Sample Trust Protector Provisions

1. Glenn Karisch's Trust Protector Provisions

1.1. **Appointment of Trust Protectors.** Subject to the power given below to trust protectors to designate successor trust protectors *[add if the Primary Beneficiary of a Descendant's Trust has a right to become trust protector of that Descendant's Trust:* , and subject to the right of the Primary Beneficiary of a Descendant's Trust to be trust protector described below *end of additional language]*:

1.1.1. The following persons or entities shall serve as trust protector and substitute or successor trust protectors of each trust which may be created under the terms of this instrument in the order of preference and priority indicated. If the person named fails or ceases to act for any reason, then, subject to the power given below to trust protectors to designate successor trust protectors, the next named substitute or successor trust protector shall serve as trust protector of that trust:

Trust Protector:
First Substitute or Successor Trust Protector:
Second Substitute or Successor Trust Protector:

1.1.2. If there is no trust protector serving with respect to a trust and if there is no other provision for the appointment of a successor trust protector, the trustee of the trust may appoint one or more trust protectors for that trust. If, upon the termination of the trust with respect to which the trust protector is serving, one or more other trusts are created or established under the terms of this instrument, the trust protector of the terminating trust shall serve as trust protector of each trust then created or established, unless a different trust protector is named or designated to serve for that trust.

[add if the Primary Beneficiary of a Descendant's Trust has a right to become trust protector of that Descendant's Trust:

1.2. **Right of Primary Beneficiary of Descendant's Trust to be Trust Protector.** If the Primary Beneficiary of a Descendant's Trust is at least years of age, the Primary Beneficiary has the right to become the trust protector of the Descendant's Trust of which he is primary beneficiary unless:

1.2.1. The Primary Beneficiary has resigned as trust protector of the Descendant's Trust or has declined to serve as trust protector of the Descendant's Trust and another person or entity is serving as trust protector of the trust; or

1.2.2. The Primary Beneficiary is incapacitated or is or becomes a disabled person as defined by law, including by the Social Security Act under 42 U.S.C.A. Section 1382(c)(3) as amended, or otherwise.

end of additional language]

1.3. **Powers of Trust Protectors.** Subject to the limitation of the powers of a trust protector regarding taxes stated below, the trust protector shall have the following powers and duties:

1.3.1. **Designate Successor Trust Protectors.** *[add if the Primary Beneficiary of a Descendant's Trust has a right to become trust protector of that Descendant's Trust:* Subject to the right of the Primary Beneficiary of a Descendant's Trust to be trust protector described above, *the end of additional language]* The trust protector may designate one or more persons to serve as successor trust protector in the event that a vacancy later occurs in the office of trust protector for any reason, and the successor trust protector so designated shall take priority over the successor trust protectors which may have been named in the instrument and over those previously designated by the current or former trust protector or trustee. The trust protector may name multiple successors, specify the order of preference and priority of service and specify the requirements which future trust protectors must meet.

1.3.2. **Appoint Co-Trust Protectors.** *[add if the Primary Beneficiary of a Descendant's Trust has a right to become trust protector of that Descendant's Trust:* Subject to the right of the Primary Beneficiary of a Descendant's Trust to be trust protector described above, the *end of additional language]* The trust protector may appoint

one or more co-trust protectors to serve with the trust protector. A co-trust protector who is so appointed may or may not be an independent trust protector.

1.3.3. **Appoint Special Trust Protector.** The trust protector may from time to time appoint a person or entity to serve as special trust protector with respect to a trust. The special trust protector may or may not be an independent trust protector. The appointment of any special trust protector shall be evidenced by an instrument in writing signed by the trust protector and delivered to the trustee of the trust and to the special trust protector, which instrument may specify the rights and powers of the special trust protector, the limitations on the special trust protector's right and power to act, the compensation to be paid to the special trust protector (if any), the term of the special trust protector and the manner in which the special trust protector may be removed. Unless such written instrument provides otherwise, the special trust protector may be removed by the trust protector at any time.

1.3.4. **Remove Trustee.** The trust protector may remove a trustee of any trust, whether individual or corporate.

1.3.5. **Fill Trustee Vacancies.** The trust protector may fill any vacancy which may occur in the office of trustee of any trust, including but not limited to a vacancy occurring because of the removal of a trustee. Without limitation, the trust protector may appoint himself or herself as trustee.

1.3.6. **Designate Successor Trustees.** The trust protector may designate one or more persons or entities meeting the requirements of this instrument to serve as trustee or successor trustee of any trust in the event of a vacancy in the office of trustee or in the event that a vacancy later occurs in the office of trustee for any reason, and the successor trustee or trustees so designated shall take priority over the successor trustee or trustees which may have been named elsewhere in this instrument and over those previously designated by the current or former trust protector. The trust protector may name multiple successors, specify the order of preference and priority of service and specify the requirements which future trustees must meet, so long as the requirements are not less restrictive than the requirements set in this instrument. The power of the trust protector to appoint trustees or successor trustees also shall apply to any trust which may be established or created upon the termination of the trust with respect to which the trust protector is serving unless a different trust protector is named to serve for that trust.

1.3.7. **Appoint Special Trustee.** The trust protector may from time to time appoint a person or entity meeting the successor trustee requirements of this instrument to serve as special trustee to administer that property which the trust protector, in the trust protector's discretion, determines cannot or should not be administered by the trustee of the trust. The special trustee may or may not be an independent trustee. The appointment of any special trustee shall be evidenced by an instrument in writing signed by the trust protector and delivered to the trustee of the trust and to the special trustee, which instrument may specify the rights and powers of the special trustee, the property which is subject to the special trustee's control, the limitations on the special trustee's right and power to act, the compensation to be paid to the special trustee (if any), the term of the special trustee and the manner in which the special trustee may be removed. Unless such written instrument provides otherwise, the special trustee may be removed by the trust protector and the property returned to the trustee of the trust for administration at any time. Unless such written instrument provides otherwise, the special trustee may act without bond or other security.

