

FLORIDA'S LAND TRUST ACT

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¹INTRODUCTION

The land trust may be the answer to the difficulties that exist in connection with ownership of real property by multiple owners in tenancy in common. The root problem of holding property in that manner comes from the fact that a co-tenant can sue for partition and in doing so, cause a forced sale of the property. The Land Trust may be a partial solution to this problem since partition is not available and beneficial interests can be transferred upon the death of a beneficial owner.

The law concerning land trusts varies from state to state and so it is important to understand the background of this vehicle for the ownership of real estate. In Florida for example, there is a statute governing land trusts; in Illinois land trusts are largely the creation of case law. A revamped land trust act has been approved by the Florida legislature. The final approved Act is attached at Appendix A.

I. DEVELOPMENT OF LAND TRUST LAW.

A. The development of trust under the common law.

1. In the middle ages, the features of feudal tenure, primogeniture and forfeiture for treason very often resulted in transfers of land to family friends for the benefit of the grantor.

2. The Statute of Uses, adopted at the time of Henry VIII, was adopted so as to execute these kinds of arrangements. The result of execution of a trust, under the Statute of Uses, was to vest the holder of the use with the legal estate.

3. After the enactment of the Statute of Uses, English courts found that it was inapplicable to active trusts and the concept of trusts became, and remains, part of present day law.

4. English rule brought the Common Law to the United States, and with it the Statute of Uses. The Statute of Uses continues as one of the problems in the legal background of land trusts. The Statute of Uses in Florida is found in Florida Statutes Section 689.09. The Statute of Uses as adopted in Florida reads as follows:

"By deed of bargains and sale, or by deed of lease and release, or of covenant to stand seized to the use of any other person, or by deed operating by way of covenant to stand seized to the use of another person, or in any lands or tenements in this state, the possession of the bargainer, releaser or covenantor shall be deemed and adjudged to be transferred to the bargainee, releasee or person entitled to the use as perfectly as if such bargainee, releasee or person entitled to the use had been enfeoffed by livery of seizin of the land conveyed by such deed of bargain and sale, release or covenant to stand seized; provided, that

¹ I would like to acknowledge and thank Julius J. Zschau, Esquire, and Andrew O'Mallery, Esquire, for their assistance and guidance in the preparation of these materials.

livery of seizin can be lawfully made of the lands or tenements at the time of the execution of the said deeds or any of them."

5. It is important to note that the land trust differs significantly from trusts as they were contemplated under the Statute of Uses. In a land trust, the trustee receives both the legal and equitable title to the real property and is generally given some purely administrative duties. Robinson v. Chicago National Bank, 176 N.E.2d 659, 661 (Ill. 1961).

6. Land trusts had their beginning in the state of Illinois and for that reason the land trust is many times referred to as the "Illinois Land Trust". Hart v. Seymour, 147 Ill. 598 (Ill. 1893), is generally regarded as the first case recognizing the existence of land trusts.

7. In a later case, Schumann-Henk v. Folson, 159 N.E. 250 (Ill. 1927) the court equated the land trust to the Massachusetts business trust from which the land trust undoubtedly evolved. However, it is important to note that unlike a Massachusetts business trust, a land trust is generally viewed as a vehicle for holding title to real property rather than as an operating business entity. As we will see later, there are important tax implications to treating the land trust as an operating business entity.

8. In jurisdictions in which the Statute of Uses is strictly construed, there are difficulties in establishing land trusts, see Janura v. Fencel, 261 Wis. 129, 52 N.W. 2d 144.

a. The liberal interpretation of the Statute of Uses by Illinois courts has made the land trust possible in that state.

b. The court in Illinois has held that the trustee's duty to deal with the title, on the direction of the beneficiary, and to sell the property, if any property remains at the end of twenty years, is sufficient to create an active trust and to avoid the operation of the Statute of Uses. Chicago Title and Trust Company v. Mercantile Bank, 300 Ill. App. 328 (1939).

c. Land trusts are widely used in the State of Illinois. The court in Chicago Federal Savings and Loan Association v. Cacciatore, 25 Ill. 2d 538 (1962), stated:

"The law of this State and the reviewing Courts for more than eighty years have encouraged public reliance upon the real property concept exemplified in the land trust now before us. Millions and probably billions of dollars have been and are now invested in similar trust arrangements and thousands of titles depend thereon for their validity."

d. In states such as Wisconsin, where the Statute of Uses is strictly construed, it may still be possible to use land trusts by expanding the duties of the trustee. Doing so will impose additional duties on the trustee, in other respects the trust agreement would be the same as the standard form.

- (1) An example of language to include in the standard trust agreement is "land trustee is empowered to manage the trust estate for the best interests of the beneficiaries, to make and modify lease agreements, to incur expenses in the printing of the trust instruments, certificates and books of record, to borrow funds and to compromise and settle claims"

- (2) It is important to review these matters with a title underwriter in states such as Wisconsin to make sure that title will be insured in the trustee under these circumstances.

B. The trustee holds both legal and equitable title to the real estate, but the complete management of the property plus full power to direct the trustee with respect to the title is in the beneficiaries. The land trust is set-up through the use of two instruments -- a deed in trust, whereby real estate is conveyed to the trustee and a trust agreement under which the trustee acts. Land trusts have been found to have several advantages:

1. Interests in land trusts cannot be partitioned, and transferring beneficial interests is relatively easy.
2. Interests of beneficiaries cannot be disclosed without order of court.
3. Judgments against the beneficiaries do not affect legal title to the real estate sold in the land trust.
4. The beneficial interest in the land trust is personal property. Since it is personal property non-residents of the state in which the property is located can avoid ancillary administration.
5. The death of a beneficiary does not terminate the trust, and testamentary dispositions can be made in the trust agreement.

C. In Florida, land trusts are a creature of statute rather than case law. In 1963, the Florida legislature passed Florida Statutes Section 689.071 which created the Florida Land Trust. Florida Statutes Section 689.071 was significantly revised in 2007 and is now known as the "Florida Land Trust Act."

1. Florida Statutes Section 689.071 recognizes and confirms the creation and establishment of land trusts described in the act.
2. Courts have held that the statutory land trust is not an ordinary inter vivos trust which is administered under the trust administration chapter, Chapter 737, Florida Statutes. See Taylor v. Richmond's New Approach Association, Inc., 351 So.2d 1094 (Fla. 2d DCA 1977).
3. Case law in Florida confirms that a grantee from a land trustee need not look beyond the trustee's deed in trust to determine his powers. Gramer v. Roman, 174 So.2d 443 (Fla. 1965).
4. The beneficiary retains full power of management of the property under Robinson v. Walker, 63 Ill. App. 2d 204 (1965).

D. Section 689.071, Florida Statutes, provides that the land trustee receives legal and equitable title to the real property which is the same rule that exists in Illinois.

1. Under Florida Statutes Section 689.071 the trustee receives full rights of ownership over the real property described in the deed with full power as granted in the recorded deed to deal with the property when the grantee is designated as "trustee", when the deed does not

name the beneficiaries of the trust, and whether or not reference is made in the recorded deed to an unrecorded trust instrument.

a. The deed must be recorded and must give to the trustee full power and authority either to protect, conserve and to sell or to lease, or to encumber or otherwise to manage and dispose of the real property described in the deed.

b. The trustee can only deal with the property within the power and authority granted in the recorded deed.

2. Florida Statutes Section 689.071(4) states that any person who deals with the trustee with respect to the real property or any interest in such property that is held under a recorded trust deed which meets the requirements of 689.071, does not have to inquire into the identification or status of any named or unnamed beneficiary, their heirs or assigns or to the authority of the trustee to act within the powers granted in the recorded deed, nor is there any requirement that such parties inquire into the provisions of an unrecorded trust document whether such document is referenced in the deed or not.

a. Florida Statutes Section 689.071(4) is applicable to recorded deeds in trust whether or not the beneficiary is named or unnamed.

b. The deed prepared pursuant to Section 689.071 creates a valid trust and there is no need to inquire into any unrecorded trust instruments which may or may not be referenced in the deed.

c. Care should be taken to insure that beneficiaries are not inadvertently named, either in the deed or subsequently recorded documents. By naming beneficiaries on the public record, notice may be given to a title examiner requiring further investigation as to the ownership of the property.

3. Florida Statutes Section 689.071(5) provides that all persons dealing with the trustee under any recorded instrument which has been prepared in accordance with Section 689.071 takes free and clear of the claims of all named or unnamed beneficiaries of the trust, and anyone claiming by, through, or under such beneficiaries, and of any unrecorded declarations or agreements collateral to the trust, whether they are referred to in the recorded instrument or not.

a. It should be noted, however, that the beneficiary can enforce the terms of the unrecorded trust instrument against the trustee.

b. If the grantee is dealing directly with the beneficiary, this subsection may not apply.

4. Florida Statutes Section 689.071(6) states that in all cases where the recorded instrument prepared in accordance with the section contains a provision declaring the interest of the beneficiary to be personal property only, that provision shall be controlling for all purposes where such determination shall become an issue under the laws or in the courts of the State of Florida. It is important to note that this provision makes it possible for a beneficiary to

convey his interest in the real property by assignment of beneficial interest rather than by the execution and recording of a deed.²

5. The personal liability of a trustee of a land trust is limited pursuant to Florida Statutes Section 689.071(7), which provides that the limitations of Florida Statutes Sections 736.08125 and 736.1013 also apply to a trustee of a land trust.

6. One of the benefits of a land trust is that the beneficiaries are not personally liable for the obligations or debt of the land trust. This is codified in Florida Statutes Section 689.071(8)(a). Florida Statutes Section 689.071(8) sets forth the rights and obligations of beneficiaries of a land trust. Key provisions of this sub-section are the application of Chapter 679 to the perfection of a security interest in a beneficial interest of a land trust and that the principal residence of a beneficiary can qualify for the homestead tax exemption even if the property is held in a land trust provided the beneficiary otherwise qualifies for the homestead exemption.

7. A major change in the codified land trust law in Florida is the provision regarding the successor trustee now found in Florida Statutes Section 689.071(9). This Section provides for a method of appointment and identification of a successor trustee if the recorded instrument and/or the land trust agreement are silent.

E. In other states, land trusts have been recognized, some by statute and some by court case.

1. Land trusts have been codified in the State of Virginia, North Dakota and Indiana in a similar manner as they are in Florida.

2. Courts in states such as Arizona, Kansas and California have moved in the direction of acknowledging land trusts by case law.

II. LAND TRUSTS IN GENERAL.

A. There are two essential instruments to a Land Trust, the deeds that convey property into the land trust and the land trust agreement. It is important, however, to understand some of the terminology that relates to land trusts before discussing these documents.

B. Terminology.

1. Trust Agreement. The Trust Agreement is the agreement entered into between the trustee and the beneficiary which establishes the trust. Attached hereto as Appendix B is a copy of a form of trust agreement.

2. The Trustee. The Trustee is the party designated in the trust agreement to hold legal and equitable title to the land trust property.

3. Beneficiary. The Beneficiary is the party designated in the trust agreement as having the power to direct the trustee with regard to the trust property, the control of the

² Notwithstanding the characterization of the beneficial interest in a land trust as personal property, the assignment of that beneficial interest is still subject to Florida's Documentary Stamp Tax pursuant to Fla. Admin. Code §12B-4.013(29).

management, operation, rental and sale of the trust property and the right to the earnings, avails and proceeds of the trust property.

4. Power of Direction. The Power of Direction is the right to control the trustee's disposition of title to the trust power and the execution of trust documents affecting the trust property.

5. Deed in Trust. The Deed in Trust is the instrument which conveys title to the real property into the land trust. A form of Deed of Trust is attached hereto as Appendix C.

