

**ABA Section of Real Property, Probate and Trust Law  
Young Lawyers Institute  
April 27, 2007**

**THE BASICS OF LIFE INSURANCE PLANNING**

**I. PURPOSE OF LIFE INSURANCE**

*A. GENERALLY*

1. Support for dependents
2. Replace lost income
3. Educational Funds
4. Emergency Fund
5. Provide immediate cash

*B. LIFE INSURANCE & ESTATE PLANNING*

1. Governed by contract law
2. Non probate asset
  - a) Exception - Incidents of ownership
3. Pay expenses after death
4. Funeral
5. Estate taxes
6. Administration expenses
7. Provide liquidity
8. Income Tax Planning or Investments

**II. TYPES OF LIFE INSURANCE**

*A. TERM*

*B. WHOLE*

*C. VARIABLE*

*D. SECOND-TO-DIE*

*E. SPLIT DOLLAR ARRANGEMENT*

**III. BENEFICIARIES OF THE POLICY**

*A. Insured*

*B. Individuals*

*C. Businesses*

*D. Trust*

**IV. LIFE INSURANCE TRUSTS**

*A. ESTATE TAX CONSEQUENCES*

*B. CONSIDERATIONS*

*C. UNFUNDED*

*D. FUNDED*

*E. REVOCABLE*

*F. IRREVOCABLE*

**V. IRREVOCABLE LIFE INSURANCE TRUSTS (ILIT)**

*A. ADVANTAGES*

*B. DISADVANTAGES*

*C. ANNUAL GIFT TAX EXCLUSION*

*D. CRUMMEY DEMAND POWER*

1. A gift of an insurance policy in trust is a non-qualifying gift of a future interest – unless use a Crummey Demand Power
2. Period of Demand
3. Notices to Beneficiary
4. Superiority to other powers
5. Assets against which demand may be exercised

*E. FORM OF CRUMMEY NOTICE*

*F. LAPSE OF CRUMMEY POWER = GIFT OF FUTURE INTEREST*

1. Five-or-Five Power
2. Crummey Powers with Testamentary Control
3. Hanging Crummey Power

THIS INDENTURE, made the \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_, between \_\_\_\_\_, of \_\_\_\_\_,  
(hereinafter referred to as the "Donor") and \_\_\_\_\_, of \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_,  
(hereinafter referred to as the "Trustees");

W I T N E S S E T H:

The Donor hereby transfers and delivers unto the Trustees the property described in Schedule A, attached hereto, the receipt of which is hereby acknowledged by the Trustees. [The Donor has caused or may cause to be assigned to the Trustees the Donor's entire interest in certain insurance policies on the Donor's life, and has caused or may cause the Trustees to be named as the beneficiary to receive the proceeds of such policies and of certain pension or other benefit plans in which the Donor participates;]

TO HAVE AND TO HOLD such property unto the Trustees, their successors and assigns, in trust, nevertheless, as follows:

During the life of the Donor, the Trustees shall manage, invest and reinvest the trust estate and collect the income thereof and shall distribute so much of the net income and principal as the Trustee or Trustees other than a beneficiary hereunder (hereinafter referred to as the

“Disinterested Trustee”) in said Trustee’s absolute discretion from time to time may determine to and among such of the Donor’s spouse and the Donor’s issue living from time to time, in such proportions as said Trustee may determine, and shall accumulate the balance of the net income. In reaching any determination as to the advisability of making any such discretionary distribution of income or principal of the trust, the Disinterested Trustee shall have no duty to inquire into or to consider any other income or resources of any beneficiary (or, if he or she shall be a minor, of his or her parent or parents), and may exclude any one or more of the beneficiaries from any such distributions and make distributions in equal or unequal proportions.

During the life of the Donor, the Trustees are authorized, in their discretion, at any time to terminate the trust and thereupon to pay over and distribute the principal thereof, and any income then accrued or held, to and among such of the then living income beneficiaries of the trust in such amounts and proportions as the Disinterested Trustee shall determine.