1.3.8. **Appoint Co-Trustees.** The trusts protector may appoint one or more co-trustees meeting the requirements of this instrument for successor trustees to serve with the trustee. A co-trustee who is so appointed may nor may not be an independent trustee.

1.3.9. **Authorize Distributions to Other Trusts.** The trust protector may direct the trustee to transfer the property of a trust to the trustee of another trust as provided in the section of this instrument entitled "Distribution to Other Trusts."

1.3.10. **Terminate Trust Early.** The trust protector of a trust who is an independent trust protector may terminate the trust prior to the date upon which it would otherwise terminate under the terms of this instrument for any reason and without court approval. If the trust protector so terminates the trust, the trustee shall distribute the property of the trust to the Primary Beneficiary of the trust, if living, or to the persons who would be entitled to receive the property on the Primary Beneficiary's death, if the Primary Beneficiary is not living.

1.3.11. **Reform or Amend Instrument to Achieve Tax Objectives.** The trust protector of a trust who is an independent trust protector may reform or amend the terms and provisions of this instrument governing the trust, but only if and to the extent the trust protector determines the reformation or amendment is necessary to achieve the tax objectives I intended or which the trust protector believes I would have intended had I known of the tax issues involved.

1.3.12. **Change Trust Situs.** The trust protector may change the situs of any trust as provided in the section of this instrument entitled "Applicable Law."

1.4. **Limitation of Powers of Trust Protector Regarding Taxes.** Notwithstanding the other provisions of this instrument, a trust protector may not hold or exercise any power or take any action as trust protector which would:

1.4.1. Cause any portion of the principal or income of the trust to be includible in the trust protector's estate for federal estate tax purposes;

1.4.2. Cause the trust protector to hold a general power of appointment over any portion of the principal or income of the trust for federal gift or estate tax purposes that is not limited by an ascertainable standard; or

1.4.3. Discharge a legal obligation of the trust protector.

1.5. **Administrative Matters Related to Trust Protectors.**

1.5.1. **Trust May Have No Trust Protector.** No trust is required to have a trust protector. All trusts are not required to have the same trust protector.

1.5.2. **Rights and Duties Apply to Successor Trust Protectors.** All rights and powers given to, and all duties imposed on, the trust protector also apply to and are binding upon each substitute or successor trust protector. The trust protector, whether original, substitute or successor, whether individual or corporate, and whether one or more, is referred to in this instrument as "the trust protector."

1.5.3. **No Compensation.** The trust protector shall serve without compensation but shall be entitled to have his or her reasonable and necessary expenses paid from the trust; provided, however, that a special trust protector may be paid compensation if the terms of the written instrument appointing the special trust protector so provide. Any trust protector may employ and rely upon the advice of accountants, attorneys, investment bankers and other agents, the cost and expense of which shall be paid from the principal of the trust.

1.5.4. **Waiver of Bond.** A trust protector is not required to give bond or other security.

1.5.5. **Multiple Trust Protectors.** If there are two trust protectors of a trust, actions of the trust protector must be approved by the trust protectors unanimously, and if there are three or more trust protectors of a trust, actions of the trust protector must be approved by a majority of the trust protectors; provided, however, that if this trust instrument requires a decision to be made or action to be taken by a trust protector who is an independent trust protector, then the decision shall be made or the action shall be taken by the independent trust protector or protectors to the exclusion of any one or more trust protectors who are not independent trust protectors.

1.6. **Duties of Trustee to Trust Protector.** The trustee shall pay the compensation of a special trust protector (if any) and the costs and expenses of the trust protector and the trust protector's accountants, attorneys, investment bankers and other agents from the trust and allocate the payments to trust income. The trustee shall provide the trust protector with information about the trust, including a copy of the trust instrument, a trust accounting and material information related to the administration of the trust if and to the extent requested to do so by the trust protector. Unless otherwise provided in this instrument, the trustee has no duty to provide information to the trust protector or to keep the trust protector informed about the administration of the trust if and to the extent requested by the trust protector.

1.7. **No Requirement to Act; Liability of Trust Protector.**

1.7.1. The trust protector is not required to investigate, monitor, supervise or approve the actions of the trustee and is not liable or responsible for any acts or omissions by the trustee, any breaches of fiduciary duty by the trustee or any other loss or damage caused by the trustee. Without limiting the foregoing, the trust protector has no duties, responsibilities or liability related to trust investments and trust distributions.

1.7.2. The trust protector is not a trustee or a co-trustee and is not liable as such. Without limiting the foregoing, the trust protector is not held to the standard of conduct imposed on co-trustees by Section 114.006 of the Texas Trust Code and has no duty or obligation of any kind to prevent a trustee from committing a serious breach of trust or to compel a trustee to redress a serious breach of trust.

1.7.3. The trust protector is not required to investigate the actions of prior fiduciaries and is not liable for the acts and omissions of current or prior fiduciaries.

1.7.4. The trust protector is not required to take any of the actions permitted by the trust protector or to exercise any of the powers granted to the trust protector in this instrument. The trust protector has no liability for refusing or failing to act or exercise a power under this instrument.

