Grantor and Beneficiary; except only as expressly provided below, the contributed Property will not be refundable to the Grantor of such Property and the Grantor will have no further interest, rights in, or control over any interest in such contributed Property; provided, however, that the Grantor (a) may designate a remainder beneficiary to receive any remainder of the contributed Property upon the termination of the Beneficiary's Trust Sub-Account, and (b) shall have and may at any time exercise, in a nonfiduciary capacity and without need for approval or consent of any person in a fiduciary capacity, the right and power to reacquire any or all of the trust corpus of the Sub-Account funded by such third party Grantor by substituting other property of an equivalent value. If a husband and wife jointly fund a single Sub-Account, either or both of them, and the survivor of them shall jointly and severally have and may so exercise the right and power granted by clause (b) of the preceding sentence. It is the intent and purpose of that clause (b) to create such right and power so as to ensure that a third party Grantor (or the third party Grantors, and the survivor of them, if jointly funded by a husband and wife) who fund(s) a Sub-Account shall be considered the owner(s) of that Sub-Account for federal income tax purposes, under Subpart E of Part I of Subchapter J of Chapter 1 of the United States Internal Revenue Code of 1986 as amended ("IRC"), or any cognate or successor statute(s), by reason of IRC 675(4).

3.03 *Effect of Grantor's Contribution.* Subject to the provisions of Article 3 of this Trust Agreement, and subject to the Trustee's sole discretion in making any and all distributions, the effect of a Grantor's contribution to the Trust as it applies to any one Beneficiary is such that the total distributions made on behalf of a Beneficiary will not exceed any amount equal to the total of all contributions made to such Beneficiary's Trust Sub-Account, plus any undistributed income.

3.04 *Future Transfer of Property.* Property, or any interest in Property, may be designated for future transfer by a Grantor as a contribution to the Trust. Such designated contributions may be revoked by the Grantor at any time during the Grantor's lifetime and continued capacity, provided the Grantor gives prior written notice to the Trust Funds Manager. Such written notice will be by certified mail, return receipt requested.

ARTICLE 4 ADMINISTRATION OF SUB-ACCOUNTS

4.01 *Sub-Accounts.* Trustee will maintain a separate Sub-Account for each Beneficiary. The Trust Funds Manager will pool the Sub-Accounts for purposes of investment and management of funds. Trustee will maintain records for each Sub-Account in the name of, and showing the contributions, expenditures and costs for, each Beneficiary.

4.02 *Fees and Expenses.* Trustee will charge the fees and expenses associated with each Sub-Account as set forth in the Joinder Agreement.

4.03 *Taxes.* The Sub-Account is a Grantor Trust and as such the Trustee, or its agents, will cause to be prepared on behalf of each Sub-Account, informational income tax returns only. Such informational tax returns will report to the federal and state authorities all allocable income, gains, or losses which are required to be reported on the Grantor's Federal and state income tax returns. The Beneficiary and the Legal Representative will be responsible for completing, signing and mailing the annual income tax returns for the Beneficiary which are applicable to any income of the Sub-Account passed through and taxable directly to a Beneficiary under the rules and regulations of the Internal Revenue Code.

4.04 *Accountings to Grantor and Beneficiary.* The Trustee has designated the Trust Funds Manager to render accountings of each Sub-Account on an annual or more frequent basis (but not more frequent than monthly), as may be required under Minnesota law or upon the direction of a court of competent jurisdiction, to each Grantor during the Grantor's lifetime and thereafter to each Beneficiary (or to the Legal Representative of a Beneficiary, if one is acting). The accountings will show all assets, receipts, disbursements and distributions to or from such Sub-Account during the reporting period. The Settlor expressly opts out of any requirement under state law, including but not limited to Minnesota Statutes § 501C.0813, that the Trustee keep the Qualified Beneficiaries of an irrevocable trust reasonably informed about the administration of any Trust created hereunder and of the material facts necessary to protect their interests, or to respond to a Beneficiary's request for information related to the administration of such Trust (for purposes of this provision, such requirements shall be referred to as "Notice"). During the lifetime of the Beneficiary of any Trust created hereunder, the Trustee shall only be required to provide such Notice to the Beneficiary who is entitled to distributions, even if such distributions are subject to the discretion of the Trustee. In the event Notice is not sent to the Beneficiary, then said Notice shall be sent to the Beneficiary's Legal Representative.