6. Trustee's Deed. An instrument by which a land trustee conveys title to the trust real property to another party is a Trustee's Deed. A trustee's deed form is attached hereto as Appendix D.

III. GENERAL USES OF LAND TRUSTS.

A. With the foregoing as background information, it is easier to explore some of the uses of land trusts.

1. Interests in a land trust cannot be partitioned. Since the interest of the beneficiary under a land trust is personal property and since the trust agreement expressly precludes the vesting of title legal or equitable in a beneficiary, partition is not available. Some cases on point are Aronson v. Olson, 348 Ill. 26, 180 N.E. 565 (1932), and Breen v. Breen, 180 N.E. 206, 103 N.E. 625 (1952). Wisconsin courts have held that if there is a valid active trust, partition is not available to the beneficiaries of such a land trust. Kinger v. Bidwell, 55 Wis 2d 749, 201 N.W. 2d 9 (1972).

a. Real Property held in a land trust is not subject to partition.

b. The unavailability of partition is a reason to have properly drafted beneficiary agreements. In situations where there are multiple beneficiaries, the standard trust agreement will not deal with operational issues. A sample beneficiary agreement is attached as Appendix E.

c. In some forms of land trust agreement, operational problems have been dealt with by means of specific additional provisions in the trust agreement. In Harden v. Desideri, 20 Ill. App. 3d 590, 315 N.E. 2d 235 (1974), the trust agreement specified a management agent and provided that the agent was to operate and manage the trust property as directed by two-thirds (2/3) of the owners of beneficial interest in the trust. Although the trust agreement dealt with management of the property, it can be extended and amplified to deal with a variety of other problems.

d. There are, of course, many problems that can arise in the operation of property. Well drafted beneficiary agreements can deal with problems such as buy-sell arrangements, dispute resolution as well as other governance issues. The terms of beneficiary agreements can be incorporated in the trust agreement. See Ferraro v. Parker, 229 So. 2d 621 (Fla. Ct. App. 1969).

2. Other uses of land trusts.

a. In situations where multiple owners hold title to real property, the potential exists for judgments, divorce, death, bankruptcy or incompetency of a single beneficiary to cloud the title to all or a part of the real property. The use of the land trust prevents the possibility of clouds on the title in these situations.

b. It is important to note that the ownership of a beneficial interest in the trust can be reached by a judgment creditor if the creditor of a beneficiary of a land trust learns of the beneficiary's ownership interest in the land trust.

c. Under well-drafted trust agreements, provision can be made to avoid deadlocks among multiple owners. A general partnership, limited partnership or other form of beneficiary ownership can be prepared to spell out the rights and obligations of multiple owners in situations where disagreements may arise.

d. Where real estate projects are syndicated, the use of a land trust can reduce delays where signatures must be obtained from remote locations and can facilitate the many conveyances of lots in subdivisions and units in condominiums.

3. Interests of beneficiaries may not be disclosed without order of court.

a. There are situations where good reasons exist for purchasers of real estate not to publicize their ownership of that real property. The land trust permits such individuals to keep their names from the public record.

b. An important use of the land trust arises in the situation in which a developer, seeking to develop an area in which there are many owners of small parcels, uses the land trust to minimize the potential for a few owners to hold out for exorbitant prices by keeping his name off the public records and notifying them of his intentions.

4. Judgments against the beneficiaries do not affect the legal title to the real property held in a land trust.

a. Judgments can, however, be enforced against a beneficiary's beneficial interest in a land trust.

b. The title to the real property held in a land trust can be conveyed free and clear of the lien of judgments against a beneficiary.

5. The beneficial interest in the land trust is personal property.

a. Non-residents of the state in which property is held in a land trust can, by placing title to their real estate in a land trust, avoid ancillary probate administration in the event of death.

b. The existence of a land trust under these circumstances permits ease and simplicity in dealing with title to the real property.

c. Beneficiaries may make dispositions of the beneficial interest upon death of the named beneficiary. These dispositions can be handled by providing in the trust agreement for the remaindermen to succeed to the beneficial interest of the beneficiary. The

provision for remaindermen has been held not to be testamentary. See In Re: Sacks Estate, 231 N.E.2d 688 (Ill. 1967).

d. Since the interest of a beneficiary is personal property, marital rights of dower and curtesy do not apply; therefore, title can be conveyed without the joinder of the spouse. Duncanson v. Lill, 322 Ill. 328 (1927).

6. The death of a beneficiary does not terminate the trust.

7. Where mortgage financing is used in connection with a land trust, personal liability of the beneficiary can be avoided if the lender does not require personal guarantees.

a. With the use of an appropriate exculpatory clause, no personal liability is imposed on the beneficiaries or trustee and exposure to deficiency judgments in the event of foreclosure can be avoided. Conkling v. McIntosh, 324 Ill. App. 292 (1944).

b. An example of an exculpatory clause for a mortgage is as follows:

"This instrument is executed by (Trustee), not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred and vested in it as such Trustee and it is expressly understood and agreed by the mortgagee herein and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the note secured by this instrument shall be construed as creating any liability on the (Trustee) or on any of the beneficiaries under said trust agreement personally to pay said note or any interest that may accrue thereon, or any indebtedness accruing hereunder or to perform any covenants either express or implied herein contained, all such liability, if any, being expressly waived and that any recovery on this mortgage and the note secured hereby shall be solely against and out of the property hereby conveyed by enforcement of the provisions hereof and of said note, but this waiver shall in no way affect the personal liability of any co-signer, endorser or guarantor of said note."

c. Care should be taken to exculpate the trustee from personal liability for condominium assessments. See Taylor v. Richmond's New Approach Association, Inc., 351 So.2d 1094 (Fla. 2d DCA 1977).

B. Use of the land trust as a vehicle for holding title to real property permits the preservation of tax benefits under the Internal Revenue Code.

1. All of the tax advantages of individual ownership may be retained when a land trust is properly used to hold title to real property.

2. The deduction for expenses flows directly through the beneficial owners, assuming of course that all of the criteria to prevent the land trust from becoming an entity taxable as a corporation are met.

3. If C-Corporation tax consequences are desired, place the beneficial ownership of the trust in a C-Corporation.

IV. CREATION OF LAND TRUST.

A. The deed in trust generally sets forth the powers and authority of the trustee. It should specifically state that the interest of the beneficiary is personal property and that no beneficiary has any title, legal or equitable, in the real property. In states where land trusts are created by statute, it is important to review the statute carefully to insure that the deed contains the language required by the statute. In Florida, for example, Florida Statutes Section 689.071 requires certain language to validly establish a land trust.

B. The trust agreement is the instrument entered into by the trustee and beneficiary.

1. It should provide that the interests of the beneficiaries have the powers to direct the trustee to deal with the title, control and operation of the property.

2. It also should provide that the interest of the beneficiary is personal property and that at the death of the beneficiary the trust will not terminate.

3. The trust agreement sets forth the duties of the trustee and generally provides that it is not the duty of any purchaser to see to the application of the purchase money, nor does any such person have the right to inquire into the necessity of any act of the trustee.

4. The trust agreement should not be recorded.

5. Note that mortgages may also be placed in land trusts. When this is done the Land Trust Agreement should be modified accordingly to provide for hold of fee title to the real estate if foreclosure occurs and to insure that a trustee has the power to institute foreclosure proceedings.

C. There may be other collateral agreements among beneficiaries which are generally called "Beneficiary Agreements" which relate to the relationship among beneficiaries.

1. The kind and variety of collateral agreements and beneficiary agreements is a very wide one. Some take the form of co-ownership agreements. Some others are very sophisticated partnerships.

2. Limited partnerships, corporations and limited liability corporations may be beneficiaries under a land trust agreement.

D. It is important to make provision for a successor trustee where a human being is the trustee.

1. When such provision is made in the deed, a copy of the death certificate for the deceased trustee may be recorded thereby showing that legal and equitable title is in the successor trustee.

2. If the recorded deed in trust makes no provision for a successor trustee. A successor trustee can be appointed by a court on petition of the beneficiaries. Then the interests of the beneficiaries become public record.

E. With respect to the relationship of the trustee to the beneficiary, it has been held that the trustee is not the agent of the beneficiary Robinson v. Chicago National Bank, 32 Ill. App. 2d 55

(1961), and the beneficiary is not the agent of the trustee, Brazkowski v. Chicago Title and Trust Company, 280 Ill. App. 2d 293 (1935).

1. In connection with the assignment of beneficial interest, a Florida court in Goldman v. Mandell, 403 So.2d 511 (Fla. 5th DCA 1981) held that since the interests of the beneficiaries were personal property no witnesses were required to an assignment of beneficial interest under the land trust.

2. With respect to personal liability, a Florida case Taylor v. Richmond's New Approach Association, Inc., 351 So.2d 1094 (Fla. 2d DCA, 1977), held that where the trustees were also the beneficiaries of the land trust and were involved in the development of a real estate project, the court looked to Florida Statutes Section 737.03 relating to personal liability of trustees to third parties and noted that the deed said nothing about the limitations of liability on the trustees. Therefore, every deed should contain language indicating that the liability of the trustee is limited to property which is contained in the trust. This limitation of liability should be placed on other documents executed by the trustee.

V. ADMINISTRATION OF LAND TRUSTS.

A. Conveyance of Fee Title from or to Land Trusts.

1. General Legal Relationships. With respect to conveyances in land trust situations, it is important to understand the relationship between Grantor, Beneficiary and Grantee. Unlike the conveyance of a fee interest from an individual or corporate grantor, a transaction with a land trustee as grantor contains certain elements which must be considered in a sale involving a land trust. The party who controls the management of property, and who would be considered the seller in a sale of real property not involving a land trust, is in fact the holder of personal property and is not a grantor of title to the land trust real property. That seller in the ordinary sense, but not necessarily in the legal sense, is the beneficiary of the land trust. The trustee merely holds and transfers title to the real property. One of the rights of the beneficiary is the right to direct the trustee to convey; the beneficiary cannot convey the title directly. The trustee holding the title will follow the directions of the beneficiary, except when any legal rights are asserted by the trustee or by third parties against the beneficiary.

The trustee and the beneficiary are bound by the terms of the recorded deed in trust which conveyed the realty to the trustee and by the unrecorded trust agreement between the trustee and the beneficiary. A grantee of title to real property from a trustee must consider the rights and obligations of both the trustee and the beneficiary. In general, the beneficiary has the right to (i) possession of the real estate; (ii) receipt of the rents, issues and profits of the real estate; and (iii) the right to direct conveyance of the real estate.

The trustee has the duty to convey upon direction of the beneficiary; and in certain cases, the right to convey without the direction of the beneficiary. The beneficiary, however, will be the party negotiating the terms of the sale, not the trustee. The grantee or buyer, therefore, will negotiate the conveyance of real estate with the party who might direct the conveyance but will not be the grantor of the deed. Therefore, undertakings and representations by the beneficiary are not those of the title holder and cannot be enforced against the title holder. The trustee-title holder, will not make substantial undertakings or representations to the prospective grantee, and yet, an agreement executed by a trustee may not bind the beneficiary. Finally, the fact that the trustee has executed a deed should not imply that the trustee holds title. The trustee is not under any duty to

determine whether a deed in trust to the trustee conveyed any interest in the real estate so described.

a. Warranties. The grantee in a warranty deed receives certain covenants and warranties from the grantor, which are enforceable by the grantee. A land trustee will generally execute a trustee's deed containing no warranties. The grantee of a land trustee's deed will not obtain any warranties of title.

b. The nature of the Trustee's Deed. A form of a Trustee's Deed is included as Appendix C. The grantee of a Trustee's Deed receives only the rights of a land trust grantor in and to the property without warranty.

c. The proceeds of sale. The proceeds of sale should be paid to the grantor. The beneficiary should obtain a pay proceeds letter from the trustee, which directs that the proceeds should not be paid to the trustee but should be paid to the beneficiary or as the beneficiary directs. In the event that this is not possible or desirable, the proceeds should be payable to the trustee.

d. Liens against the beneficial interest. Because of the undisclosed nature of a beneficiary's interest, liens, encumbrances, and collateral interests in the beneficiary's personal property interest may exist.