1.7.5. If a person or entity is serving as trust protector of more than one trust created by this instrument, the person or entity may take different actions with respect to different trusts and may act with respect to one trust and fail or refuse to act with respect to another trust without liability.

1.7.6. The trust protector cannot be compelled to act or exercise a power by a beneficiary or a trustee. Without limiting the foregoing, a trust protector who acts or exercises a power in one instance cannot later be compelled to act or exercise a power in a different instance.

1.7.7. If the trust protector takes an action permitted by this instrument or exercises a power granted by this instrument, then, with respect to that action or exercise:

A. The trust protector shall have the sole and absolute discretion to act with respect to the action; and

B. The trust protector is acting as a fiduciary, owes duties to the beneficiaries of the trust, and is required to act in good faith, but an individual serving as trust protector shall not be personally liable for failing to meet the standards of conduct imposed on fiduciaries by the Texas Trust Code, by applicable common law or by this instrument, so long as he or she did not act in bad faith or was not guilty of gross negligence.

[related provisions]

1.8. **No Disqualification Due to Conflict of Interest.** No person is disqualified from serving as a fiduciary because he or she has an interest in my estate or any trust, because he or she has a claim against my estate or any trust, or because my estate or any trust has a claim against him or her.

1.9. **Distribution to Other Trusts.** The trust protector of any trust who is an independent trust protector shall have the power to direct the trustee of the trust to transfer all of the property in the trust to the trustee of one or more other trusts benefitting one or more of the current or future beneficiaries of the trust, regardless of the situs of that trust, regardless of the terms of that trust and even if that trust will extend beyond the perpetuities restriction imposed on this trust by Texas law; provided, however, that the trust protector may not direct the trustee to transfer the property to a trust of which the trust protector or any person that the trust protector has a legal obligation to support is a beneficiary; and provided further, however, that I do not intend to give the trust protector, the trustee or any beneficiary a general power of appointment for federal gift and estate tax purposes or to expose the assets of the trust to the claims of creditors of any beneficiary, and this instrument shall be construed and, if necessary, reformed to be consistent with that intent. If so directed, the trustee shall transfer that property in accordance with the trust protector's direction and shall have no liability for following the direction of the trust protector to transfer that property.

1.10. **Independent Trustee.** An "independent trustee" is a person or entity serving as trustee who has no direct or indirect beneficial interest in the trust and who is not related or subordinate to a person having a direct or indirect beneficial interest in the trust.

1.11. **Independent Trust Protector.** An "independent trust protector" is a person or entity serving as trust protector who has no direct or indirect beneficial interest in the trust and who is not related or subordinate to a person having a direct or indirect beneficial interest in the trust.

1.12. **Applicable Law.** This instrument has been drafted in Texas and signed when I am domiciled in Texas. All questions concerning the meaning and intention of any of its terms and its validity, the rights and duties of fiduciaries, and the administration of any trusts shall be determined in accordance with the laws of Texas; provided, however, that the trust protector of any trust who is an independent trust protector may from time to time change the situs of that trust from Texas (or its current situs, if different from Texas) to another jurisdiction, in which case the trust shall thereafter be construed in accordance with and governed by the laws of that jurisdiction.

2. From "Chapter 13 – Drafting Fiduciary Powers, Including Trust Protector Provisions"

2.1. **TRUST PROTECTOR - SAMPLE** 1 (From Steve Leimberg's News of the Week E-mail Newsletter, Archive Message #325, Grossman & Gullecas, Practical Planning Techniques and Client Communication Tools for Estate Planner After EGTRRA of 2001, July 31, 2001, available at www.leimbergservices.com)

2.1.1. I hereby appoint RONALD SMITH and RANDALL JONES as Trust Protectors hereunder. If one of them fails or ceases to act as Trust Protector, then the remaining Trust Protector may select BIGTRUST BANK, a licensed trust company, or a board certified estate and probate attorney who has an "A V" rating in the Martindale-Hubbell law directory licensed to practice in the State of Florida to serve in the first Trust Protector's stead. No trust created under this instrument is required to have a Trust Protector acting with respect to that trust.

2.1.2. The Trust Protectors may, by majority vote, and for the sole benefit of the beneficiaries named or designated in this Agreement, as deemed appropriate by them in their absolute discretion, and with respect to any trust as to which the Trust Protector is acting, modify or amend the terms of this trust or any trust created under this instrument with respect to:

A. The purposes for which the Trustee may distribute trust income and principal, and the circumstances and factors the Trustee may take into account in making distributions, provided that it is for one or more beneficiaries of this Trust and/or the lineal descendants thereof;

B. The termination date of the trust, either by extending or shortening the termination date (but not beyond any applicable perpetuities period);

C. The situs of administration of the trust and the law of the applicable situs of administration to apply to this trust, which law may apply notwithstanding that this trust may be administered in more than one jurisdiction so long as there is an active Co-Trustee officed in such jurisdiction, and further provided that the law of the situs shall not have a detrimental impact upon the ability of the Trustee or Trustees to make distributions for the beneficiaries. If the primary beneficiary of a trust effected thereby is solvent at the time of any such change in jurisdiction and/or addition of Co-Trustee, then she shall be informed of such change and shall have the power to choose an alternate institutional Co-Trustee in such selected jurisdiction which must be managing at least $500,000,000 worth of assets and which power must be exercised within thirty (30) days of receiving notice of the change of situs and appointment of beneficiary; and

D. Complying with the intentions, and purposes, of necessary aspects of this Trust, including the addition of language requested by trust companies who may be asked to serve as Trustees or Co-Trustees under this Agreement so long as such additions are not inconsistent with the purposes and intentions of this Agreement.