4.05 *Records Available for Inspection.* The records of a Beneficiary's Sub-Account will be open and available for inspection by the Beneficiary or the Legal Representative of a Beneficiary, if one is acting, or both, at all reasonable business hours. The Trustee is not required to furnish Trust records, Sub-Account records, or documentation to any individual, corporation, or other entity who (a) is not a Beneficiary, (b) is not the Legal Representative of the Beneficiary, or (c) does not have the express written authorization of the Beneficiary to receive such information. The Trustee's decision will be the sole and final determination as to the sufficiency of any and all written authorizations or requests for records and/or documentation.

ARTICLE 5 DISTRIBUTIONS

5.01 *Discretionary Distributions by Trustee.* The Trustee may apply to or expend for the benefit of a Beneficiary such sum or sums from the income or principal of the Trust as the Trustee determines, in the Trustee's sole and absolute discretion, to be necessary or advisable to provide for the supplemental care or supplemental needs of the Beneficiary. The Trustee will possess and exercise the sole discretion and authority to allocate all distributions between income and principal. Any income not distributed from a Sub-Account will be added to the principal of that Sub-Account. The Trustee is under no obligation to direct the expenditure of income or principal and the Trustee will have the discretion to refuse to make any such distributions.

5.02 *Distributions Limited.* The Trustee will not make distributions or disbursements:

- (a) if the effect of such distributions and disbursements will have the effect of replacing, reducing or substituting for Government Assistance or would render the Beneficiary ineligible for otherwise available means-tested publicly funded benefits;
- (b) if such distributions and disbursements would be in excess of the resource and income limitations of any Public Benefit program to which the Beneficiary is entitled;
- (c) if such distribution or disbursement would provide or pay for any care or service that is a "Medical Assistance covered service" in any state where the Beneficiary resides, unless such Medical Assistance benefits have been terminated or the application for such benefits denied and such termination or denial is no longer the subject of review or contest;
- (d) for anything other than necessary services or for services which will enhance the quality of life for the Beneficiary; or
- (e) to pay or to reimburse any amounts to the federal government, State of Minnesota, any other state, or any other governmental unit or non-

governmental agency for the care, support, maintenance and education of any Beneficiary.

5.03 *Non-Exclusive List of Permissible Distributions.* The Trustee will have the discretion to make distributions for anything that is a supplemental or special need of the Beneficiary that is not otherwise provided for the Beneficiary, including but not limited to the following:

- (a) medical, dental and diagnostic work and treatment for which there are no available private or public funds;
- (b) medical procedures that are, in the Trustee's discretion, advisable even though such procedures may not be medically necessary or life saving and not covered by public or other private funds;
- (c) supplemental nursing care, supplemental occupational or supplemental physical therapy that is not covered by public or other private funds;
- (d) care appropriate for a Beneficiary that Government Assistance programs may not or do not otherwise provide;
- (e) expenditures for travel, companionship by a personal care attendant (PCA) and other expenditures that the Trustee, in the Trustee's discretion, deems advisable to improve the Beneficiary's quality of life; or
- (f) an item of similar nature contained in the above.

5.04 *Payee of Disbursements.* The Trust Funds Manager, at the Trustee's direction and as determined by the Trustee in the Trustee's discretion, may make any payment from a Sub-Account in any form allowed by law, to a person deemed suitable by the Trustee (as determined by the Trustee in the Trustee's discretion), or by direct payment of a Beneficiary's expenses.

ARTICLE 6 TERMINATION OF TRUST OR OF SUB-ACCOUNTS

6.01 *Sub-Account Terminations.* Every reasonable attempt will be made to continue the Trust for the purposes for which it is established; however, the Trustee and the Trust Funds Manager do not and cannot know how future developments in the law, including administrative agency and judicial decisions, may affect the Trust or any Trust Sub-Account. If the Trustee and the Trust Funds Manager have reasonable cause to believe that the assets of a Trust Sub-Account are or will become liable for basic maintenance, support, or care that has been or that would otherwise be provided to such Beneficiary by local, state, or federal government, or an agency or department thereof, the Trustee in its sole discretion, may direct the Funds Manager to:

- (a) terminate the Sub-Account as to the affected Beneficiary as though the Beneficiary had died, and the Trust Funds Manager will then treat the assets in the Sub-Account according to the provisions of paragraph 6.02;
- (b) determine that the Trust has become impossible to implement for the affected Beneficiary, and the Trust Funds Manager will then treat the assets in the Sub-Account according to the provisions of paragraph 6.03; or
- (c) continue to administer the Sub-Account under separate arrangement with the affected Beneficiary or his or her Legal Representative.