- (1) If the lien is not recorded against the title to the real estate, it does not attach to the interest of the grantee of the land trustee.
- (2) While such liens may not affect the title received by the grantee they can affect the ability of the beneficiary to direct a conveyance to the proposed grantee.
- (3) If a lien holder refuses to consent to the conveyance, the beneficiary may not be able to direct the trustee to convey, and thus a default may arise.

e. Actions by the Trustee. In general, a trustee will not make any covenant, representation, warranty or agreement except to convey when directed by the parties necessary to direct conveyance.

- (1) The beneficiary may undertake certain personal obligations (i.e. representations and warranties, agreements to repropertate, agreement to surrender possession) but the beneficiary is not the party in title.
- (2) For a purchaser, it is desirable to bind not only the trustee but also the beneficiary.
- (3) With enactment of laws relating to environmental risks, trustees are becoming less willing to execute agreements for sale without specific exclusion accompanying the customary exculpatory language.

f. Signature of Beneficiary. In view of the many personal obligations of the ordinary contract, it may be advisable to seek the beneficiary's execution of the agreement or a joinder by which a beneficiary joins in and adopts the undertakings and representations of the trustee seller. Provisions should be made that the contract will not be recorded.

2. General forms in conveyance of title by trustee.

a. Land Trust Contracts. Where a beneficiary is to execute a contract for sale, the beneficiary should represent and undertake that: (i) the beneficiary is the sole beneficiary of the land trust; (ii) the beneficiary has full power to direct the trustee to enter into and execute the agreement and will do so to consummate the contemplated transaction; and (iii) there are no liens or claims to prohibit the trustee's execution of the closing documents upon delivery of the appropriate direction.

b. Beneficiary executes contract. The contract should recite that legal title is held in a land trust and that the trustee's deed will be delivered at closing. The trustee should be identified as the seller, and the beneficiary is executing the contract. The beneficiary could be made an additional seller.

A form of clause for the execution of a sale contract by a beneficiary is as follows:

This contract is executed by John Doe as beneficiary under a land trust titled Richard Rowe as trustee under a Land Trust Agreement dated January 1, 1990, and known as Trust No. 101 and John Doe as beneficiary represents to C. Wadsworth Stuffings, the purchaser, that John Doe is the sole beneficiary, and possesses the sole power to direct the trustee and John Doe expressly undertakes all covenants and agreements contained in this contract not reserved for the trustee, and agrees to perform the same as if made by him. C. Wadsworth Stuffings acknowledges that John Doe is not the agent for Richard Rowe as trustee and further agrees to look solely to John Doe for the performance of those covenants and agreements not reserved to the trustee.

c. Letter of Direction. The letter of direction is the document by which the beneficiaries direct the land trustee to act.

d. A grantee of a land trustee may wish the beneficiaries to execute an undertaking which includes modified warranties of title. The sample form is as follows:

John Doe as beneficiary of a certain Trust Agreement dated January 1, 1990, and known as Trust No. 101 wherein Richard Rowe is the trustee, in consideration of \$10.00 and the covenants of a certain real estate contract dated February 1, 1991 for the premises known as 1525 Main Street, Dunedin, Florida, the receipt and sufficiency of which are hereby acknowledged, does hereby undertake, represent and warranty to C. Wadsworth Stuffings, the purchaser in the real estate sale contract, that:

- (1) The premises aforementioned and legally described as follows (legal description) are held by Richard Rowe as trustee and that Richard Rowe holds the

same as an indefeasible fee simple estate and has the power to convey same.

- (2) The aforementioned described premises are free from encumbrances except as follows: taxes for the year 1990 and subsequent years, covenants, conditions and easements and restrictions of record, governmental regulations and land use regulations.
- (3) The grantee is entitled to peaceable possession of same except for the leases set forth in the rent roll attached as Schedule 1, and made a part of this undertaking.
- (4) The undertaking shall be binding upon the heirs, devisees, legatees, and assigns of John Doe and shall inure to the benefit of the heirs, devisees, legacies and assigns of C. Wadsworth Stuffings.
- (5) This undertaking is made and delivered to C. Wadsworth Stuffings in order to induce him to consummate the purchase set forth above."

It is important that these provisions be negotiated with the real estate contract since the beneficiary is not likely to agree to them after the contract has been executed. It is also important to know who the beneficiaries are.

B. Transfer of Title by Assignment of Beneficial Interest.

1. General. It is important to understand the relationship of the assignor, assignee, and the trustee. Because the beneficial interest in a land trust is personal property, the assignment of that beneficial interest is governed by rules affecting personal property, not real property.

a. The transfer of this personal property is the transfer of the right to control the real property.

b. The trustee who holds title to the real property interest is the same entity before and after the assignment. The legal title to the realty remains unchanged.

c. The trustee after the assignment takes its directions from a new party, the assignee.

2. Assignee. The assignee is bound by the same terms of the trust, as was the assignor. The assignee, by accepting the assignment, agrees to all of the provisions of the trust agreement. The assignee is entitled to all of the rights of the assignor to the trust, but is subject to all of the obligations and burdens that accompany the ownership of the beneficial interest. The rights of third parties with respect to the title remain unchanged and still burden the land. The assignment is subject to all of those rights but may be subject to contractual rights granted to parties in possession by the previous beneficiary.

3. Title Insurance. A bona fide purchaser of real estate without notice and for value is given certain rights against third parties. Title insurance underwriting acknowledges this and excepts from coverage any matters known to the purchaser. An assignee of the beneficial interest does not have these rights, and furthermore, has all of the knowledge of the trustee and the assignor imputed to it. A standard type title insurance policy affords limited protection to the assignee for this kind of problem. In some states, a non-imputation endorsement may be available. However, current regulations prohibit the issuance of the non-imputation endorsement in Florida.

4. Trustees acknowledgment or receipt. The trustee's acknowledgment is nothing more than a receipt of the assignment. It is not a statement as to the validity of or the priority of the assignment and certainly makes no representation of the status of the legal title to the land, or even that the trustee holds title to the land.

5. Lodging the assignment, refusal of the trustee to acknowledge. If the trustee's acknowledgment is only a receipt, the refusal of the trustee to lodge the assignment and to acknowledge the assignment does not make the assignment void. Between assignor and assignee the assignment is valid, but the trustee may then refuse to follow any directions of the assignee. The assignee in such a case has purchased a lawsuit.

6. Warranties of title by the assignor. The assignor may negotiate in the contract for purchase of the beneficial interest to receive certain warranties similar to the warranties of title, which are included in a warranty deed.

7. Lien on title to real property. A transfer of the beneficial interest in a land trust does not affect the status of legal title to the underlying land. All liens and encumbrances remain the same. The assignee, in general, will not be personally liable for the satisfaction of those liens, although the real property may be sold to satisfy those liens. If the lien is a mortgage, the assignor may require that the assignee assume the debt and that the assignor be released from the debt. Additionally, the assignee may wish to assume the lien personally to prevent the calling of a mortgage which contains a due on sale clause. If the mortgage is assumed, it is advisable to receive, at the least, an estoppel letter from the lender which states that the mortgage is not in default and states the balance due, amount and date of payments. Additionally, an assumption agreement should be executed, in the same form as that for a transaction involving the transfer of real property.

8. Due on sale clauses. Most mortgages contain due on sale clauses which are triggered by an assignment of a beneficial interest. The use of an assignment of beneficial interest to avoid a due on sale clause can result in the triggering of a due on sale clause.

9. Drafting tips and assignments of beneficial interest.

a. Contractual language. To protect the assignee of the beneficial interest, appropriate provisions must be included in the contract between the assignee and assignor. These clauses include:

- (1) The right of the assignee to receive the beneficial interest. Such a clause might be included in a rider as follows:

The purchaser may elect to receive an assignment of beneficial interest in the Land Trust holding title to the premises which are the subject matter of this

contract. The purchaser may exercise this right by giving notice of the same to the seller not less than thirty (30) days prior to the date of closing specified herein. If this right is exercised, then the provisions requiring delivery of a deed to the real property shall be modified to read that the seller shall provide an assignment of beneficial interest.

- (2) A provision should be added to provide that the seller would furnish an undertaking with warranties of title and other assurances.
- (3) A provision for searches and information should be added. Note, some of these searches will be done by the title insurer. At a minimum, the searches must include: Federal tax liens; judgment, pending litigation, and bankruptcy; UCC; certified copies of entire trust file; and certification of current beneficiaries. All of these searches should be in addition to the usual title search. The seller will not willingly provide the assurances and the information needed to protect the buyer taking an assignment unless the obligations are set forth in the contract. One alternative is to have the seller establish a new trust and have the beneficial interest in that trust transferred provided that such an arrangement will not frustrate any of the purposes of the purchaser in requiring an assignment by beneficial interest.

b. Assignment of Beneficial Interest. The actual form of assignment is usually provided by the trustee. Check for the signature of all beneficiaries and parties holding power to direct. Make sure that the assignment includes that the power to direct is transferred to the new beneficiaries. If homestead property is involved, include a waiver of homestead signed by the assignor and his or her spouse. Remember, the trustee may refuse to accept the assignment.

c. Warranties of title on the Assignment of Beneficial Interest. The warranties of title on a deed do not apply to the assignment of beneficial interest. The form of warranty should be substantially the same as the undertaking mentioned earlier with the following changes:

- (1) References to the real estate contract would have to be modified to fit the actual contract in its format.
- (2) A paragraph would be inserted as follows:

"The undersigned are all beneficiaries of the aforesaid trust, and warrant that they, and no others, have the power of direction, and that they are under no disability, and further warrant that there are no liens or encumbrances against any of their beneficial interests, and that they have full power and complete authority to assign the same."

d. Searches on title and beneficial interests. The assignment transaction itself does not involve real estate; however, since the rest of the trust is real property, it is very important to assure that the state of title is as agreed upon by the assignor and assignee of the beneficial interest. Title insurance, with the appropriate endorsement, should be a part of the transaction to assure that the assignee gets the agreed upon title.

C. Leases.

Generally, any lease of real property held in a land trust can be signed by the trustee as the lessor or as in Illinois, beneficiaries can execute the lease. The beneficiary enters into the lease in his or her own name reciting the appropriate capacity and not as an agent of the trust. A case approving this concept is Southeast Village Associates vs. Health Management Associates 92 Ill. App. 2d. 810, 416 NE 2d 325 (1980). The beneficiary under this concept is named as the lessor. Since the beneficiary is not the agent of the trust, and is not the trustee, the beneficiary should not attempt to sign for the trustee. The beneficiary may sue to recover rent and possession in his or her own name. Note that if the lease contains an option to purchase, then the trustee should sign, or the option should be executed by the beneficiary as the beneficiary of the trust with full power to direct the trustee.

VII. CASES REGARDING LAND TRUSTS

A. Trustee Liability for Environmental Matters.

A constant concern of those who serve as land trustee is the specter of being held liable under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*

1. A decision of a U.S. District Court (Illinois), held that a land trustee is not an "owner" under CERCLA. That case is United States v. Peterson Sand & Gravel, Inc., 806 F.Supp. 1346 (N.D. Ill. 1992), which involved an operator of a hazardous waste site who had been held liable for an \$800,000.00 remedial investigation, and who filed a third party complaint for contribution from several defendants. The complaint included Northern Trust Bank, the trustee of an Illinois land trust, which had held legal title to the site during the period of contamination. The bank sought summary judgment claiming that it was not an owner under CERCLA. The bank argued that a land trust is little more than a form of title registration; therefore, there was no policy reason to hold the bank liable as an "owner".