The Trustees are authorized to invest any or all of the trust assets, whether received from the Donor or from others, in life insurance policies upon the life of the Donor and to apply trust income or principal to

the payment of premiums on such policies. The Trustees also are authorized to join with others in holding any such policy, or part thereof, under a split dollar agreement, whereby the Trustees own certain portions of the life insurance policy and the other owner or owners, in return for payment of an appropriate premium or share of the total premium, also own a portion of the life insurance policy. Notwithstanding such authorization, the Trustees shall have no obligation to pay any premiums, assessments or other charges necessary to keep any insurance policies in force, shall have no obligation to ascertain whether the same have been paid or to notify the Donor or any beneficiary hereunder of the non-payment of premiums and shall have no responsibility or liability of any kind in case such premiums are not paid. If the Donor's status as a group member shall terminate for any reason other than the Donor's death, the Trustees shall have the right to convert any group insurance policies into individual insurance policies on the life of the Donor, and thereafter to hold any such policies, together with any dividends received on such policies. The Trustees may borrow against any insurance policies held in the trust and apply such borrowed amounts for the education of the Donor's children, or for such other purposes as the Disinterested

Trustee in said Trustee's discretion may determine. The Trustees also may invest trust assets in other property.

If in any year a contribution is made to the trust estate by any person, the Trustees shall notify promptly such of the Donor's spouse and the Donor's then living descendants as the Donor shall select of such contribution, or, if any descendant of the Donor shall then be a minor, his or her representative for the receipt of such notice under the provisions of Paragraph (6) of Article TENTH hereof, and each of the Donor's spouse and descendants so selected, or such representative acting on behalf of any such descendant during his or her minority, shall have the right at any time within two months of receipt of such notice to withdraw from the trust estate an amount determined as follows:

(1) The Donor's spouse if so selected shall have the prior right to withdraw an amount not in excess of the lesser of: (i) the amount of such contribution and (ii) the sum of Five thousand Dollars or such larger amount that shall not exceed the maximum annual amount with respect to which a power of appointment may lapse and not be considered a release of such power for United States Federal gift tax purposes under Section 2514 of the Internal Revenue Code of 1986, as amended ("the Code");

(2) Each of the Donor's descendants so selected, or his or her representative, shall have the right to withdraw an amount not in excess of the lesser of (i) the beneficiary's pro rata share of the amount of such contribution after reduction by the amount subject to withdrawal by the Donor's spouse under paragraph (1) and (ii) the annual exclusion available to the contributor (and his or her spouse as if such spouse shall have consented to being deemed to have made one-half of such contribution) for United States Federal gift tax purposes with respect to the beneficiary's pro rata share of such contribution, after reduction by the amount subject to withdrawal by the Donor's spouse under paragraph (1), after taking into account any other gifts made by the contributor (and his or her spouse, if applicable) to the beneficiary in that year. For this purpose, a beneficiary's pro rata share of a contribution shall be a fraction of which the numerator shall be one and the denominator shall be the number of persons other than the Donor's spouse receiving notice (or on behalf of whom notice is received by a representative under Paragraph (6) of Article TENTH hereof) of the contribution. If a beneficiary's power of withdrawal is limited by clause (ii) above, then the excess of the amount determined under clause (i) over the amount determined under clause (ii) as to such beneficiary shall be

treated as an additional transfer to the trust except that such beneficiary shall be excluded as a withdrawal power holder for purposes of applying clauses (i) and (ii) to such additional transfer.