2.1.3. The Trust Protectors acting from time to time, if any, may appoint anyone or more individuals or licensed trust companies as successor Trust Protectors, subject to the requirements set forth under subsection 2.1.1

above. Any appointment of a successor Trust Protector hereunder shall be in writing, may be made to become effective at any time or upon any event, and may be single or successive, all as specified in the instrument of appointment. The Trust Protectors may revoke any such appointment before it is accepted by the appointee, and may specify in the instrument of appointment whether it may be revoked by subsequent Trust Protectors. In the event that two or more instruments of appointment or revocation by the same Trust Protectors exist and are inconsistent, the latest by date shall control.

2.1.4. Any Trust Protector may resign by giving prior written notice to the Trustee. All trusts created under this instrument need not have or continue to have the same Trust Protector. The provisions of this instrument that relate to the Trust Protector shall be separately applicable to each trust held hereunder.

2.1.5. Notwithstanding any other provision of this instrument, the Trust Protector shall not participate in the exercise of a power or discretion conferred under this instrument for the direct or indirect benefit of the Trust Protector, any family member or affiliate of a Trust Protector's estate, or the creditors, the Trust Protector, or the Trust Protector's estate, or that would cause the Trust Protector to possess a general power of appointment with the meaning of Sections 2041 and 2514 of the Code.

2.1.6. A Trust Protector acting from time to time, if any, on his or her own behalf and on behalf of all successor Trust Protectors, may at any time irrevocably release, renounce, suspend, cut down, or modify to a lesser extent any or all powers and discretions conferred under this instrument by a written instrument delivered to the Trustee.

2.1.7. A Trust Protector shall have no duty to monitor any trust created hereunder in order to determine whether any of the powers and discretions conferred under this instrument should be exercised. Further, the Trust Protector shall have not [sic] duty to keep informed as to the acts or omissions of others or to take any action to prevent or minimize loss. Any exercise or non-exercise of the powers and discretions granted to the Trust Protectors shall be in the sole and absolute discretion of the Trust Protector, and shall be binding and conclusive on all persons. The Trust Protector is not required to exercise any power or discretion granted under this instrument. Absent bad faith on the part of the Trust Protector [sic] is exonerated from any and all liability for the acts or omissions of any other fiduciary or any beneficiary hereunder or arising from any exercise or non-exercise of the powers and discretions conferred under this instrument.

2.1.8. If more than one Trust Protector is serving under this Trust, then the exercise of any power authorized under this Section shall require the consent of a majority of the Trust Protectors then acting, unless otherwise provided. If there is a sole Trust Protector serving under this Trust, then such Trust Protector shall have the ability to exercise any power authorized under this Section unilaterally, unless otherwise provided.

2.1.9. Notwithstanding any provision herein to the contrary, unless or until such time as the Trust is taxed as a foreign trust under the Internal Revenue Code and applicable regulations, a person who is not a permanent resident or citizen of the United States, and no entity that is not a United States entity shall have the power to act as Trust Protector without unanimous consent of _____, and the Trustee or Co-Trustees.

2.2. TRUST PROTECTOR - SAMPLE 2.

2.2.1. Appointment of Trust Protector.

A. The Settlor appoints _____ as the Trust Protector. The Trust Protector is authorized, in the exercise of sole and absolute discretion, to remove any and all Trustees acting hereunder and to designate successor Trustees in such Trustees' place, and to appoint co-Trustees; provided, however, no Trust Protector may appoint as Trustee himself or herself, the Settlor, any other person who has contributed property to the trust, any person who is married to the Trust Protector or who is related to the Trust Protector or the Trust Protector's spouse within the third degree of consanguinity, or any person who is a partner or fellow shareholder of the Trust Protector in any enterprise in which the Trust Protector holds a substantial interest, or to which the Trust Protector devotes on an average more than 10 hours per week. The Settlor is not imposing any fiduciary responsibility on the Trust Protector to monitor the actions of the Trustee. Except for any matter involving the Trust Protector's own individual willful misconduct or negligence proved by clear and convincing evidence, no Trust Protect shall incur any liability by reason of any error of judgment, mistake of law, or action of any kind taken or omitted to be taken hereunder if in good faith reasonably believed by such Trust Protector to be in accordance with the provisions and intent hereof. The Trust Protector shall not be liable for failure to remove any Trustee even if such Trustee may be guilty of a gross violation of his or her fiduciary duties hereunder.

B. The primary beneficiary of each trust created hereunder is authorized, in the exercise of sole and absolute discretion, to remove any Trust Protector acting as Trust Protector of the trust of which such primary beneficiary is the primary beneficiary. Any such removal shall be by written instrument delivered to the then acting Trustee.

C. If the Trust Protector ceases to act or is removed from office, the successor Trust Protector shall be such individual (other than the Settlor, any other person who has contributed property to the trust, any descendant of the Settlor or any spouse of any descendant of the Settlor) as shall be appointed by _____ Bank (or its successor or successors by any merger, conversion or consolidation) or, if _____ Bank is unwilling or fails (within six (6) months of the Trust Protector ceasing to act or having been removed) to appoint a successor Trust Protector, by the largest domestic bank (determined by its reported base of deposits) in the United States of America which is willing to appoint a successor Trust Protector. Any such appointment shall be by written instrument delivered to the Trust Protector thereby appointed. Any successor Trust Protector shall have all the powers of the initial Trust Protector.