In its decision, the court noted that an Illinois land trust is "an odd legal creature". Under Illinois law, the land trustee holds both the legal and equitable title, and the beneficiary has only a personal property interest. The land trustee, however, may take no action with respect to the property without written direction from the beneficiary of the land trust. Illinois courts have, therefore, made a distinction between the legal concepts of title and ownership. Title refers to a legal relationship to the land, while ownership is comparable to control of the land, and denotes an interest in the land other than holding title. Because of the control of the trust property enjoyed by the land trust beneficiary, Illinois courts have placed the burden of ownership on the beneficiary of the land trust in other areas, such as responsibility for the payment of property taxes.

The court concluded that CERCLA policy would not be furthered by holding land trustees liable. Congress enacted the statute to impose liability upon those who have benefited from, and those who were responsible for, the environmental damage. Although

Congress may have attempted to make "owners" strictly liable under the theory that "owners" are ultimately responsible for the condition of their property, simple paper title is unrelated to responsibility. Holding land trustees liable under CERCLA would have little deterrent value since they have no control of the property. Because the trustee had no further involvement with the property beyond holding the title as land trustee, the court granted its motion for summary judgment and ruled that Illinois land trustees are not "owners" under CERCLA.

2. In another federal decision in the Northern District of Illinois United States v. N.L. Industries, 1992 WL 359986 (S.D. Ill. April 23, 1992), the court held: "The definition of owner, although broad, requires some indication of control... Furthermore, because the trustee of an Illinois land trust has no ownership or control interest which would implicate the policies behind CERCLA, the court concludes the trustee cannot be liable under CERCLA."

In Peterson Sand and Gravel, the court states at page 1359 of its opinion: "Taking into account the implications of being a trustee under Illinois law, the concepts of ownership under federal and Illinois law, and the legislative purposes of CERCLA, the court concludes that being an Illinois land trustee is not 'owning' land under 42 U.S.C. 9607(a)(2)."

While this case is an encouraging one for land trustees, it must be pointed out that there are some conflicts with other courts. For example, in Phoenix v. Garbage Service Company, 1991 WL 294636 (D. Ariz.) the U.S. District Court in Arizona held that a testamentary trustee was a CERCLA "owner" regardless of the lack of control given under the trust agreement. The Phoenix case is contrary to the decision of the U.S. District Court in Illinois. In a footnote however, the court in the Phoenix case stated it would hold the land trustee to be an "owner", but because of the trustee's lack of control, would not impose personal liability upon it, thereby achieving the same practical result as the Illinois courts.

B. Modification to Requirements regarding Land Trustees.

Florida Statutes Section 660.41 has been modified to delete Subsection 4 which reads as follows: "All corporations, except banks or associations and trust companies incorporated under the laws of this state and having trust powers and except national banking organizations or federal associations located in this state and having trust powers, are prohibited from exercising any powers or duties and from acting in any of the capacities, within this state, as follows: ... (4) Trustee of any real estate in this state or any interest therein under any agreement whereby the beneficial interest in such property is vested in others." This deletion indicates that corporations can now act as trustees for land trusts.

C. Land Trust as an Instrument in the Nature of a Mortgage.

Kirkland vs. Miller, 702 So.2d 620 (Fla. App. 4 Dist. 1997) involved a situation in which the purpose of the conveyance of real property into the land trust was to secure payment of money pursuant to an assignment of beneficial interest. The secured party foreclosed on the beneficial interest under Article 9 of the UCC rather than foreclosing the property as a real estate foreclosure. The trial court held that since the interest of Miller constituted personal property and that the rights of the secured party, Kirkland, were governed by Article 9 and Florida Statutes Section 679.01 was not applicable. Testimony at the trial indicated that the purpose of the transaction was to avoid a real estate foreclosure in the event of a default. The court held:

“Although Florida will recognize a valid Illinois land trust, Magnuson vs Jones, 491 So.2d 1315 (Fla. 5th DCA 1986), the transaction at issue here was not a valid Illinois land trust; it was a mortgage securing indebtedness. It is uncontradicted the Sellers and Kirkland intended that the conveyance would secure the payment of money, as provided in Section 697.01, Florida Statutes (1985). In the event of default, Kirkland’s interest in the property automatically reverts to Sportsmans (the secured party). Under these circumstances, the transaction “shall be deemed” a mortgage subject to the rules of Foreclosure.”

If the conveyance into a land trust has, as its sole purpose, the avoidance of a real estate foreclosure, Florida Statutes Section 697.01 will apply.

D. In re Saber 233 B.R. 547 (Bkrtcy. S.D. Fla 1999)

Involved a series of transfers of beneficial interest and appointment of a trustee who was also a 100% beneficial owner. Court held that the Doctrine of merger applied in Florida and that subsequent attempted transfers of trust interest were mere nullities.

VIII. BENEFICIARY AGREEMENT

Many, if not most of the beneficial owners of property held in Land Trusts have probably not entered into any formal agreements other than the bare land trust agreement. As long as there is only one beneficiary, or a small number who are closely related and agree on everything, this will suffice. This arrangement however, is similar to the unwritten partnership. Absent a written partnership agreement, when the partners begin to disagree, they must rely on rules of law and the courts to determine their legal rights.

In many situations, the law does not provide remedies the parties would have selected if they had decided among themselves how to deal with conflicting situations. Where there are multiple beneficiaries, no matter how closely related, the absence of a definite operating agreement amongst the beneficiaries exposes the trust agreement to a variety of problems. A close examination of the trust instrument will disclose that each beneficiary has a right to manage the property and to collect the rents, and no specific obligations are imposed to perform the many functions incidental to the operation of the property. In addition, the trust agreement does not provide for resolution of divergent views relating to the operation, financing, sale, or other disposition or encumbrance of the land trust property.

a) Partnership Aspect.

i) In most states, the Revised Uniform Partnership Act provides that a "partnership" is an association of two or more persons to carry on a business for profit as co-owners (See Fla. Stat. §620.8101(5)). Thus, unless the parties agree otherwise, in writing, the relationship between individuals acquiring real property "to carry on a business for profit" will be governed by the Revised Uniform Partnership Act. However, because the Revised Uniform Partnership Act superseded all the common law of partnerships and joint ventures, there is a possibility that the common law of a jurisdiction regarding the relationship between "joint venturers" may control. A properly drawn partnership or joint venture agreement among the beneficiaries will contractually establish the relationship among the beneficiaries.

b) Elements of the Agreement.

What should be accomplished by a beneficiary agreement and how can it provide for the parties' choice of the form of agreement among themselves rather than relying on the common law of co-owners, partnerships, or joint venturers?

i) Income Tax Consequences: First and foremost are the income tax consequences of the ownership of income producing property by two or more beneficiaries. Having a detailed trust agreement in the nature of a partnership agreement (or having a partnership or joint venture hold the beneficial interest in a Florida Land Trust as partnership property or joint venture property, pursuant to a written partnership agreement) should assist in establishing taxation as a partnership rather than as a corporation. Without careful drafting and consideration of the relationship between the beneficiaries there is a very real possibility of the land trust being taxed as a corporation rather than as a partnership.

Further, use of a partnership to hold the beneficial interest in the land trust pursuant to a partnership agreement can give the beneficiaries the use of special allocations and other tax advantages often found in partnerships. Note, however, that if the beneficiaries will not actively participate in the management of the property because they designate a "managing partner" or the circumstances preclude them from participating in management (an orange grove in Florida can't be operated by investors in Ohio), there may be a need for compliance with federal securities laws and state "blue sky" laws, and a limited partnership limiting the liability of passive beneficiaries would be the preferred entity.

ii) Management: Additional benefits can be obtained from a properly drawn beneficiary agreement because the trustee will have no obligation to manage the trust property; he is merely a conduit for rents, profits, income, etc. generated by the trust property. The trust beneficiaries may not want all of their membership to have equal privileges in the management of the trust property and may wish to delegate management responsibilities to one or more of the beneficiaries. A properly drafted agreement can clearly establish the rights and responsibilities of the managing beneficiary(ies) among the group of beneficial owners. This would be especially important in a land trust that has many beneficial owners holding freely transferable certificates evidencing their beneficial ownership; the beneficial ownerships will be more freely transferable if the purchaser of a beneficial interest knew that the property is being managed by a professional, either as a beneficiary under the land trust or as an outside manager hired by the beneficiaries.

Again, note that a limited partnership holding the beneficial interest in the land trust may be the preferred investment vehicle.

iii) Record Maintenance: Under federal income tax laws, it is necessary that proper records be kept for the income and expenses of all properties held in the land trust. An agreement specifying that books of account be maintained and that payment for accounting services be made from the income of the property assures that the trust's records will be properly kept for income tax purposes.

iv) Contributions: One of the most common problems occurring in connection with the ownership of property by several persons involves the co-owner who fails to pay his share of necessary expenses. The co-owners who pay their expenses, of course, have a right of contribution against the defaulting co-owner. They are entitled to an equitable lien on the premises for the amount of such payments. However, in order to enforce either of these remedies, the co-owners paying the expenses must establish that the expenses were necessary for the preservation or use of the property. No co-owner has the right to make permanent improvements without the consent of the other co-owners. If he does so without such consent, he has no right of contribution against the other co-owners and can collect for his improvements only upon the sale of the premises and a showing that the price received upon the sale was increased by the value of the improvements. He will have the right to receive the income that can be ascribed to the improvements. He will have no right, until final disposition of the property, to a contribution from the others for their actual cost.

The entire area of additional cash contributions for improvements to the trust property is a special breeding ground for disputes among beneficiaries and the partners. In addition, the area of payment for repairs and improvements of the trust property should be considered by the beneficiaries and provisions should be made in the agreement to reflect their desires rather than relying on the Florida Revised Uniform Partnership Act or the common law. For example, the agreement could provide that repairs up to a certain cost amount be made unilaterally by the managing partner, if any, or by the building manager, and improvements or repairs above that amount must be agreed upon by all, or at least the majority, of the beneficiaries.

v) Remedies of Co-Owners: By a properly drawn beneficiary agreement much more pressure can be brought to bear upon a defaulting co-owner. The agreement should specify that a defaulting co-owner can be sued for amounts due from him, and it should also indicate that the amount due from him is collectible from any income due to him out of the proceeds of any sale or cash flow from the trust property. One of the most common procedures used to handle a defaulting, or unhappy partner, is the "buy-sell" provision found in among all partnership agreements. This provision would require that a written demand for compliance with the agreement be made on the defaulting co-owner and in the event of non-compliance for a specific period, the non-compliance would be treated as an offer by him to sell his interest in the property at the then book value. Since book value would normally be substantially less than fair market value, a defaulting co-owner would be strongly motivated to come up with his share of necessary expenses. Other penalty provisions may also be used, such as a forfeiture of all income or benefits until the default is cured.

vi) Right to possession: In the absence of a beneficiary agreement, any co-owner has the right to possess, share and use the property until such time as the other co-owners assert their rights. If such a co-owner takes possession of the property and, for example, raises crops himself, the other co-owner who stood by permitting him to do this has no right to any of the proceeds. The co-owner not in possession may demand that the other co-owners pay him rent for use of the property, and the occupying co-owner will be liable for a fair

rent. A properly drawn agreement will provide for possession of the property and rents and/or incomes to be charged and distributed among the beneficiaries, thus no co-owner can profit from the neglect of any other co-owner to act.

vii) Mortgage obligations: In the absence of very special circumstances, the beneficiaries of a land trust will have no personal liability for the payment of a mortgage debt or performance of any other obligations under a mortgage. Lawyers Title Guaranty Fund v. Koch, 397 So.2d 455 (4th DCA 1981). A beneficiary agreement providing that each of the co-owners shall be liable for the proportionate share of all expenses, could eliminate this exculpation from personal liability, making the co-owners personally liable for mortgage payments. Conversely, a clause could be included in the beneficiary agreement to eliminate the possibility that personal liability will be created where there was no personal liability in the actual agreement between the trustee and the mortgagee.

viii) Transfer or Sale of Beneficial Interest: One of the important advantages of the land trust form is the free transferability of the beneficial interest. Any beneficiary may assign his interest in the trust property to anyone he chooses and the other beneficiaries must accept this person as a co-owner. Since most people like to select their partners, if the beneficiaries want to prevent someone else from coming into ownership, a properly drawn beneficiary agreement will provide for the right of the remaining beneficiaries to control the selection of any new members to the land trust. This is handled by the "buy-sell" provision; the group of beneficiaries maintains the right of first refusal on any sale of a beneficial interest. Sample "tag along" and "drag-along" provisions are attached as Appendix F. Please note that these are sample provisions only and must be tailored to fit the terms and conditions of each situation.