In satisfaction of such right of withdrawal, the Trustees may distribute to a beneficiary any asset held in the trust estate (including any insurance policies or any interests in such policies), valued as of the date of withdrawal. Such right of withdrawal shall not be cumulative with respect to any prior contributions made to the trust and, if such right of withdrawal is not exercised within such two-month period, it shall lapse, provided that the amount with respect to which the right of withdrawal shall lapse for any beneficiary in any year shall not exceed the maximum annual amount with respect to which a power of appointment may lapse and not be considered a release of such power for United States Federal gift tax purposes under Section 2514 of the Code, as in effect for that year taking into account any excess withdrawal rights carried over from previous years (hereinafter referred to as the “maximum lapse amount”). If any beneficiary has a right of withdrawal in any year which shall exceed the maximum lapse amount, the power for that beneficiary for that year shall lapse only to the extent of the maximum lapse amount, and any excess withdrawal right shall continue

to be exercisable by the beneficiary, but shall lapse in the next succeeding year or years to the extent of the maximum lapse amount for such year, on the second day of such year. The right of withdrawal hereunder shall be exercised by written notice delivered to the Trustees.

Upon the death of the Donor, the Trustees shall collect, as principal of the trust estate, the net proceeds of any insurance policies then included in the trust estate, or benefits or proceeds payable to the Trustees as beneficiary, after deduction of all charges against such policies or benefits by way of advances, loans, premiums or otherwise. The Trustees may use any part of the income or principal of the trust estate to meet expenses incurred in collecting any such proceeds or benefits. If, however, the Trustees in their discretion shall determine that the income and principal on hand in the trust estate may not be sufficient to meet any expenses and obligations to which they may be subjected in any litigation to enforce payment of any insurance policy, benefits or proceeds then included in the trust estate, then the Trustees shall not be required to enter into or maintain any litigation to enforce payment of any such policy until they shall have been indemnified to their satisfaction against all such expenses and obligations. The Trustees are authorized to compromise and adjust claims

arising out of any such policies, upon such terms and conditions as they may deem advisable, and the decision of the Trustees in this respect shall be binding and conclusive upon all persons then or thereafter interested in the trust estate.

4. If any assets held in the trust estate shall be included in the Donor's estate for Federal estate tax purposes, and if the Donor's spouse shall survive the Donor, then from and after the Donor's death, subject to the provisions of Article SECOND hereof, the Trustees shall hold, manage, invest and reinvest the assets of the trust estate so included in the Donor's gross estate for Federal estate tax purposes upon a separate trust, shall collect the income thereof and shall pay the net income to the Donor's spouse, annually or at more frequent intervals, for the life of the Donor's spouse. Upon the death of the Donor's spouse, the Trustee shall dispose of the principal of the trust, as then constituted, as provided in Part (B) of this Article.

The Disinterested Trustee is authorized to pay over and distribute to the Donor's spouse (or apply for such spouse's benefit) from time to time all or any part of the principal of the trust held during such spouse's lifetime under this Part (A). Such distributions may be made for

any purpose whatsoever, including for the sole purpose of terminating the trust, and the determination of the Disinterested Trustee with respect to any distribution of principal shall be final and binding upon all persons then or thereafter interested in the trust.

The Donor's Executor is hereby authorized to elect to treat all or any part of the transfer made under this Part (A) as a qualified terminable interest under Section 2056(b)(7) of the Code, or similar provision of state law, and to claim a marital deduction with respect thereto for Federal and state estate tax purposes. Such election shall be binding upon the Trustees hereunder. If the Donor's Executor shall make a partial election, the Trustees thereafter shall segregate upon their books the property with respect to which the election was made. The Donor recognizes that in exercising the discretion granted hereby, the Donor's Executor may affect the amount of estate taxes payable by the Donor's estate and the estate of the Donor's surviving spouse, and otherwise materially may affect the interests of the beneficiaries hereunder. The Donor's Executor is nevertheless granted the broadest authority to exercise the power granted hereby as such Executor shall deem best, and the determination of such Executor shall be final and binding upon all persons at any time interested in the trust estate. If the

Donor's Executor has made a partial election and the Trustees are holding trust assets in two segregated accounts, any principal distributions for the benefit of the Donor's spouse shall be made solely from the account with respect to which a Section 2056(b)(7) election has been made, until that account has been exhausted.