2.2.2. **Trustee's Actions in Fiduciary Capacity.** Every act done, power exercised or obligation assumed by the Trustee pursuant to the provisions of this Agreement shall be held to be done, exercised or assumed, as the case may be, by the Trustee acting in a fiduciary capacity and not otherwise, and every person, firm or corporation contracting or otherwise dealing with the Trustee shall look only to the funds and property of the trust estate for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Agreement, in whole or in part, and the Trustee shall not be individually liable therefor even though the Trustee did not exempt himself from individual liability when entering into any contract, obligation or transaction in connection with or growing out of the trust estate.

2.2.3. **Resignation of Trustee or Trust Protector.** Any Trustee or Trust Protector may resign from office of one or all of the trusts of which he, she or it is acting hereunder without leave of court at any time and for any reason. Such resignation shall be made by instrument in writing, duly acknowledged, and delivered in person or by registered mail to the Trustee, or, ifthere is no Trustee then in office, to the Settlor, if she is then living, or, if she is not then living, to the legal representative, if any, of the Settlor's estate.

2.2.4. **Age Limitation on Trustee and Trust Protector**. Any individual, other than the Spouse or any descendant of the Settlor, who serves as a Trustee or Trust Protector hereunder from time to time shall cease to serve upon reaching the age of seventy (70) years.

2.3. **TRUST PROTECTOR - SAMPLE 3** (Excerpt From The Capital Trust Companv of Delaware. available at www.ctcdelaware.com)

2.3.1. The Settlor hereby appoints JANE DOE of New Castle, DE as Protector. If said JANE fails or ceases to act as Protector, CHARLES SMITH of Wilmington, DE, shall serve as Protector in his or her place. [Although Capital Trust Company does not encourage it, include procedure for the appointment of any further successor Protectors here.] Each such appointment shall become effective only upon delivery of a written acceptance of the office of Protector by the Protector to the Trustee within thirty (30) days after the date of this instrument, in the case of the original Protector, or within thirty (30) days after the Trustee has notified a successor Protector that the predecessor Protector has failed or ceased to act as Protector.

2.3.2. The Protector shall have the following powers:

A. By written notice to the Trustee and to all beneficiaries hereof who have reached the age of [select age] and who are then entitled absolutely or in the Trustee's discretion to a payment of trust income or principal,

1. To remove any Trustee and to appoint as successor a corporation having authority to act as a trustee.

2. To appoint and remove any Investment Adviser in accordance with Article ___-Investments.

B. In its uncontrolled discretion, by written notice to the Trustee, to direct the Trustee to make payments of trust income or principal which the Trustee otherwise has the discretionary power to make hereunder. If the Protector has received a request for such a payment from a beneficiary or the Trustee, the Protector shall give the Trustee such notice within seven (7) days after the Protector has received such request, and, if the Protector fails to give notice as aforesaid, the Trustee may exercise its discretion with respect to such payment. The Trustee shall have no responsibility whatsoever to review, approve or disapprove any exercise by the Protector of the Protector's power hereunder and shall not be liable for any act or omission by the Protector hereunder.

C. By written notice to the Trustee, to direct the Trustee to render an accounting as provided in Article __ the Trustee to furnish a copy thereof to the Protector.

2.3.3. The Protector shall be a fiduciary hereunder only with respect to the exercise (or failure to exercise) the power set forth in Paragraph 2.3.2.B above, and as such shall be liable only for its willful misconduct or gross negligence.

2.3.4. The trust shall indemnify the Protector from and against all claims, damages, expenses and liabilities, including reasonable attorneys' fees and costs, incurred by the Protector as the result of any act or omission as Protector except those for which it is liable under Paragraph 2.3.3 above.

2.4. TRUST PROTECTOR - SAMPLE 4. PART D. Protective Committee.

2.4.1. Appointment and Resignation of Members of the Protective Committee.

A. The Protective Committee shall consist of the following persons: _____ and any additional or successor member who shall be named in or otherwise appointed pursuant to the provisions hereof; provided, that to the extent possible, there shall always be at least two members who are the Settlor's Wife and/or the Settlor's Issue; and provided, further, that any such additional or successor member shall not be: (i) Incapacitated, (ii) indulging an addiction to alcohol or any other drug or similar substance, or a compulsive gambler or a member of a ritualistic or cult-related group or other forn of organization for persons of such beliefs as certified by the Protective Committee, or (iii) an Excluded Descendant or a resident, domiciliary and/or citizen of an Excluded Jurisdiction at the time that his or her appointment becomes effective. Each such member shall be a voting member as provided in paragraph A of Article H of this Part D.

B. Provided that the Settlor is not Incapacitated, the Settlor shall have the overriding right to (i) appoint individuals (other than the Settlor) to serve as additional or successor members of the Protective Committee (provided that there shall not at any time be fewer than three (3) persons or more than five (5) persons serving on the Protective Committee) and (ii) remove any current member of the Protective Committee. Any such appointment or removal shall be made by deed delivered to and held with the Trust records by the Trustee and to the other members of the Protective Committee.

C. Subject to the foregoing, if either or both of _____ and/or _____ (i) during the Settlor's lifetime shall not be Excluded Descendants prior to the Four-Year Date or (ii) upon or after the Settlor's death shall be Qualifying Beneficiaries, they shall be appointed as additional members of the Protective Committee.

Any member of the Protective Committee may, at any time, by deed delivered to the other members of the Protective Committee and to the Trustee, resign as a member, of the Protective Committee.