Before making any distribution of amounts retained in any Sub-Account, the Trustee should consider the public benefits consequences to the Beneficiary of any particular disbursement.

6.02 *Distribution upon Death of Beneficiary.* Upon the death of a Beneficiary, any amounts that remain in that Beneficiary's Sub-Account (the "Remaining Assets") will be distributed as follows:

- (a) A Remainder Share of 10% of the Remaining Assets in the Sub-Account, or if elected by the Beneficiary in the Joinder Agreement all (or other percentage in excess of 10% as designated in the Joinder Agreement) of the Remaining Assets, will be retained by the Trustee and added to its Remainder Share;
- (b) The balance shall be distributed by the Trustee in accordance with the instructions provided by the Grantor pursuant to the Joinder Agreement, or if the Joinder Agreement is silent, such Remaining Assets will be retained by the Trustee pursuant to Section 6.02(c).
- (c) Any Remaining Assets which are retained by the Trustee as its Remainder Share, will be used, at the direction of the Trustee as may be determined in the Trustee's sole discretion, as follows:
 - (i) for the direct or indirect benefit of other Beneficiaries of the Trust or of the LSS Pooled Trust (First party funded Trust);
 - (ii) to add disabled persons, as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)) or who are eligible under Minnesota Statute §501C.1205, as Beneficiaries of the Trust, who qualify under Minnesota Statutes §501C.1205, as amended, to be recipients of benefits and services under this Trust Agreement, as Beneficiaries;
 - (iii) to provide disabled persons, as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)) or who are eligible under

Minnesota Statute §501C.1205, as a Beneficiaries of the Trust, who qualify under Minnesota Statutes §501C.1205, as amended, to be recipients of benefits and services under this Trust Agreement, with equipment, medication or services deemed suitable for such persons by the Trustee; or

- (iv) to otherwise further the nonprofit purposes and nonprofit operations of Lutheran Social Service of Minnesota a 501(c)(3) tax exempt organization.

6.03 Termination of Sub-Account for Impossibility or Impracticability. The Trustee may distribute all or any portion of the assets in a Sub-Account to such Beneficiary on behalf of such Grantor, or to a Trust for the benefit of such Beneficiary, if, in the Trustee's sole discretion, it becomes impossible or impracticable to fulfill the conditions of the Trust with regard to the respective Beneficiary for reasons other than the death of the Beneficiary. If the Trustee, in the Trustee's sole discretion deems such distribution not to be in the Beneficiary's best interest, such Sub-Account or portion of such Sub-Account shall be distributed as if the Beneficiary had died in accordance with Section 6.02.

6.04 Termination of Trust. Every reasonable attempt will be made to continue the Trust for the purposes for which it has been established. If it becomes impossible or impracticable to carry out the purposes of the Trust, the Trustee may terminate the Trust and distribute the assets and Property in each Beneficiary's Sub-Account in accordance with the provisions of paragraph 6.03 of this Trust Agreement. Any assets in the Remainder Share will be paid to Lutheran Social Service of Minnesota; provided however, that if Lutheran Social Service has ceased to exist or has been dissolved, then the Remainder Share will be applied and paid over to such other nonprofit organization(s) as the Trustee will determine, in the Trustee's sole discretion, serve the interests and needs of disabled persons, as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)) or Minnesota Statute §501C.1205.

ARTICLE 7 TRUSTEE

7.01 Trustee. In addition to its role as Settlor of this Trust, Lutheran Social Service of Minnesota, or its successor charitable organization, is the Trustee of the Trust. The Trustee, Lutheran Social Service of Minnesota and any successor trustee, will manage the Trust, as required by Minnesota Statute §501C.1205, and will perform such acts and duties as set forth in the Joinder Agreement, and otherwise as the Trustee and the Trust Funds Manager will mutually agree. The Trustee specifically has full authority and power to prosecute, defend, contest or otherwise litigate legal actions or other proceedings for the protection or benefit of this Trust and to pay compromise, release, adjust, or submit to arbitration any debt, claim or controversy, and to insure the Trust against any risk, and to insure the Trust Funds Manager and the Trustee against liability with respect to third persons.