From and after the date of the Donor's death, subject to the provisions of Article SECOND hereof, the Trustees shall hold upon a separate trust under the terms of this Part (B) all assets of the trust estate except those held under Part (A) of this Article, together with any amounts received by the Trustees under a Will or other instrument of the Donor or any other person directed to be held under this Part. The Trustees shall manage, invest and reinvest the same and collect the income thereof, and, until termination of the trust as hereinafter provided, shall distribute so much of the net income as the Trustees from time to time may determine to and among such of the Donor's spouse and the Donor's issue living from time to time (hereinafter referred to as "the income beneficiaries"), as the Disinterested Trustee from time to time may determine, in such proportions as said Trustee may determine, and shall accumulate and add to the principal

of the trust any net income not so distributed within sixty-five days after the end of the trust year in which it was collected.

During the continuance of the trust, the Trustees are authorized from time to time to pay to any one or more of the income beneficiaries (or to pay to another trust for the benefit of an income beneficiary, or to set apart hereunder in a separate trust solely for the benefit of an income beneficiary hereunder upon the terms of Part (C) of this Article) such amounts from the principal of the trust (including the whole thereof) as the Disinterested Trustee in such Trustee's discretion may deem advisable for any reason or purpose whatsoever. In reaching any determination as to the advisability of making any such discretionary distribution of income or principal of the trust, said Trustee shall have no duty to inquire into or to consider any other income or resources of any income beneficiary (or, if he or she shall be a minor, of his or her parent or parents), and said Trustee may exclude any one or more of the income beneficiaries from any such income or principal distribution and make distributions in equal or unequal proportions. [Notwithstanding the generality of the foregoing, the Donor instructs the Disinterested Trustee to consult with the Donor's spouse no less often than annually about the allocations of trust income and principal to be

made by said Trustee, asks that said Trustee favor the Donor's spouse in making any distributions, and directs that the Disinterested Trustee shall not be authorized to pay over and distribute, or to irrevocably set aside, amounts from principal exceeding in the aggregate one-half of the principal of the trust to beneficiaries other than the Donor's spouse without such spouse's consent. Except as aforesaid,] the determination of the Disinterested Trustee as to the advisability of making or refraining from making any such discretionary distribution of income or principal shall be final and binding upon all persons then or thereafter interested in the trust estate.

The Trustees are authorized, in their discretion, at any time to terminate the trust and thereupon to pay over and distribute the principal thereof, and any income then accrued or held, to and among such of the then living income beneficiaries of the trust, in such amounts and proportions as the Disinterested Trustee in such Trustee's discretion shall determine, [provided that the trust shall not be terminated during the life of the Donor's spouse without such spouse's consent.]

In lieu of making any distribution of income or principal to any income beneficiary as above provided, the Disinterested Trustee may apply the same for his or her support, maintenance, education or other benefit or,

in the case of a minor, may set the same apart for distribution, to be administered as provided in Article FIFTH hereof.

Upon the death of the Donor's spouse, the Trustee shall pay over and distribute the principal of this trust and of the trust under Part (A) of this Article, as then constituted (or, if the Donor's spouse shall not survive the Donor, upon the Donor's death the Trustee shall pay over and distribute the entire principal of the trust estate which the Trustee shall collect), and any income then accrued or held, to the Donor's issue then living, per stirpe.