If a member of the Protective Committee shall at any time be (i) Incapacitated or (ii) indulging an addiction to alcohol or any other drag or similar substance, or a compulsive gambler or a member of a ritualistic or cult-related group or other form of organization for persons of such beliefs as certified by the Protective Committee, or (iii) an Excluded Descendant or a resident, domiciliary and/or citizen of any Excluded Jurisdiction, then in each case, such member shall be automatically removed, provided that if such removed member shall no longer be (i) Incapacitated, or (ii) indulging an addiction to alcohol or any other drug or similar substance or no longer a compulsive gambler or a member of a ritualistic or cult-related group or other form of organization for persons of such beliefs as certified by the Protective Committee, or (iii) an Excluded Descendant or a resident, domiciliary and/or citizen of an Excluded Jurisdiction, as the case may be, such

removed member shall resume his or her duties as a member of the Protective Committee upon written notice from the Trustee to the members of the Protective Committee, including the successor member, if any, who replaced such removed member and at that time such successor member shall cease to act as a member of the Protective Committee.

Subject to the Settlor's overriding power to appoint successor Protective Committee member(s), each member of the Protective Committee shall, as a condition of accepting his or her appointment as such, designate two alternate successors in order of preference, by deed delivered to the other members of the Protective Committee and to the Trustee, to act in such member's place and stead when such member ceases to be a member of the Protective Committee, and may also in the same manner revoke any such designation, provided that such deed of revocation shall designate two alternative successors in order of preference. Any successor member so designated must be approved by the Protective Committee immediately prior to the time such successor's appointment becomes effective. In default of such designation or approval, if a vacancy arises on the Protective Committee during the Incapacity or after the death of the Settlor, the remaining members of the Protective Committee shall appoint a successor member. Except for the purpose of approving or appointing a successor member, the Protective Committee shall not act if there are fewer than three (3) persons serving on the Protective Committee. If no members of the Protective Committee remain, the Trustee, in the Trustee's sole discretion and after consultation with the Current Beneficiaries, shall appoint no fewer than three (3) persons nor more than five (5) persons as successor members of the Protective Committee.

2.4.2. **Operation of the Protective Committee.**

A. Except as otherwise provided, the Protective Committee shall act by majority vote of its then current members at a duly convened meeting where all the members are present in person, by telephone conference call or by proxy. Minutes of all such meetings shall be prepared by a member of the Protective Committee so designated by the majority vote of the Protective Committee and filed with the Trustee. Each member of the Protective Committee (other than _____ and _____, each of whom shall be entitled to two (2) votes) shall be entitled to one (1) vote. In the case of a tie vote, the Chairman of the Protective Committee shall have one additional vote. Members of the Protective Committee may vote by proxy at any meeting, provided that the member appointing such proxy shall be aware of the business to be transacted at such meeting and the instrument appointing such proxy shall not extend to any other actions by the Protective Committee. Each proxy must be executed in writing and may not be granted to a person who is not a member of the Protective Committee. On receipt of such a written instrument, the Trustee may rely on it as proof that all the requirements of this paragraph A and of paragraph D of this Article II have been met. Any action permitted to be taken by the Protective Committee may be taken by a written consent of a majority or all (where the provisions of this instrument specifically require unanimity) of the members of the Protective Committee in lieu of a meeting.

B. Notwithstanding any provision of this instrument to the contrary, a member of the Protective Committee shall not participate in the following decisions under this instrument:

1. the determination of whether such member is Incapacitated (or is no longer Incapacitated), including the selection of Qualified Examining Physicians required to make such determination;

2. the determination of whether such member is indulging (or is no longer indulging) an addiction to alcohol or any other drug or similar substance, or is (or is no longer) a compulsive gambler or a member of a ritualistic or cult-related group or other form of organization for persons of such beliefs;

3. the determination of whether such member qualifies to be an Excluded Descendant (after having been a Qualifying Beneficiary) for the Permissible Period in subparagraph (6)(b) of Article m of Part B of this instrument; and

4. the determination of whether the Trustee should exercise its power pursuant to paragraph E of Article I of Part C of this instrument to transfer part of the Trust Fund to a separate Trust for the benefit of such member.

C. A meeting of the Protective Committee shall be called within thirty (30) days of a written request for a meeting by any member of the Protective Committee delivered to the other members of the Protective Committee. The member requesting the meeting shall notify each member of the Protective Committee in writing of the scheduled meeting not less than ten (10) days preceding the meeting, unless such requirement is waived by all the members of the Protective Committee. Any such notice shall state the time, place and purposes of the meeting.

D. The Chairman of the Protective Committee shall be _____, or if she shall be Incapacitated or not be living or a member of the Protective Committee, either _____or ____ , if one of them shall then be living and a member of the Protective Committee. If both _____and _____shall then be living and members of the Protective Committee, the individual who was the first in time to become a member of the Protective Committee shall become Chairman thereof. If neither _____ nor _____ shall then be living or members of the Protective Committee, then the Chairman of the Protective Committee shall be such member as a majority of the other current member(s) of the Protective Committee shall so name by a written notice delivered to the Trustee and the Chairman so named.

E. Except as to the authority to issue a proxy as provided in paragraph A of this Article II, the powers of each of the members of the Protective Committee shall be considered fiduciary powers.

F. The Settlor or each member of the Protective Committee shall notify the Trustee in writing of each member's current mailing address for the purpose of receiving notices and other communications from the Trustee.

G. Notwithstanding any prior provision to the contrary, the right of the Settlor to appoint and/or remove members of the Protective Committee shall be a personal right of the Settlor and shall not be exercised by a guardian, conservator, attomey-in- fact, attorney, receiver. personal representative, committee or other person.

2.4.3. Additional Powers of the Protective Committee.

A. During the Incapacity or after the death of the Settlor. the Protective Committee shall have the power with respect to the Trust, to direct the Trustee to (i) organize and/or fund one or more business entities (other than an operating company) to be held by the Trust, or (ii) reorganize, consolidate, merge, dissolve, liquidate. recapitalize or refinance any such business entity held by the Trust.