Beneficiary agreements often provide that if a beneficiary wishes to sell his interest, he must offer his beneficiary interest to the remaining beneficiaries at its then book value (cost less depreciation). This is based upon the belief that the remaining beneficiaries should not have to buy out the beneficiary wishing to leave the partnership at an appreciated value when the selling beneficiary does not want to continue in the group. This, of course, very much limits free transferability of beneficial interests and prevents a beneficiary from realizing the appreciation of his investment. This procedure is probably best used in the situation where the remaining beneficiaries are "bailing out" a beneficiary who cannot meet a cash call for additional partnership expenses. A more common "buy-sell" provision would allow any beneficiary to offer his interest for sale to the group of beneficiaries at an agreed upon price, usually determined by appraisal, and the group would be required to purchase the interest at the agreed price.

ix) Death or Incompetency: Death or incompetency, however, are not within the control of the beneficiary, and in such an event it is desirable to have an appraisal made to make sure the estate of the deceased or the incompetent will get the fair market value for the beneficial interest. Of course, the purchase agreement should be flexible and not mandatory, and the remaining beneficiaries should have the right to decide whether or not they want to buy and should not be forced into it.

x) General Considerations: Depending on the type of property involved, the complexity of the operation and management of the property, and the number of beneficiaries, there are many matters that can be included in a properly drawn beneficiary agreement. The matter of selecting a building manager or one of the co-owners to manage and operate the property can be clearly set forth in the agreement. Interest rates on loans from or to co-owners can be established as well as the matter of selecting accountants, lawyers, and other

professionals who may assist in the operation of the property. If the beneficial interest is held by a partnership, a method of accounting to be used can be stated and a fiscal year can be established. Special provisions can be drafted to deal with the authority to make improvements and repairs. The authority to make leases, mortgages, and deeds of property should be spelled out. This is most important when giving directions to the trustee to make leases, mortgages and deeds since the trustee will want it clearly established from whom he will be required to take written direction to take these actions.

LIST OF ATTACHMENTS

1. Appendix A: Proposed Legislation
2. Appendix B: Form of Trust Agreement
3. Appendix C: Form Deed of Trust
4. Appendix D: Form Trustee's Deed
5. Appendix E: Form Beneficiary Agreement
6. Appendix F: Form Affidavit of Beneficiaries
7. Appendix G: Sample Provisions

APPENDIX A

Land Trust Act

See attached

APPENDIX B

Form of Land Trust Agreement

LAND TRUST AGREEMENT

THIS TRUST AGREEMENT, dated as of the ____ day of _____, 20____, entered into by and between _____, as Trustee, under Land Trust No. _____, hereafter called the "Trustee" which designation shall include all successor trustees, and _____, hereinafter called the "Beneficiary", whether one or more, which designation shall include all successors in interest to any beneficiary or beneficiaries:

WITNESSETH

WHEREAS, _____, is about to convey to the Trustee, as Trustee under this Agreement, title to the property in _____ County, Florida described on Exhibit "A" attached hereto (herein called the "Property"); and,

WHEREAS, when the Trustee has taken title to that Property, or to any other property conveyed to him as Trustee under this Agreement, he will hold the title, in trust, for the uses and purposes and subject to the terms and conditions as hereinafter set forth; and,

WHEREAS, it is further the intent of Trustee to take title to the Property in accordance with the provisions of Section 689.071, Florida Statutes; and,

WHEREAS, the Trust created by this instrument shall be known for all purposes as Land Trust No. _____.

NOW, THEREFORE, in consideration of the mutual premises herein contained the parties hereto agree as follows:

1. **Property.** Title to the Property shall be conveyed to the Trustee in accordance with and the rights of the parties shall be governed, to the extent applicable, by the provisions of Section 689.071, Florida Statutes. The Trustee agrees to accept the deed to the Property and to cause said deed to be recorded in the Public Records of _____ County, Florida, and to hold title to the Property for the uses and purposes herein stated. The Beneficiary shall advance to the Trustee all monies required by the Trustee to record said deed including, but not limited to, all appropriate documentary stamp taxes. The Beneficiary may not dedicate or cause any other property to be conveyed to the Trustee under this Trust Agreement unless the Trustee consents thereto in writing. Should other property subsequently be conveyed to and held by the Trustee pursuant to this Trust Agreement, the term "Property" as used herein shall mean and refer to all property, the title to which is held by the Trustee pursuant to this Trust Agreement. This Trust Agreement is identified as Trust Agreement No. _____, dated the ____ day of _____, 20____.

2. **Names, Addresses and Interests of Beneficiaries:**

(a) The following is the Beneficiary of this Trust, and as such shall be entitled to all of the earnings, avails and proceeds of the trust property according to the percentage interest set forth opposite its name:

NAME OF BENEFICIARY

INTEREST IN TRUST

100%

(b) The interest of the Beneficiary shall consist solely of the following rights respecting the trust property:

(1) Power to direct the Trustee to deal with title to the Property, which power shall include, but is not limited to, directions to the Trustee to execute deeds, leases, mortgages, promissory notes and all other instruments relating to the Property, provided, however, as set forth in paragraphs 12 and 22 of this Trust Agreement, the Trustee shall have no individual liability whatsoever nor shall the Trustee be required to furnish any warranties that would result in any individual liability in regard to the execution of any such instruments.

(2) Power to manage, possess, use and control the Property.

(3) Right to receive the earnings, avails and proceeds from leases and other uses and from mortgages, sales and other dispositions of the Property.

(4) Enjoyment of all rights and privileges regarding the Property as if the Beneficiary was the legal and equitable owner of the Property.

Such rights and powers, as well as the interest of the Beneficiary under this Trust Agreement, shall be personal property. The Beneficiary shall not have any right, title or interest in or to any portion of the legal or equitable title to the Property. If the Beneficiary is a human being, the death of the Beneficiary (or any of the persons contained in the term Beneficiary if more than one person signs this Trust Agreement as the Beneficiary) shall not terminate this Trust Agreement or the trust created hereby or affect the rights or powers of the Trustee or of the Beneficiary except as provided by law and the interest of the Beneficiary of this Trust Agreement, pass to his personal representative and not to his devisees or heirs at law.

3. Obligation of Trustee with Respect to Property. The Trustee shall have no obligation to file any income, profit or other tax reports or returns or pay such or any other taxes relating to the Property, provided, however, that the Trustee shall have the right but not the obligation to file any tax return or pay taxes relating to the Property which it, in its absolute discretion, deems should be filed by it, and in such event the Beneficiary will cooperate with the Trustee in providing such information as is necessary to the proper and correct preparation of such return and the Beneficiary shall promptly pay to the Trustee the amount of said taxes as set forth in paragraph 12 hereof. The Beneficiary shall make all returns and reports and pay all real estate and all other taxes or charges payable with respect to the Property and to the earnings, avails and proceeds of the Property or based on his interest under this Trust Agreement.

4. Objects and Purposes of Trust. The objects and purposes of this Trust shall be to hold title to the Property until its sale or other disposition or liquidation or until the expiration of this Trust Agreement as provided in paragraph 20 hereof. The Trustee shall not manage or operate the Property nor undertake any other activity not strictly necessary to the attainment of the foregoing objects and purposes; nor shall the Trustee transact business of any kind with respect to the Property within the meaning of Chapter 609 of the Florida Statutes, or any other law; nor shall this

Agreement be deemed to be, or create or evidence the existence of a corporation, de facto or de jure, or a Massachusetts Trust, or any other type of business trust, or an association in the nature of a corporation, or a co-partnership or joint venture by or between the Trustee and the Beneficiary, or by or between the Beneficiaries, if there be more than one.

5. Beneficiary Manages and Operates Trust Property. The Beneficiary shall have the sole possession, management and control of the selling, renting, repairing, maintaining and handling of the Property and the Trustee shall have no right or duty in respect to such matters. The Beneficiary shall and does hereby indemnify and hold the Trustee harmless from and against all expenses, including attorney's fees, obligations and liabilities which the Trustee may incur or become liable for by virtue of the Beneficiary performing the matters set forth herein or by virtue of the fact that the trustee holds legal title to the Property. The Beneficiary shall have the right to execute leases and collect rents in its own name or through its agents. The Beneficiary is not the agent of the Trustee for any purpose whatsoever and does not have any authority whatsoever to contract or to execute leases or to do any other act or in the name of the Trustee or to obligate the Trustee personally or as Trustee.

6. Protection of Third Parties Dealing with Trustee. No party dealing with the Trustee in relation to the Property in any manner whatsoever, and (without limiting the foregoing) no party to whom the Property or any part of it or any interest in it shall be conveyed, contracted or sold, leased or mortgaged by the Trustee, shall be obliged (a) to see to the application of any purchase money, rent or money borrowed or otherwise advanced on the Property, (b) to see that the terms of this Trust Agreement have been complied with, (c) to inquire into the authority, necessity or expediency of any act of the Trustee or (d) be privileged to inquire into any of the terms of this Trust Agreement. Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the Property shall be conclusive evidence in favor of every person claiming any right, title or interest under the Trust (a) that at the time of its delivery the Trust created under this Agreement was in full force and effect; (b) that instrument was executed in accordance with the terms and conditions of this Agreement and all its amendments, if any, and is binding upon all Beneficiaries under it; (c) that the Trustee was duly authorized and empowered to execute and deliver each such instrument; (d) if a conveyance has been made to a successor or successors in trust, that the successor or successors have been appointed properly and are vested fully with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in trust.

7. Trust Agreement Not to be Recorded. This Agreement shall not be placed on record in the county in which the trust property is situated, or elsewhere, but if it is so recorded, that recording shall not be considered as notice of the rights of any person under this Agreement derogatory to the title or powers of the Trustee.

8. Beneficiary Cannot Bind Trustee or Other Beneficiary. No Beneficiary shall have the authority to contract for or in the name of the Trustee or any other Beneficiary or to bind the Trustee or any other Beneficiary personally.

9. Forbidding Use of Name of Trustee for Publicity. The name of the Trustee shall not be used by the Beneficiary in connection with any advertising or other publicity whatsoever without the written consent of the Trustee.