Whenever the Trustees shall have been directed or in their discretion shall determine to hold a share of the trust estate hereunder in a separate trust under this Part (C) or shall receive under a Will or other instrument of the Donor or any other person any property to be held, administered and disposed of in trust for a descendant of the Donor who shall not then have reached the age of [thirty] years, and notwithstanding any provisions in this Indenture to the contrary, any shares distributable to a descendant of the Donor who shall not then have reached the age of [thirty] years, shall be held by the Trustee. The Trustees shall hold such shares, amount or property upon a separate trust for such descendant (each descendant being hereinafter referred to as the "beneficiary" of his or her

trust). The Trustees shall manage, invest and reinvest the same and collect the income thereof, shall apply so much of the net income as the Disinterested Trustee from time to time may deem necessary or desirable for the support, maintenance, education or other benefit of the beneficiary, and shall accumulate any balance of said net income and add it to the principal of the trust until such beneficiary shall have reached the age of [twenty-five] years or sooner died. After a beneficiary shall reach the age of [twenty-five years or sooner graduate from college], the Trustees shall distribute to him or her the net income of his or her trust, annually or at more frequent intervals.

The Trustees are authorized to pay to or apply for the benefit of a beneficiary such amounts from the principal of his or her trust (including the whole thereof) as the Disinterested Trustee shall deem advisable for any reason (including solely for the purpose of terminating the trust), irrespective of any other resources of such beneficiary. The determination of said Trustee with respect to income and principal distributions to a beneficiary shall be final and binding upon all persons then or thereafter interested in the trust, [provided that said Trustee shall consult with the Donor's spouse, if such spouse shall then be living, before making any such distribution.]

Without in any way limiting the discretion of said Trustee, it is the Donor's wish that principal distributions be made to a beneficiary only for important and well-considered purposes which the beneficiary shall set before the Trustees, such as, for example, the purchase of a first home or investment in a business.

When and if a beneficiary for whom a trust is held shall reach the age of [thirty] years, the Trustees shall pay over and distribute to him or her, absolutely, the principal of the trust held for him or her, as then constituted.

If any beneficiary shall have reached an age herein specified as the occasion for distribution or distributions of principal to him or her on the date a share of property shall become distributable to a trust for his or her benefit, such distribution or distributions shall be made forthwith to such descendant by the Trustees.

If a beneficiary shall die before reaching the age of [thirty] years, the Trustees shall pay over and distribute the principal of such beneficiary's trust, as constituted at his or her death, and any income then accrued or held, to the then living issue of such beneficiary, per stirpes, or, if no such issue shall then be living, to the then living issue of the child of the

Donor who was the parent of the beneficiary, per stirpes, or, if no such issue shall then be living, to the child of the Donor who was the parent of the beneficiary or, if such child shall not then be living, to the Donor's issue then living, per stirpe.

Unless sooner terminated under the foregoing provisions of this Part (C), each trust created hereunder shall terminate upon the expiration of twenty-one years following the death of the last to die of all of the Donor's father's descendants who shall be living at the date of this Indenture, and thereupon the Trustees shall pay over and distribute the principal of such trust, as then constituted, and any income then accrued or held, to the income beneficiary of such trust.

If any person whose life measures the duration of a trust hereunder and any remainderman of such trust shall die under such circumstances that there is reasonable doubt as to who died first, then such person whose life measures the duration of such trust shall be deemed conclusively to have survived such remainderman for the purposes of all provisions of this Indenture.

Any distribution required to be made per stirpes in this Indenture to the descendants of any person shall require division of such

assets into as many equal shares as there are living children of that person, if any, and deceased children of that person who leave issue then living (even if all of such children are then deceased). Each living child shall be allocated one share, and the share of each deceased child who leaves issue then living shall be divided in the same manner.