B. If at any time during the incapacity or after the death of the Settlor, a dispute among the Protective Committee members rises to the level that the integrity and spirit of the Trust may be called into question or that may prevent the intention of the Settlor (as expressed in writing to the Protective Committee from time to time) from being carried out with respect to the Trust (other than the determination of incapacity in subparagraph (6) of paragraph A of Article I of Part A of this instrument), the disputing member(s) may, by written notice to the other(s). require the dispute to be determined by experts, who shall act as experts and not as arbitrators. The experts shall be selected as follows: each party to the dispute shall within ten (10) days of the mailing of such written notice, appoint an expert by written instrument delivered to the other party. the Trustee, and to the expert so appointed If either party shall fail to appoint an expert within the specified time period, such party shall forfeit its right to require the dispute to be determined by experts and the member(s) of such party shall resign forthwith. The two experts shall within ten (10) days of accepting their appointment together select a third expert in the manner specified above. The experts shall be attorneys. barristers or solicitors or chartered or certified accountants with not less than fifteen (IS) years of experience in trust law or trust administration respectively. who are in good standing in the jurisdiction in which they are admitted to practice law or qualify as accountants. as the case may be. The judgement of a majority of such experts shall be rendered within ten (10) days of their appointment and shall be final, conclusive and binding on all members of the Protective Committee to the extent permitted by law at the time such decision is rendered. The member(s) of the losing party shall resign forthwith so that new Protective Committee member(s) may be appointed pursuant to the provisions hereof.

2.4.4. Protective Committee's Liability. Indemnification and Compensation.

A. Each member of the Protective Committee shall be entitled to the benefit of the same indemnities, protection and exculpations as conferred on the Trustee by law and this instrument.

B. Each member of the Protective Committee (other than) shalJ be entitled to receive compensation as follows: (i) if any member of the Protective Committee is a professional who bills his or her time at an hourly rate, he or she shall be entitled to receive his or her customary hourly fee for time spent in fulfilling his or her responsibilities as a member of the Protective Committee, or (ii) if any member of the Protective Committee is not a professional who bills his or her time at an hourly rate, such member shall be entitled to receive such reasonable compensation as shall be detennined by a majority vote of the members of the Protective Committee other than such

member subject to the approval of the Trustee. Each member of the Protective Committee shall be reimbursed for any travel and out-of-pocket expenses incurred in fulfilling such member's responsibilities as a member of the Protective Committee. In addition, if a member of the Protective Committee renders services in connection with the administration of the Trust, the activities of the Trust or the investment of the Trust Fund, other than in such member's capacity as a member of the Protective Committee, such member and any person assisting such member shall be entitled to receive just and reasonable compensation for such services, in addition to the fees to which a member of the Protective Committee is entitled.

2.5. **TRUST PROTECTOR - SAMPLE 5** (From the Handbook of Estate Planning Forms and Commentary, Irrevocable Non-Charitable Lifetime Gift Trusts. Illinois Institute for Continuing Legal Education. EPF IL-CLE 11-1 (Main Handbook available through westlaw.com)

2.5.1. This Article shall apply only during my life.

2.5.2. **Designation.** I name as the Trust Protector. Each Trust Protector at any time acting shall have the power by written instrument to designate an individual (other than me, my spouse, or an Adverse Party, as defmed in Code Section 672(a» as his or her successor as Trust Protector. If at any time no individual is acting or designated pursuant to the preceding sentence and able and willing to act, the first of the following who is able and willing to act shall be Trust Protector:

(a)
(b)
(c)
(d) An individual appointed by the trustee (other than me, my spouse, or an Adverse Party, as defined in Code Section 672(a)).

2.5.3. **Resignation.** A Trust Protector may resign at any time by signed notice to the trustee.

2.5.4. **Power of Trust Protector.** The Trust Protector shall have the power, acting in a non-fiduciary capacity and without the consent or approval of the trustee, any beneficiary or other Adverse Party, any court, or any other person, at any time and from time to time by written instrument delivered to the trustee, to designate anyone or more Charities or spouses of mine or of any beneficiaries as additional beneficiaries ("Additional Beneficiaries") of the Lifetime Trust. The Trust Protector (or any successor Trust Protector) may from time to time amend or revoke any designation of Additional Beneficiaries at any time by written instrument delivered to the Trustee.

2.5.5. **Distributions.** The trustee of the Lifetime Trust may pay to anyone or more Additional Beneficiaries as much of the income and principal of the Lifetime Trust as the trustee considers advisable. The trustee's decision to make or not to make a distribution pursuant to the preceding sentence of this paragraph shall be conclusive and binding on all beneficiaries.

2.5.6. **Qualification.** Notwithstanding any other provision, only a Nonadverse Party may act as a Trust Protector. If an individual acting as the Trust Protector becomes an Adverse Party, that individual shall immediately cease to act as Trust Protector.

2.5.7. **Release by Trust Protector.** The Trust Protector at any time acting may by written instrument delivered to the Trustee irrevocably release the power granted the Trust Protector under this Article. If the Trust Protector releases such power, such power shall thereafter no longer be exercisable by the Trust Protector or any successor Trust Protector.

2.5.8. **Termination.** Upon the earlier to occur of my death and a release pursuant to the preceding paragraph by the Trust Protector of the power granted the Trust Protector under this Article, all Additional Beneficiaries designated pursuant to this Article shall cease to be beneficiaries of the Lifetime Trust.