10. Insurance. The Beneficiary shall during the term of this Trust Agreement maintain and purchase at its expense insurance either in the name of the Trustee or showing the Trustee as an additional insured thereunder with said insurance to protect the Trustee against public liability in the amount of \$_____ and to protect the Trustee against such other hazards or liabilities

as the Trustee may reasonably require and in such amounts as the Trustee may reasonably require. All such insurance shall be written on insurance companies reasonably acceptable to the Trustee. At the request of the Trustee, said policies of insurance shall be delivered to the Trustee or, in lieu thereof, certificates reflecting said coverage shall be delivered to the Trustee. In all events, said policies of insurance and certificates shall contain a provision that thirty (30) days notice shall be given to the Trustee by the insurance company issuing said policies prior to cancellation or termination of said policies of insurance. In the event the Beneficiary fails to make any payment for premiums on said policies of insurance the Trustee may, but is not required to, make said payment and said payment shall be considered an advance made by the Trustee under the provisions of paragraph 12 of this Trust Agreement.

11. Multiple Beneficiaries. In the event that the term "Beneficiary" as used in this Trust Agreement includes more than one beneficiary, then, in that event, all persons included in the term "Beneficiary" shall be jointly and severally liable for obligations of the Beneficiary under this Trust Agreement.

12. Trustee Responsibility to Make Advances or Incur or Pay Expenses. The Trustee shall have the right, but not the duty, to make any advances or incur or pay any expenses on account of this Trust Agreement or the Property. If the Trustee shall make any such advances or incur or pay any such expenses on account of this Trust Agreement of the Property, or shall incur any expenses by reason of being a party to any litigation in connection with this Trust Agreement or the Property, or if the Trustee shall be compelled to pay money on account of this Trust Agreement or the Property, whether for breach of contract, injury to person or property, taxes of any kind, fines or penalties under any law, or otherwise, in any manner under this Trust Agreement as set forth in paragraph 22 (provided, however, the Trustee shall not be individually liable in any manner under this Trust Agreement as set forth in paragraph 22 hereof) the Beneficiary, on demand by the Trustee, shall pay to the Trustee, with interest at the highest rate permitted by law, the amount of all such expenses, advances or payments made by the Trustee, plus all its expenses, including attorneys' fees, incurred by the Trustee in said matters, including attorneys' fees for appeals. The Trustee shall have the right, but not the duty, to employ and consult with attorneys regarding this Trust Agreement and the Property, and any and all costs and expenses incurred by the Trustee by virtue of said employment and consultation shall be deemed to be an advance or expense made or incurred by the Trustee under this paragraph to be paid by the Beneficiary on demand. Any other monies expended by the Trustee under any other provision of this Trust Agreement shall also be deemed to be an advance made by the Trustee under this paragraph 12. The Beneficiary further agrees to indemnify and hold the Trustee harmless of and from any and all expenses, including but not limited to, all costs and attorneys' fees, advances, payments or liabilities incurred by it for any reason whatsoever as a result of this Trust Agreement or the Trustee holding legal title to the Property under this Trust Agreement. The Trustee shall not be obliged to convey, transfer or otherwise deal with the Property or any part of it or to follow any instructions of the Beneficiary unless and until all of the payments, advances and expenses made or incurred or paid by the Trustee on account of this Trust Agreement or the Property shall have been paid, with interest at the rate set forth herein. Further, after making written demand on the Beneficiary to pay to the Trustee all payments, advances and expenses made or incurred by the Trustee on account of this Trust Agreement or the Property, the Trustee shall be entitled to and shall have a lien on the Property to secure all such payments, advances and expenses, together with interest thereon at the rate set forth herein and all costs and expenses, including attorney's fees, which the Trustee may incur or become liable for in collecting said amounts from the Beneficiary.

13. Trustee Responsibility with Respect to Legal Proceedings. The Trustee shall be under no duty to take any action, to pay any money or to incur any expenses in regard to any legal

proceeding involving this Trust Agreement or the Property unless it shall elect, in its absolute discretion, to do so and be furnished with sufficient funds or be indemnified to its satisfaction by the Beneficiary. If the Trustee is served with process or notice of legal proceedings or of any other matters concerning this Trust Agreement or the Property, the sole duty of the Trustee shall be to forward the process or notice to the Beneficiary as provided in paragraph 30 hereof; in such case, the Beneficiary may defend said action in the name of the Trustee with counsel reasonably acceptable to the Trustee provided, however, the Trustee may at any time resign as such under this Trust Agreement or personally appear in said proceeding.

14. Resignation or Death of Trustee. The Trustee may resign at any time by giving written notice of such intention to resign to the Beneficiary. The resignation shall become effective after the Trustee shall have executed any and all documents furnished to the Trustee by the Beneficiary and satisfactory to the Trustee for execution, which documents shall be for the purpose of conveying to any successor trustee all existing rights of Trustee under this Trust Agreement and title to the Property provided, however, that in all events said resignation shall become effective no later than thirty (30) days after notice of resignation has been delivered to the Beneficiary. If the Trustee is advised in writing by the Beneficiary as to who the successor trustee is to be, the Trustee has the right, but not the duty, to prepare, execute, deliver and/or record any and all documents which are necessary in the absolute discretion of the Trustee to convey or transfer title to the Property to such successor trustee. If notice of the successor trustee is not given to the Trustee in writing within twenty (20) days after notice of resignation has been delivered to the Beneficiary or if the Beneficiary fails to furnish documents satisfactory to the Trustee for execution within twenty (20) days after notice of resignation has been delivered to the Beneficiary, the Trustee may convey title to the Property to the Beneficiary (and if more than one then in accordance with the respective interests of the Beneficiary as set forth in paragraph 25 of this Trust Agreement), and the deed of conveyance may be recorded by the Trustee. Notwithstanding the resignation by the Trustee as provided herein, the Beneficiary shall upon such resignation immediately pay to the Trustee all payments, advances or expenses made or incurred by the Trustee in regard to this Trust Agreement or the Property and the Trustee shall continue to have a lien on the Property to secure the payment of such sums as set forth in paragraph 12, which lien the Trustee may evidence by causing to be recorded in the Public Records of Orange County, Florida, a notice of lien specifying the amount of monies owed to it by the Beneficiary. The Trustee may thereafter enforce its lien against the Property by appropriate judicial proceeding and, in said proceeding, the Trustee shall be entitled to recover from the Beneficiary, and the same shall be a lien on the Property, all its costs and expenses, including attorneys' fees, in such proceeding. In the event that the Trustee is an individual and not a corporation, then, upon the death of the Trustee, the successor trustee shall be the following:

The recording in the public records of _____ County, Florida, of a death certificate for any trustee under this Trust Agreement shall be deemed to be a conveyance of title to the Property to the successor trustee.

15. Amendment of Trust Agreement. This Agreement contains the entire understanding between the parties and may be amended, revoked or terminated only by a written agreement signed by the Trustee and the Beneficiary.

16. Florida Law Governs. This Agreement shall be construed in accordance with the Laws of the State of Florida.

17. Notices. Any notice required to be given by the terms of this Agreement or by any applicable law by either party shall be in writing and shall be either hand delivered or sent by certified or registered mail, return receipt requested. Each written notice shall be addressed as follows:

If to Trustee: _____

If to Beneficiary: _____

Either party may, by subsequent written notice, designate a different address for receiving notice.

18. Certified Copies Satisfactory Evidence. Copies of this Agreement or any amendment to it, certified by the Trustee to be true and correct, shall be satisfactory evidence of such Agreement for all purposes.

19. Successors Bound by this Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon any successor trustee under it, as well as upon the personal representatives, administrators, heirs, assigns and all other successors in interest of the Beneficiaries. Every successor trustee shall become fully vested with all the title, estate, rights, powers, trusts and shall be subject to the duties and obligations of its predecessor under this Trust Agreement. The term Trustee shall thereafter mean and refer to said successor trustee.

20. Term. The term of this Trust Agreement shall be for a period of twenty-one (21) years from the date of this Trust Agreement, unless sooner terminated as otherwise provided in this Trust Agreement. Upon expiration of this Trust Agreement the Trustee shall convey the Property to the Beneficiary.

21. Trustee Acts Only on Written Authorization. It is agreed by the parties hereto that the Trustee will deal with the Property including cash or other assets of any kind which may become subject to this Trust Agreement only when authorized and directed to do so in writing by the Beneficiary. On the written direction of the Beneficiary, the Trustee shall execute deeds for, or mortgages or trust deeds (which may include a waiver of the right of redemption from sale under an order or decree of foreclosure) or execute leases all in regard to the Property or otherwise deal with the title to the Property including cash or other assets subject to this Trust Agreement, provided, however, that in regard to all documents to be executed by the Trustee, said documents shall be prepared by the Beneficiary and furnished to the Trustee with written direction by the Beneficiary to execute and redeliver to the Beneficiary or to any third person or persons. The Trustee shall not under any circumstances be obligated to execute any instrument which may, in the opinion of the Trustee, result in personal liability to the Trustee and rather than executing any instruments under this paragraph, the Trustee may resign as Trustee under this Trust Agreement as provided in paragraph 14 and, in the event the Trustee so resigns, the Trustee shall be under no duty to execute any instruments other than instruments provided in paragraph 14 regarding conveyance of title to the Property. The Trustee shall not be required to inquire into the propriety of any written direction by the Beneficiary or the authority of the person signing said direction. To the extent the Trustee follows any written direction received from the Beneficiary including, but not limited to, the execution by the Trustee in accordance with written direction of the Beneficiary of any deed or other

instrument relating to the Property and delivery of said deed or other instrument in accordance with said written instructions, the Trustee shall have no duty, liability or obligation whatsoever and the Beneficiary shall indemnify and hold the Trustee harmless from and against all claims, demands, costs and expenses, including attorneys' fees, losses, liabilities and obligations which the Trustee may pay, incur or sustain by virtue of the Trustee following said written instructions.

22. Trustee Not Individually Liable. The Trustee shall have no individual liability or obligation whatsoever arising from its ownership of or holding legal title to the Property, or with respect to any act done or contract entered into or indebtedness incurred by it in dealing with the Property or in otherwise acting under this Trust Agreement upon the direction of the Beneficiary except only so far as the Property and any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge of such liability or obligation. By way of illustration and not by way of limitation, the Trustee shall be under no duty whatsoever to execute or enter into any instrument or agreement which does not contain language acceptable to the Trustee providing that the Trustee shall have no personal liability whatsoever and that the liability of the Trustee shall be limited solely to any property that the Trustee holds under this Trust Agreement.

23. Disclosure of Interests. The Trustee shall not, without the prior written consent of the Beneficiary, disclose to any person this Trust Agreement or the Beneficiary for whom the Trustee holds title to the Property hereunder, unless compelled to do so by legal process. The Trustee shall not however be responsible under this paragraph for any inadvertent disclosures made by it.

24. Trustee Not Required to Give Warranty. The Trustee shall not be required to execute any instrument containing covenants of warranty.

25. Multiple Beneficiaries. In the event that the term "Beneficiary" as used in this Trust Agreement includes more than one beneficiary, then, in that event, all persons included in the term "Beneficiary" shall be jointly and severally liable for obligations of the Beneficiary under this Trust Agreement.

26. No Third-Party Beneficiary. This Trust Agreement is solely for the benefit of the parties hereto and no person or persons not a part to this Trust Agreement shall have any rights or privileges under this Trust Agreement either as a third-party beneficiary or otherwise.

27. Revocation and Amendment. The Beneficiary may, at any time, by written instrument delivered to the Trustee revoke, or with the consent of the Trustee, amend this Trust Agreement. In the case of revocation, the Trustee shall convey title to the Property in accordance with the procedures set forth in paragraph 14 of this Trust Agreement and, in the case of amendment, the Beneficiary shall furnish to the Trustee the written form of said amendment as executed by the Beneficiary. Upon the execution of said amendment by the Trustee, said amendment shall be considered to be an amendment to this Trust Agreement.