7.02 *Appointment of Successor Trustee.* Lutheran Social Service may nominate another nonprofit corporation that meets the requirements of Internal Revenue Code 501(c)(3) as a successor Trustee of the Trust. Lutheran Social Service of Minnesota, and any duly designated successor Trustee, will request a court of competent jurisdiction to designate an appropriate successor Trustee, and will provide notice of proceedings for that purpose to the Minnesota Attorney General, the United States Attorney for the State of Minnesota, and the Minnesota Department of Human Services. In the event that Lutheran Social Service of Minnesota nominates, and a court designates a successor Trustee, then that successor will succeed to all the rights, powers, and privileges accorded Lutheran Social Service of Minnesota as Trustee of the Trust, including the right to name a successor Trustee.

7.03 *Trustee Powers.* The Trustee shall have the power, and the authority, to do any act or any thing reasonably necessary or advisable for the proper administration and distribution of the Trust and to do all acts and things necessary to accomplish the purposes of this Trust, and to perform the Trustee's duties as such, and to do such other acts or things concerning the Trust as may be advisable. Further, except as may be otherwise expressly directed or required by this Trust Agreement, and in extension, but not in limitation, of the powers provided by applicable law (including but not limited to the powers stated in Minnesota Statutes §501C.0816, or corresponding provisions of successor law, which are incorporated in this Trust Agreement by this reference), the Trustee shall have full power and authority as to any properties, at any time comprising a part of any trust hereunder and, without the necessity of notice to, or license or approval of, any court or person during the term of such trust and, for the purposes of administration and distribution of such trust, after its termination, in the Trustee's continuing sole discretion, to perform the following:

(a) Asset Retention and Disposal. The Trustee may retain cash or other assets for so long as it deems advisable. The Trustee may also sell, exchange, mortgage, lease, or otherwise dispose of any assets of the Trust estate for terms ending within, or extending beyond, the term of the trust.

(b) Permissible Investments. Except as provided in paragraph 8.04 of this Trust Agreement, the Trustee may invest, and reinvest in, or exchange assets for, any securities and properties it deems advisable, and as enumerated in the Minnesota Prudent Investor Rule of Minnesota Statutes §501C.0901, or corresponding provisions of any successor law, which are incorporated into this Trust Agreement by reference.

(c) Rights of Ownership. The Trustee shall have the right to: (i) to collect, receive, and receipt for any principal or income; (ii) to enforce, defend against, compromise, or settle any claim by, or against, the trust; (iii) to vote, issue proxies to vote, join in, or oppose any plans for reorganization; and (iv) to exercise any other rights incident to the ownership of any stocks, bonds, or other properties of the Trust estate.

(d) Allocations of Receipts and Disbursements. Except as otherwise provided in this Trust Agreement, the Trustees shall apply the rules stated in the Minnesota Revised Uniform Principal and Income Act in determining whether receipts shall be income or principal and whether disbursements shall be paid out of income or principal.

(e) Division, Distribution, or Allocation. As permitted in the Revised Minnesota Uniform Principal and Income Act under Minnesota Statutes § 501C.1101, et seq., the Trustee may use “income” as defined therein to pay the expenses of administration, including the payment of any taxes.

(f) Employment and Delegation. The Trustee may employ such trust fund managers, accountants, attorneys, bankers, brokers, custodians, investment counsel, and other agents as determined by the Trustee to be necessary. The Trustee may delegate to them such of the rights, powers, and duties herein conferred upon the Trustee as the Trustee deems proper. The Trustee shall act in these matters without liability for any mistake or default of any such person selected or retained with reasonable care and prudence.

7.04 *Trustee May Seek Advice.* The Trustee may, but is not required to, seek the advice and assistance of any person or entity it deems to be appropriate, including, but not limited to, the Grantor, Legal Representative, any guardian or guardians of a Beneficiary, and any federal, state, or local agencies that are established to assist persons with disabilities. Associated costs, if any, will be a proper expenses of the Trust and may be apportioned on a pro rata basis against all Sub-Accounts or may be charged only against the Sub-Account about which the Trustee seeks such advice or assistance. The Trustee may use available resources to assist in identifying programs that may be of legal, social, financial, developmental or other assistance to Beneficiaries.

7.05 *The Trustee Not Liable for Failure to Identify Resources.* The Trustee will identify private or governmental programs that may be of legal, social, financial, developmental, or other assistance to any Beneficiary. In no event, however, will the Trustee be liable to any Beneficiary for failure to identify all programs or resources that may be available to such Beneficiary or to create programs when such programs do not exist.