If any principal or income of any trust hereunder shall become payable to or be set apart to be distributed to a minor, the Trustees are authorized in their discretion to pay over such principal or income at any time to the guardian of the property of such minor, appointed in any jurisdiction, or to a custodian then acting or appointed by the Trustees for such minor (including one of the Trustees or a custodian designated by the Trustees) under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state or any similar state law, or to retain such principal and income for such minor during minority. In paying over any principal or income to a custodian, the Trustees may direct that the custodianship shall continue until the minor reaches the age of twenty-one, rather than eighteen. In case of such retention, the Trustees may apply such principal or income, and income therefrom, to the support, maintenance, education or other benefit of such minor, irrespective of any other resources

of such minor or of his or her parent or parents. Any such application may be made either directly or by payments to such guardian of the property or parent of such minor or to the person with whom such minor may reside, in any case without requiring any bond, and the receipt of any such person shall be a complete discharge to the Trustees, who shall not be bound to see to the further application of any such payment. Any such principal or income so retained, and any income therefrom, which is not applied under the provisions of this Article, shall be paid over to such beneficiary upon reaching the age of majority or, if he or she shall sooner die, to his or her estate. In holding any principal or income for any minor, the Trustees shall have all the powers and discretion hereinafter conferred.

The retention of any funds under this Article shall not preclude the Trustees from receiving any commissions to which they would have been entitled had such funds been distributed. The Trustees also shall be entitled, for services in respect of each fund retained under the provisions of this Article, to the same commissions to which testamentary trustees would be entitled from time to time under the laws of the State of New York, as though each such fund were a separate trust fund, such commissions to be payable without judicial authorization.

5. Without limitation of the powers conferred upon them by statute or general rules of law, the Trustees are specifically authorized and empowered with respect to any property held hereunder:

To retain any property transferred to any trust hereunder for so long and upon such terms as the Trustees in their discretion shall deem it advisable to do so;

To invest any funds in any stocks, bonds or other securities or property, real or personal, including any insurance policies on the life of the Donor (and including without limitation the power to invest in oil, gas and mineral interests or in any partnership of any kind or description, to write or buy put and call options, whether or not covered, to buy securities on margin, to sell securities short and to enter into futures transactions in any commodities), and to join with others in such form of ownership of such property (including without limitation in the case of a life insurance policy, to enter into split dollar agreements) as they shall determine, notwithstanding that such investments may not be of the character allowed to trustees by statute or general rules of law, and without any duty to diversify investments, the intention hereof being to confer the broadest investment powers and discretion upon the Trustees;

To sell (at public or private sale, without application to any court) or otherwise dispose of any property, whether real or personal, for cash or on credit, in such manner and on such terms and conditions as they may deem best, and no person dealing with the Trustees shall be bound to see to the application of any moneys paid;

To manage, operate, repair, improve, mortgage and lease for any period any real estate forming a part of the trust estate (whether expiring before or after the termination of any trust hereunder);

To lend any funds or property held in the trust estate to, and borrow such amounts from, such persons (including the Trustees or any beneficiary of any trust hereunder) and for such purposes as they may deem advisable, and to pledge any assets of any trust hereunder to secure the repayment of any amounts so borrowed all upon such terms and conditions as they may deem advisable;

To maintain margin accounts with one or more individuals, partnerships, associations, banks or other corporations (including without limitation [ ] or any affiliate of said firm) on such terms and conditions as they in their discretion shall determine, and to conduct such transactions in such accounts as they shall so determine, and to pledge all or any portion of any trust hereunder as security for the payment of the respective debit balances in such accounts;

To engage in any arbitrage transactions;

To determine in their discretion whether any premium on any investment acquired at a premium shall be amortized from income;

Except to the extent prohibited by law, to cause any securities to be registered in the names of their nominees, or to hold any securities in such condition that they will pass by delivery;

To employ such attorneys, accountants, custodians, investment counsel, (including without limitation [ ] or any affiliate of such firm), real estate consultants and other persons as they may deem advisable in the administration of any trust hereunder, and to confer on them such authority and to pay them such compensation as the Trustees may deem proper, notwithstanding that one or more of the Trustees may be a member of, or otherwise connected with, such firm, and without any diminution of, or offset against, the commissions to which the Trustees may be entitled by law;