28. Residency of Beneficiary. The Beneficiary represents that it is a resident of _____ in United States of America.

29. Assignment of Beneficial Interest. The Beneficiary may not assign any or all of its interest as Beneficiary under this Trust Agreement unless and until both of the following two (2) conditions have been met:

(a) The original or executed duplicate of an assignment subscribed in the presence of two witnesses is delivered to the Trustee and the Trustee has accepted in writing said assignment provided, however, that the Trustee shall be under no duty or obligation whatsoever to so accept any assignment, and the Trustee may in its absolute discretion determine whether or not to accept said assignment and may in its discretion reject said assignment; and

(b) The assignee of any beneficial interest agrees in writing to be bound by all the duties and obligations of the Beneficiary under this Trust Agreement including, but not limited to, the duty and obligation to pay to the Trustee all advances and expenses set forth in paragraph 12.

Upon the acceptance by the Trustee of an assignment as set forth in subparagraphs (a) and (b) hereof, the Beneficiary so assigning his interest under this Trust Agreement shall have no further liability or obligation under this Trust Agreement but only for any acts of the Trustee taken or performed after the acceptance by the Trustee of said assignment provided said assignment conveys the entire interest of said assigning Beneficiary under this Trust Agreement. The Beneficiary shall continue to be liable for matters occurring prior to the acceptance by the Trustee of said Assignment. Every assignment of any beneficial interest, the original or duplicates of which shall not have been delivered to and accepted by the Trustee in writing, shall be wholly ineffective as to the Trustee and all subsequent assignees or purchasers without notice. Although the death of the Beneficiary (or any one of the persons contained in the term Beneficiary if more than one person signs this Trust Agreement as the Beneficiary) shall not be deemed an assignment of the interest of the Beneficiary under this paragraph (as set forth in paragraph 2 hereof), any assignment of said interest by the personal representative of the Beneficiary shall be deemed to be an assignment under this paragraph 29 subject to required acceptance by the Trustee.

30. Inquiries. Written inquiries, legal and other notices, tax statements and all other documents and writings received by the Trustee and relating to this Trust Agreement or the Property shall be sent and forwarded within a reasonable time after receipt by the Trustee to the Beneficiary.

31. Miscellaneous. The captions for the paragraphs contained herein are solely for the convenience of the parties and do not, in themselves, have any legal significance. Time is of the essence of this Trust Agreement. In this Trust Agreement, the plural includes the singular and, vice versa, and masculine, feminine and neuter pronouns and the words "Trustee" and "Beneficiary" shall each include all genders. This Trust Agreement constitutes the complete agreement between the parties hereto and there are no representations, agreement or understandings other than as set forth herein.

IN WITNESS WHEREOF, the Trustee and Beneficiary have executed this Agreement the day and year first written above.

Trustee:

Signature

, as Trustee

Printed name

Signature

Printed name
Witnesses as to Trustee

STATE OF FLORIDA)
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the county aforesaid, to take acknowledgments, personally appeared _____, who [is personally known to me] OR [has produced _____ as identification] and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20____.

Printed Name: _____
Notary Public, State of Florida at Large
Commission No.: _____
My Commission Expires: _____

Successor Trustee:

Signature

_____, as Successor Trustee

Printed name

Signature

Printed name
Witnesses as to Successor Trustee

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the county aforesaid, to take acknowledgments, personally appeared _____, who [is personally known to me] OR [has produced _____ as identification] and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20____.

Printed Name: _____
Notary Public, State of Florida at Large

Commission No.:
My Commission Expires:

Beneficiary:

Signature

Printed name

Signature

Printed name

STATE OF FLORIDA)
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the county aforesaid, to take acknowledgments, personally appeared _____, who [is personally known to me] OR [has produced _____ as identification] and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of February, 2003.

Printed Name: _____
Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

APPENDIX C

Form of Deed of Trust

PREPARED BY and RETURN TO:

**WARRANTY DEED TO TRUSTEE UNDER
LAND TRUST _____**

THIS WARRANTY DEED made this ____ day of _____, 20____, by _____, hereinafter called "Grantor", to _____, as Trustee under that certain land trust dated _____, 20____, and numbered _____, (hereinafter referred to as "Trustee") with full power and authority to protect, conserve and to sell, or to lease or to encumber, or to otherwise manage and dispose of the property hereinafter described and whose Post Office address is:

_____.

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Trustee, all that certain land situate in _____ County, Florida, to-wit:

See Exhibit A attached hereto and by
Reference incorporated herein.

This conveyance is subject to:

1. Taxes and Assessments for the year 20____ and subsequent years.
2. Zoning and other governmental regulations.

TO HAVE AND TO HOLD the above described real estate in fee simple with the appurtenances upon the trust and for the purposes set forth in this Deed and in the Land Trust No. _____, dated _____, 20____ (Trust Agreement).

Full power and authority is hereby granted to said Trustee to improve, subdivide, protect, conserve, sell, lease, encumber and otherwise manage and dispose of said property or any part thereof, to dedicate parks, streets, highways or alleys and to vacate any subdivision or part thereof, and to re-subdivide said property as often as desired, to contract to sell, to grant options to purchase, to sell on any terms, to convey either with or without consideration, to convey said property or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in

said trustee, to donate, to dedicate, to mortgage, pledge or otherwise encumber said property, or any part thereof, to lease said property, or any part thereof, from time to time, in possession or reversion, by leases to commence in present or future, and upon any terms and for any period or periods of time, not exceeding in the case of any single demise the term of 99 years, and to renew or extend leases upon any terms and for any period or periods of time and to amend, change or modify leases and the terms and provisions thereof at any time or times hereafter, to contract to make leases and to grant options to lease and options to renew leases and options to purchase the whole or in any part of the reversion and to contract respecting the manner of fixing the amount of present or future rentals, to partition or to exchange said property, or any part thereof, for other real or personal property, to submit said property or any part thereof to condominium, to place restrictions on the property or any part thereof, to grant easements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appurtenant to said premises or any part thereof and to deal with said property and every part thereof in all other ways, and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with the Trustee in relation to the real estate or to whom the real estate or any part of it shall be conveyed, contracted to be sold, leased or mortgaged by Trustee, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on the premises, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Trustee, or be obliged or privileged to inquire into any of the terms of the Trust Agreement or Declaration of Trust or the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom the Trustee may be accountable; and every deed, trust deed, mortgage, lease or other instrument executed by Trustee in relation to the real estate shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease or other instrument (a) that at the time of its delivery the trust created by this Indenture and by the Trust Agreement and Declaration of Trust was in full force and effect, (b) that the conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in the Trust Agreement and Declaration of Trust and is binding upon all beneficiaries under those instruments, (c) that Trustee was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument and (d) if the conveyance is made to a successor or successors in trust, that the successor or successors in trust have been appointed properly and vested fully with all the title, estate, rights, powers, duties and obligations of the predecessor in trust. If there are co-trustees, it is specifically understood that the signature of only one of the Co-Trustees shall be required to accomplish the foregoing.

Any contract, obligation or indebtedness incurred or entered into by Trustee in connection with said property shall be as Trustee of an express trust and not individually and the Trustees shall have no obligations whatsoever with respect to any such contract, obligation or indebtedness except only as far as the trust property and funds in the actual possession of Trustee shall be applicable for the payment and discharge thereof; and it shall be expressly understood that any representations, warranties, covenants, undertakings and agreements hereinafter made on the part of the Trustee, while in form purporting to be the representations, warranties, covenants, undertakings and agreements of said Trustee, are nevertheless made and intended not as persona representations, warranties, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purpose of binding only the trust property

specifically described herein; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the trustee individually on account of any instrument executed by or on account of any representation warranty, covenant, undertaking or agreement of the said Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released and all persons and corporations whomsoever and whatsoever shall be charged with notice of this condition from the date of the filing for record of this Deed.

The interest of each beneficiary under this Deed and under the Trust Agreement referred to previously and of all persons claiming under them or any of them shall be only in the earnings, avails and proceeds arising from the sale or other disposition of the real estate, and that interest is declared to be personal property, and no beneficiary under this Deed shall have any title or interest, legal or equitable, in or to the real estate as such but only as interest in the earnings, avails and proceeds from that real estate as aforesaid.

In the event of the death of the Trustee, the successor trustee under the trust agreement referred to above shall be _____, and upon a recording in the public records of _____ County, Florida, of a death certificate of the Trustee or of any successor trustee, title to the land described herein shall be deemed to be held by the successor trustee and to pass to the successor trustee without the requirement of recording any further or additional documents.

This deed is given and accepted in accordance with Section 689.071, Florida Statutes. The Trustee shall have no personal liability whatsoever for action as trustee under the trust agreement referred to above or by virtue of taking title to the land described above and the sole liability of Trustee hereunder shall be limited to the property which the Trustee holds under the trust agreement referred to above.

And the Grantor by this Deed fully warrants the title to the above-described real estate and will defend the title against the lawful claims of all persons whomsoever. "Grantor", "Grantee", "Trustee", and "Beneficiary" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, the Grantor aforesaid has set its hand and seal this _____ day of _____, 20____.

Witnesses to both parties:

Signature

Printed name

Signature

Printed name

STATE OF FLORIDA)

COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared _____, who [is personally known to me] OR [has produced _____ as identification] and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20____.

NOTARY PUBLIC
My commission expires:

APPENDIX D

Form of Trustee's Deed

PREPARED BY AND RETURN TO:

TRUSTEE'S DEED

THIS INDENTURE made this ____ day of _____, 20____ between _____ as Trustee under that certain Land Trust No. _____, dated _____. 20____, hereinafter called the "Grantor" and _____, hereinafter called "Grantee", whose address is _____.

W I T N E S S E T H:

THAT GRANTOR, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain and sell to Grantee, the following described property in _____ County, Florida, to-wit:

See Exhibit A attached hereto and incorporated herein by reference.

This conveyance is subject to:

1. Zoning and building ordinances and other governmental regulations.
2. Taxes and assessments for 20____ and subsequent years.
3. All easements, restrictions, limitations of record and all matters of survey.

TOGETHER WITH ALL THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREOF BEING OR IN ANY WISE APPERTAINING.

TO HAVE AND TO HOLD the same unto the Grantee and Grantee's heirs and assigns forever.

"Grantee" is used for singular or plural as the context requires.

IN WITNESS WHEREOF, Grantor has hereunto affixed his seal as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Signature

Printed name

. as Trustee
under Land Trust No. _____ dated
_____, 20____

Signature

Printed name

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, as Trustee of
_____, on behalf of the Trust. [He] [She] is personally
known to me OR has produced _____ as identification.

Notary Public
Print name: _____

My commission expires:

APPENDIX E

BENEFICIARY AGREEMENT (CO-OWNERSHIP)

This is a Beneficiary Agreement made this ____ day of _____, 20__ between and _____.

_____ and _____ are beneficiaries of a Land Trust Agreement dated the ____ day of _____, 20__ and known as Trust Number One (the "Trust Agreement"). _____ is the trustee of the Trust Agreement. The principal of the Trust Agreement consists of certain real estate that may from time to time be conveyed to the Trustee as legally described on an addendum or addenda attached to the Trust Agreement (the "Trust Property").

The beneficiaries desire to impose certain restrictions and obligations on themselves and their beneficial personal property interest in the Trust Agreement. They also desire to facilitate liquidation of the interest of any deceased beneficial owner of an interest in the Trust Agreement.

For the reasons described above and in consideration of their mutual covenants, the beneficiaries agree as follows:

1. Co-Ownership; Division of Profits. The beneficiaries shall share in the earnings, avails and proceeds of Trust Property in the proportions stated in the Trust Agreement, which provides that directions to the Trustee must be signed by all beneficiaries.