2.5.9. **Compensation.** The Trust Protector shall receive no compensation for acting as Trust Protector.

2.5.10. **Exoneration of Trust Protector.** A Trust Protector acting in good faith shall not be liable for any act or omission.

3. THE PROTECTOR AND THE POWERS OF THE PROTECTOR

3.1. **Succession.** There shall be at least one protector of each trust created by or pursuant to this Agreement. The initial protector (the "Protector") is _____. The Protector shall have the power to appoint additional Protectors and a successor or successors to any Protector. Any such appointment may be changed by the Protector from time to time prior to the time it becomes effective. If a Protector resigns or otherwise ceases to act and there is at least one other Protector then acting, then the remaining Protector or Protectors shall continue to act. If a sole Protector resigns or otherwise ceases to act resulting in a vacancy in the office of Protector and a successor to that Protector has not been appointed in accordance with the preceding provisions of this Article __, then the Trustee shall have the power to appoint a successor Protector, but may not appoint itself, the Settlor, or any party related or subordinate to itself or to the Settlor as Protector. Any appointment of an additional or successor Protector shall be by a written instrument delivered to the appointee and shall be effective at the time or under the conditions specified in that instrument (but in no event shall such appointment be effective prior to the time that the Trustee receives actual notice of such appointment).

3.2. **Removal.** With regard to any Protector, upon (i) certification from two licensed doctors of medicine, each doctor affirming in a written instrument signed by him or her that he or she has examined such Protector and has concluded, based upon such examination, that the Protector is unable to discharge his duties as Protector, (ii) appointment of a guardian or other judicially appointed personal representative of the Protector, (iii) the death of the Protector, or (iv) the Protector becoming subject to any bankruptcy laws; or if the Protector is a company or other entity, (a) entering into liquidation, whether compulsory or voluntary, provided that such liquidation is not merely a voluntary liquidation for the purposes of amalgamation or reconstruction, (b) entering into receivership, (c) having an administrator of the Protector appointed, or (d) becoming subject to any bankruptcy laws (or being in any analogous state or subject to any analogous action in any jurisdiction), then such Protector shall thereupon be deemed to have resigned as Protector, and the appointment of a successor Protector shall be governed by this Article.

3.3. **Resignation.** A Protector may resign at any time by deed or other written instrument delivered to the Trustee, and such resignation shall be effective at the time or under the conditions specified in that instrument. Subject to any conditions included in any such written notice, any resignation of a Protector shall take effect upon the receipt of the written notice by the Trustee.

3.4. **Indemnification.** The Protector shall have the benefit of the same indemnities, protections, and exculpations as conferred on the Trustee by the operation of law or under the terms of this Agreement.

3.5. **Sole Discretion.** In addition, the decision of the Protector to exercise the discretion to act or not to act with respect to any activity or action that the Protector is empowered to undertake under this Agreement shall not cause the Protector to be liable for so acting or not acting. The Protector shall also have no liability for exercising the discretion to consent or not to consent to any activity or action that the Trustee is empowered to undertake under this agreement with the consent of the Protector, and the Protector shall also not be liable for so consenting or failing to consent.

3.6. **Change in Governing Law.** Notwithstanding the provisions of Article __, the Protector shall have the power from time to time and at any time by deed or other written instrument delivered to the then serving Trustee or Trustees to designate the law of any jurisdiction (under which the terms of any trust created by or under this Agreement shall be capable of taking effect) to be the governing law of any trust created by or pursuant to this Agreement, and to declare that such trust shall thereafter be governed by and take effect according to the laws of the jurisdiction so designated. The Protector shall also have the power to declare that the courts of such jurisdiction may or shall become the forum for the administration of such trust. Such a designation and declaration shall be set forth in a deed or other written instrument that shall contain the powers and provisions that are necessary to enable such trust to be capable of taking effect under the laws of such jurisdiction, and that may also contain such other powers and provisions as the Protector may determine to be in the best interest of the beneficiaries, provided that such powers and provisions do not lengthen any perpetuity period that is applicable to such trust. Upon the declaration by the Protector that any trust created by or pursuant to this Agreement shall be governed by the laws of a new jurisdiction, the rights of all persons, parties, and entities, and the construction and effect of each and every provision of such trust, shall be subject to and construed only according to the laws of the designated jurisdiction.

3.7. **Accounting.** The Protector shall have the power, exercisable at any time, to demand an accounting by the Trustee, setting forth the receipts, disbursements, and distributions of both principal and income during the period of accounting and the invested and uninvested principal and undistributed income that is in existence at the beginning and at the end of such accounting period.

3.8. **Bond.** Subject to the provisions of Article __, the Protector shall have the power, exercisable at any time, to require in writing that the Trustee, or any person or entity to whom the Trustee has delegated a power pursuant to any provision of this Agreement, be required to give a bond or other security for the faithful administration of its or their duties under this Agreement.

3.9. **Duties Non Delegable.** The duties and powers of the Protector shall be personal and shall cease upon the death of the person holding such office (if an individual) or upon the dissolution of the entity acting as the Protector (in the case of a corporation or other entity acting as Protector). The powers of the Protector shall not be capable of being delegated or of being exercised by any representative (whether a personal representative or otherwise), agent, receiver, or liquidator of the Protector.

3.10. **Written Consent.** Any provision of this Agreement that requires the consent of the Protector shall require the Protector's written consent. Furthermore, failure by a Protector to give any such consent or to make any decision or to communicate with the Trustee regarding any such consent or decision shall be deemed for all purposes as a refusal to consent and shall be treated by the Trustee as a refusal to consent.