To use any securities or brokerage firm (including without limitation [ ] or any affiliate of such firm) in the purchase or sale of stocks, bonds or other securities or property for the account of any trust hereunder and to pay such firm such compensation as the Trustees may deem proper, notwithstanding that one or more of the Trustees may be a member of, or otherwise connected with, such firm, and without any diminution of, or offset against, the commissions to which the Trustees may be entitled by law;

To distribute any income or principal of any trust hereunder in cash or in kind and, if in kind, in a fashion other than pro rata, having regard in such event to the characteristics, including tax characteristics, of the property being distributed and to the income, needs and tax status of the recipient; and

In general, to exercise any and all rights and powers in the management of the trust estate which any individual could exercise in the management of property owned in his or her own right, upon such terms and conditions as the Trustees may deem best, and to execute and deliver all instruments and to do all acts which they may deem necessary or advisable to carry out the purposes of this Indenture.

The signature of one Trustee shall be sufficient to bind the trust upon all undertakings to third parties in all administrative matters or in any other matter upon which the Trustees agree between themselves.

All sums received by the Trustees and representing interest accrued or dividends declared but unpaid on securities at the time of the delivery thereof to the Trustees shall be considered by the Trustees as income and disposed of accordingly.

All liquidating distributions received by the Trustees shall be disposed of in accordance with the law from time to time in effect. All stock dividends and other distributions payable in shares of the distributing corporation or association, all stock dividends and other distributions by a corporation or association payable in shares of any other corporation or association, provided that the same shall be treated as a non-taxable distribution or as a capital gains distribution to the recipient for United States Federal income tax purposes, and all rights to subscribe to securities either of the issuing corporation or association or of any other corporation or association shall be solely principal. Distributions made by a regulated investment company from ordinary income shall be solely income, and all other distributions made by such a company shall be solely principal. All other distributions shall be treated solely as income.

Any trust estate held hereunder may be increased from time to time by the addition of such property as may be added to it by the Donor or by any other person with the consent of the Trustees.

The Trustees are authorized in their discretion to pay out of the trust estate all income taxes which may be imposed upon the Donor from time to time as the result of the inclusion in the Donor's taxable income of

income (including capital gains) realized on the trust estate or any part thereof. The payment of any such income taxes may be made by the Trustees by remittance directly to, or by check payable to the order of, the taxing authority to which the Donor's income taxes are payable, or by reimbursement to the Donor for the amount of such tax the Donor already shall have paid. In determining what amount constitutes such income taxes, the Trustees may rely upon the certificate of the Donor or of the person preparing the Donor's income tax returns as to the amount of any such tax.

The Trustee is authorized in the Trustee's discretion to pay out of the principal of the trust estate all estate, inheritance and similar taxes, including any interest and penalties thereon, which may be imposed upon the death of the Donor's spouse by the United States of America or any state or subdivision thereof (and, in the Trustee's discretion, any such taxes imposed by any foreign jurisdiction) with respect to the Donor's spouse's estate, including not only the trust estate, but also any other property or interest of any character taxable in the Donor's spouse's estate. The determination of the Trustee as to the amount of such taxes shall be final and binding upon all persons then or thereafter interested in the trust estate. The Trustee shall be under no duty to take part in the proceedings to determine

any such tax, and may rely upon the certificate of the executor or administrator of the estate of the Donor's spouse as to the amount of any such tax, as returned, tentatively assessed or ultimately determined.

The Trustees are further empowered to pay any other taxes which may become payable from time to time with respect to the trust estate or any transfer thereof or transaction affecting the same under the laws of any jurisdiction which the Trustees are advised may validly tax the same.

6. The Donor during the Donor's lifetime and thereafter any individual Trustee acting as such hereunder from time to time is hereby empowered, by written instrument, duly executed and acknowledged, to designate an individual (other than the Donor) or a bank or trust company to act as co-Trustee or successor Trustee hereunder, upon such conditions as such instrument shall specify [and there shall be no Trustee named herein who shall be willing and able to qualify]. Any such appointment so made may be revoked by the maker thereof, by written instrument, duly executed and acknowledged, at any time prior to the happening of the event upon which it is to become effective, and a new appointment may be made as above provided. Upon the happening of the event upon which such appointment is to take effect and upon qualifying as hereinafter provided,

any co-Trustee or successor Trustee so appointed shall become a Trustee hereunder as though originally named herein.