2. Collection, Deposit and Disbursement of Funds. The beneficiaries shall open a checking account with a banking institution which account shall require the signature of at least one of the beneficiaries for withdrawal. All cash receipts from the Trust Property shall be promptly deposited in such account, and all expenses of operating the property, including taxes, insurance, legal fees, accounting fees and all other necessary disbursements, shall be paid from such account.

3. Maintenance of Books of Account. Full and accurate books of account, showing all income, expense advances, withdrawals, assets and liabilities, shall be maintained by such accountants as may be designated by the beneficiaries.

4. Expenses and Contributions.

A. The Trust Property is being acquired or held for investment purposes. No beneficiary shall have any authority to obligate the others for any expense or liability in connection therewith, or to contract or deal with the Trust property on behalf of the others in any manner. Each beneficiary shall be liable only for his share of the purchase price, taxes, special assessments, public liability and casualty insurance, maintenance costs, and other expenses of the Trust Property.

B. Failure by the beneficiary to contribute his share of money necessary to accomplish any expenses or liability in association therewith shall, at the option of the majority in interest of the other beneficiaries, create a debt from the delinquent beneficiary to the other beneficiaries in the amount of his liability, plus interest at _____% per annum above the prime

rate of interest as announced from time to time by _____ thereon until paid, collectible either by suit or by charging it against income or proceeds of sale then or thereafter due to the delinquent beneficiary. A majority in interest of the other beneficiaries (or if there be only two beneficiaries, then either beneficiary) may, if that failure shall continue for three months or more, consider that failure as an offer by the delinquent beneficiary to sell his interest under for the fair market value of the delinquent beneficiary's interest as determined under paragraph 6 of this Agreement, less the delinquent beneficiary's proportionate interest in the face amount of all trust liabilities, and all State Documentary Stamp tax assessed on the assignment of the delinquent beneficiary's interest.

C. The beneficiary hereby acknowledge that _____ has, concurrently with the execution of this Agreement by the beneficiaries, contributed \$ cash to the account of the Trust for the accomplishment of the trusts purposes. Such contribution shall be a continuing obligation of the trust and shall bear interest at the rate of % per annum above the prime rate of interest as announced from time to time by _____, payable interest only quarterly from the income of the trust. Such debt shall be satisfied in full by the beneficiaries in proportion to their respective interests in the trust upon the earlier of the sale of such beneficiary's interest in the trust or termination of the trust.

5. Sale or Assignment of Interest.

A. A beneficiary (the "Offeror Beneficiary") shall not sell, exchange, gift, pledge, hypothecate, transfer, or assign, whether voluntary, by operation of law, at judicial sale, or otherwise (hereinafter referred to as "assign"), the whole or any part of his interest in the Trust Agreement unless he shall first offer in writing to sell such interest to the other beneficiary or beneficiaries (hereinafter sometimes referred to as the "Offeree Beneficiary") at a price and on terms no less favorable than (i) those that the Offeror Beneficiary is willing to accept from a third party, or (ii) that are determined in accordance with paragraph 6 (if an offer has not been received or is unavailable from a third party). The Offeree Beneficiary shall have five (5) days from receipt of such written notice to accept the offer to purchase such interest according to the relative percentage interest of the other beneficiary or beneficiaries, or, if one or more of the other beneficiaries do not intend to exercise their proportionate right to purchase said interest, then according to any other percentages agreed to by the other beneficiaries who are willing to make such a proportionate purchase. The acceptance shall be evidenced by writing notice to the Offeror Beneficiary, and shall specify the time (no more than 60 days from date of acceptance) and place of closing such sale. If such offer is not accepted with respect to the entire interest being offered for sale, the Offeror Beneficiary desiring to assign his interest shall be free to assign it to any other person or persons at the price and upon the terms specified in his offer; provided, however, that he shall not assign such interest to any other person at a price less than, or upon terms more favorable than those offered the Offeree Beneficiary, or after the lapse of more than six (6) months from the date of the written offer to the Offeree Beneficiary, without first reoffering such interest to the Offeree Beneficiary for sale pursuant to the procedure above set forth, which reoffer shall be deemed an initial offer for the purposes of this paragraph. The Offeror Beneficiary desiring to assign his interest, as a condition to the assignment of his interest to any person other than the Offeree Beneficiary hereunder, shall first obtain the written agreement of the prospective assignee to be bound by all of the terms of this Agreement then in effect.

B. Any assignment in violation of the provisions of this paragraph shall only be effective to give the assignee the right to receive any distribution of profits to which his assignor would otherwise be entitled, but shall not give the assignee the right to be or become a

substituted owner of an interest in the Trust Agreement for purposes of exercising management and control of the trust property.

C. The provision of this paragraph 5 shall not apply to a gift of an interest in the Trust Agreement from a beneficiary to his spouse, to his descendants, to a trust or other entity established primarily for the benefit of the beneficiary, his spouse or his descendants, or to the beneficiary's legal guardian, but they shall apply to any assignment (whether voluntarily, by operation of law, at judicial sale, or otherwise) by said beneficiary's spouse, descendants, such trust, or such guardian to the same extent that they would have applied to said beneficiary.

6. Death of a Beneficiary.

A. The remaining beneficiary or beneficiaries shall have the right to purchase the interest of a deceased beneficiary according to their relative percentage interests under the Trust Agreement, or, if one or more of the remaining beneficiaries do not intend to exercise their proportionate right to purchase said interest, then according to any other percentages agreed to by the remaining beneficiaries who are willing to make such a proportionate purchase. Such election shall be exercised by written notice given to the personal representative of the deceased beneficiary within three (3) months after the appointment of such personal representative. The personal representative is not bound to sell the deceased beneficiary's interest unless the remaining beneficiary or beneficiaries elect to purchase the entire interest of the deceased beneficiary.

B. The value of a deceased beneficiary's interest for purposes of this Agreement shall be equal to the excess of the aggregate fair market value of the Trust Property over the aggregate face amount of all trust liabilities multiplied by the percentage interest in the earnings, avails and proceeds owned by the deceased beneficiary. The value of the Trust Property shall be determined as of the date of the beneficiary's death (or the date of notice of assignment in the case of a proposed assignment under paragraph 5 if an offer has not been received or is unavailable from a third party). The terms of payment of the price for the interest of a deceased beneficiary (or of a selling beneficiary if an offer has not been received or is unavailable from a third party) shall, unless otherwise agreed, be as follows: 25 percent of the price shall be paid in cash at the closing and the balance of the price shall be paid by the executing and delivering at the closing to the deceased beneficiary's estate of heirs or the selling beneficiary a promissory note payable to the order of the seller for the amount of the balance of the price. The note shall bear interest at an annual rate equal to the designated prime rate announced by _____ as of the closing date. Unless otherwise agreed, principal and interest on the note shall be payable in 60 equal, monthly installments until paid in full, and the first monthly installment shall be due one month after the closing date. The note shall contain the following terms: (i) upon default in payment of principal or interest, the entire unpaid balance of principal and all accrued interest on the note shall, at the option of the holder, become immediately due and payable, (ii) the note may be prepaid without penalty, at any time as a whole and from time to time in part, and (iii) upon default in payment of all or any part of installments of principal or interest, the defaulting party shall pay all costs and expenses of collection, including reasonable attorneys' fees.

C. If any disagreement exists as to the value of the Trust Property in connection with the purchase of a deceased or selling beneficiary's interest in the Trust Agreement, the Trustee shall employ an independent MAI certified appraiser to determine the value of the Trust Property. The Trustee shall promptly give notice to all beneficiaries (including the personal representative and heirs of a deceased beneficiary) of the name and address of the

appraiser. If a beneficiary or personal representative of a deceased beneficiary disagrees with the appointment of an independent appraiser, he may designate one additional independent appraiser, and those two appraisers shall appoint a third independent appraiser, and the value of the Trust Property determined by each of the three appraisers shall be the average of the two appraisals most nearly equal in appraised value. The appraisal with the greatest difference in appraised value between the two closest appraisals shall be disregarded. An appraisal made pursuant to this paragraph 6C shall be binding on both the Trustee and all the beneficiaries (including the personal representative of a deceased beneficiary). The cost of the appraisal selected by the Trustee shall be borne equally by the buyer and seller. If a beneficiary or personal representative desires another appraisal pursuant to the terms of this paragraph, the beneficiary or personal representative desiring such appraisal shall be solely responsible for the cost of that appraisal. The cost of the third appraisal shall be borne equally by the buyer and seller. All appraisals shall be performed by independent MAI certified appraisers.

7. Amendments. Any amendments to this Agreement shall require the approval of all the beneficiaries who enter this Agreement.

8. Miscellaneous.

A. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

B. This Agreement shall extend to and shall be binding upon the personal representatives, successors, and assigns of the beneficiaries.

C. The paragraph headings or designations used throughout this Agreement have been inserted solely for convenience in reference and shall in no way be taken to limit or extend the natural and proper construction or meaning of the language employed within the paragraph.

D. Any reference made in this Agreement to any gender shall be deemed to include either masculine or feminine, as appropriate, and any reference to any number shall be deemed to include both singular and plural where the context of the provisions of this Agreement shall permit or require.

Executed by the beneficiaries the day and year first above written.

WITNESSES:

_____ (SEAL)

Witnesses as to _____
_____ (SEAL)

Witnesses as to _____

APPENDIX F

Sample Provisions

“Tag Along” Rights: In the event that a beneficiary proposes to sell or otherwise transfer any or all of its beneficial interest to any person or group of persons (a “Proposed Transferee”), then the remaining beneficiaries shall have the right to sell their beneficial interest to such Proposed Transferee in the same transaction or transactions and on the same terms as provided herein. The beneficiaries shall have the right to sell or transfer that portion of their beneficial interest so that after the transfer to the Proposed Transferee, the Proposed Transferee shall have acquired its beneficial interest proportionately from each beneficiary desiring to sell to such Proposed Transferee based upon the interests held by each of the selling beneficiaries. The price at which each beneficiary’s interest or portion thereof shall be sold hereunder shall be equal to the price paid by the Proposed Transferee for any equivalent beneficial interest purchased from the initial selling beneficiary. At least ____ days prior to any sale or transfer by a beneficiary of its beneficial interest, the selling beneficiary shall notify the remaining beneficiaries in writing of the proposed sale or transfer (the “Notice of Sale or Transfer”), which notice shall state the interest proposed to be sold or transferred, the aggregate interest that will be owned by the Proposed Transferee upon consummation of such sale or transfer, the purchase price and the date such proposed sale or transfer is expected to occur. Each beneficiary that elects to exercise its right to sell in connection with such proposed sale pursuant to this subsection shall notify the selling beneficiary in writing of such election not later than ____ days after the receipt by the beneficiary of the Notice of Sale or Transfer.

“Drag-Along” Rights: Every beneficiary shall notify the remaining beneficiaries in writing of every offer or indication of interest that it receives from a third party for the sale or transfer of its beneficial interest, regardless of the formality of the offer (a “Purchase Offer”). The written notice of the Purchase Offer must be given to the remaining beneficiaries within ____ days after receipt of the Purchase Offer. The written notice must state the name and address of the purchaser, the terms and conditions of the Purchase Offer, and if applicable, the percentage of Partnership Interests to be sold or exchanged. The selling beneficiary has the right to require the remaining beneficiaries to sell or exchange all of their beneficial interests to the person or entity making the Purchase Offer upon the same terms and conditions of the Purchase Offer (provided, however, the purchase price shall be at least the fair market value of the beneficial interests at the time of the Purchase Offer) or the remaining beneficiaries can elect to purchase the selling beneficiary’s interest upon the same terms and conditions of the Purchase Offer.