7.06 *Trustee to Obtain and Maintain Eligibility.* The Trustee has full authority and power to take any and all steps necessary to obtain and maintain eligibility of any Beneficiary for any and all Public Benefits and entitlement programs, which programs may include but are not limited to Social Security, Supplemental Security Income, Medicare, Medical Assistance, services provided or authorized or licensed by the Minnesota Department of Human Services, other State services and other community services. In no event, however, will the Trustee be liable to any Beneficiary for failure to obtain or maintain the eligibility of such Beneficiary for any such programs.

7.07 *Trustee Entitled to Reasonable Compensation.* The Trustee, including its agents, will be entitled to reasonable compensation and to reimbursement of costs and expenses properly incurred in the management and/or administration of the Trust. All such compensation and reimbursements will be made in accordance with a schedule of fees and charges as specified in each Beneficiary’s Joinder Agreement.

7.08 *No Bond.* Neither the Trustee, nor successor Trustee, will be required to pay a bond for the faithful performance of any duties. If a bond is required by law or by a court

of competent jurisdiction, no surety will be required on such bond, and such bond will be a proper expense of the Trust.

7.09 Indemnification. Except as is otherwise provided in this paragraph, the Trustee and any successor Trustee and their respective agents, employees, officers, and directors as well as their heirs, successors, assigns, and personal representatives of such parties will be and hereby are indemnified by the Trust and the Trust assets against all claims, demands, liabilities, fines, or penalties and against all costs and expenses (including attorney's fees and disbursements and the cost of reasonable settlements) and expressly including claims for the negligence of the indemnified parties and their agents, employees, officers and directors, imposed upon, asserted against or reasonably incurred thereby in connection with or arising out of any claim, demand, action, suit, or proceeding in which he, she, or it may be involved by reason of being or having been a Trustee, whether or not he, she, or it will have continued to serve as such at the time of incurring such claims, demands, liabilities, fines, penalties, costs, or expenses or at the time of being subjected to the same. This right of indemnification will not be exclusive of, or prejudicial to, other rights to which the Trustee and any successor Trustee, and each of their respective agents or employees may be entitled as a matter of law or otherwise. The Trustee and any successor Trustee and their respective agents and employees (and their heirs or personal representatives) will not be indemnified with respect to matters as to which he, she, or it will be finally determined to have been guilty of willful misconduct, gross negligence in the performance of any duty as such, or violation of any fiduciary obligation or duty to a Grantor or Beneficiary, by a court of competent jurisdiction.

ARTICLE 8 TRUST FUNDS MANAGER

8.01 Trust Funds Manager's Reliance on Trustee. The Trust Funds Manager may rely on the Trustee's directions.

8.02 Resignation or Removal. The Trust Funds Manager may be removed without cause by the Trustee at any time upon giving ninety (90) days advance notice to the Trust Funds Manager. The Trust Funds Manager may resign for any reason, at any time, provided that the Trust Funds Manager gives ninety (90) days advance notice to the Trustee of its intention to resign. No court approval is required for the Trust Funds Manager's removal or resignation. If both the Trustee and the Trust Funds Manager agree, the notice requirement may be waived or reduced.

8.03 Successor Trust Funds Manager. If the Trust Funds Manager resigns or is removed, the Trustee will select and appoint a Successor Trust Funds Manager. The Successor Trust Funds Manager must be a bank or trust company doing business in the State of Minnesota. If the Trustee does not appoint a Successor Trust Funds Manager within sixty (60) days after removing a Trust Funds Manager or within sixty (60) days after receiving notice of the Trust Funds Manager's intent to resign, a successor Trust Funds Manager will be selected and appointed by a court of competent jurisdiction in Minnesota. Any successor Trust Funds Manager will act as such without any liability for the acts or

omissions of any predecessor Trust Funds Manager. Any corporation that will succeed (by purchase, merger, consolidation or otherwise) to all or the greater part of the assets of any corporate Trust Funds Manager will succeed to all the rights, duties and powers of such corporate Trust Funds Manager as Trust Funds Manager of this Trust.

8.04 *Trust Funds Manager Powers.* The Trust Funds Manager will have full power and authority to perform the Trust Funds Manager's duties as such and to receive, hold, manage, and control all the income arising from such Trust and the corpus thereof and to do such other acts or things concerning the Trust as may be advisable; the Trust Funds Manager's power and authority will include, but not be limited to, all powers conferred upon fiduciaries by Minnesota Statute § 48A.07, as amended from time to time, or the provisions of any trust laws of the state of Minnesota, and the powers conferred upon the Trust Funds Manager by applicable law are hereby incorporated into this Agreement by reference; provided, however, that the Trust Funds Manager is specifically prohibited from making direct investments of the Trust assets in real estate or oil, gas and other mineral interests, leases, overriding royalties, production payments, and other oil, gas and mineral properties. The Trust Funds Manager may invest the assets of the Trust in its common trust funds. If the Trust Funds Manager accepts non-productive property contributed by a Grantor, the Trust Funds Manager is authorized to retain such non-productive property as an asset of the Trust.

8.05 *Limits of Trust Funds Manager's Authority.* No authority described in this Trust or available to the Trustee or Trust Funds Manager pursuant to applicable law will be construed to enable the Trustee or Trust Funds Manager to purchase, exchange or otherwise deal with or dispose of the assets of any Sub-Account for less than an adequate or full consideration in money or money's worth, or to enable any person to borrow the assets of any Sub-Account, directly or indirectly, without adequate interest or security.

8.06 *No Bond Required.* The Trust Funds Manager will not be required to furnish any bond for the faithful performance of the Trust Funds Manager's duties. If bond is required by any law or court of competent jurisdiction, no surety will be required on such bond.

8.07 *No Court Supervision of Trust.* The Trust established under this instrument will be administered free from the active supervision of any court. Any proceedings to seek judicial instructions or a judicial determination may be initiated by the Trust Funds Manager or by the Trustee in any court having jurisdiction of these matters relating to the construction and administration of the Trust.

8.08 *Trust Funds Manager's Compensation.* The Trust Funds Manager will be entitled to reasonable compensation, commensurate with the services actually performed, and as from time to time agreed to by the Trustee.

8.09 *Trust's Defense Costs and Expenses.* Costs and expenses of defending the Trust or any Sub-Account, including attorneys' fees incurred prior to, during or after trial, and on appeal, against any claim, demand, legal or equitable action, suit, or proceeding may, in the sole discretion of the Trustee, either (a) be charged on a pro rata basis to all Trust

Sub-Accounts, or (b) be charged only against the Trust Sub-Accounts of the affected Beneficiaries.

8.10 Indemnification. As evidenced by each Joinder Agreement executed by a Grantor, such Grantor acknowledges that the Trust Funds Manager is a financial institution and is not licensed or skilled in the field of social services. The Trust Funds Manager may conclusively rely upon the Trustee to identify programs that may be of social, financial, developmental or other assistance to Beneficiaries. Except as is otherwise provided in this paragraph 8.10, the Trust Funds Manager, its agents and employees, as well as its agents, employees, heirs and legal and personal representatives will not in any event be liable to any Grantor or Beneficiary or any other party for its acts as Trust Funds Manager so long as the Funds Manager acts in good faith. The Trust Funds Manager, its agents and employees (and their heirs or personal representatives) will not be indemnified with respect to matters as to which he, she, or it will be finally determined to have been guilty of willful misconduct, gross negligence in the performance of any duty as such, or violation of any fiduciary obligation or duty to a Grantor or Beneficiary, by a court of competent jurisdiction.

ARTICLE 9 GENERAL GOVERNING PROVISIONS

9.01 Captions and Headings. The captions and headings of each paragraph of this Trust Agreement are for purposes of convenience only, and it is the Settlor's intent that no such caption will be considered in the construction of any provision of this Trust Agreement, or in any of the Exhibits, or in any Joinder Agreement executed by a Grantor and the Trustee.

9.02 Governing law. This Trust Agreement will be construed and regulated according to the laws and regulations of the State of Minnesota and the United States.

9.03 Complete Authority. This Trust Agreement, the attached Exhibits, and any Joinder Agreement approved by the Trustee will determine all rights, authority and duties of the parties, as well as designate the fiduciaries and Beneficiary under this Trust Agreement.

9.04 Severability. If any part or portion of this Trust Agreement is adjudicated by a court of competent jurisdiction to be unlawful, or is made invalid by legislative changes and rulings, this Trust Agreement will remain in effect, and in force, as if that part, or portion, were no longer a part of this Trust Agreement.

{Signatures appear on the following page}