Any Trustee acting hereunder may resign and be discharged from any trust hereunder by giving, personally or by mail, written notice of resignation, duly acknowledged, to the Donor or, if the Donor shall not then be living, to the Donor's spouse or, if such spouse shall not then be living, to the income beneficiary or beneficiaries of such trust (or if any income beneficiary shall be a minor, to the representative serving under the provisions of Paragraph (6) of this Article). Such notice shall specify the date when such resignation shall take effect, which date shall be at least thirty days after the service or mailing thereof.

If at any time the Donor's spouse shall be acting as sole Trustee without having designated a co-Trustee as hereinabove provided, or if at any time there shall be no Trustee acting hereunder and no successor shall have been designated as hereinabove provided who shall then be willing and able to qualify, such individual other than the Donor or any trust beneficiary (who may be one of its own partners) or bank or trust company as shall be designated by the firm of Sullivan & Cromwell LLP, of New York, New York (or any firm successor thereto), is hereby appointed as a co-Trustee or

as successor Trustee. Upon qualifying as hereinafter provided, the co-Trustee or successor so designated shall become a Trustee hereunder as though originally named herein.

In case any Trustee acting as such hereunder for any reason shall cease to act, the retiring Trustee or his or her personal representative upon the effective date of his or her resignation or upon his or her death shall turn over the trust estate or any portion of it under his or her control to the Trustee who thereafter shall be acting hereunder, and shall execute and deliver all instruments which may be deemed necessary more effectively to vest title in such Trustee.

Any co-Trustee or successor Trustee named herein or designated as above provided and then entitled to act hereunder shall qualify by delivering or mailing written acceptance of such trust, duly acknowledged, to the Donor, any other Trustee then acting hereunder and to the income beneficiary or beneficiaries, or if any shall be a minor, to his or her parent, to the adult with whom he or she shall reside, or to the representative serving under the provisions of Paragraph (6) of this Article.

The Donor's [                    ], [                    ], shall serve as the representative of the Donor's minor descendants for purposes of receiving

notices, and taking (or electing not to take) action on behalf of such descendants during their minority for all purposes of this Indenture. The representative at any time may resign as such representative by delivering written notice of his or her resignation to the Trustees in which case he or she shall be succeeded as representative by [                      ]. If at any time there shall be no person acting as a representative for minor descendants hereunder and no successor shall be named herein who is willing and able to qualify, he or she shall be succeeded by such individual as shall be designated by the Trustees. A successor representative shall accept his or her appointment by written acceptance delivered to the Trustees.

Except as otherwise expressly provided herein, all estates, powers, trusts, duties and discretion herein created or conferred upon the Trustees shall extend to any Trustee who at any time may be acting hereunder, whether or not named herein. No bond or other security shall be required of any Trustee hereunder in any jurisdiction.

Any Trustee at any time acting hereunder at any time may render an account of his or her proceedings to the income beneficiary or beneficiaries of any trust during the accounting period (or, if any such person shall have died during or after the accounting period, to his or her

personal representative and to any person or persons to whom any principal of the trust estate is to be paid over and distributed). If any person to whom an account would be so rendered shall be a minor, such account instead may be rendered to either of such minor's parents or the guardian of his or her property appointed in any jurisdiction or the representative for such minor then serving under the provisions of Paragraph (6) of Article TENTH hereof, other than an accounting Trustee. If approved in writing by the parties to whom such account shall have been rendered as above provided, such account shall be final, binding and conclusive upon all persons who then or thereafter may have any interest in the trust estate. The Trustees also at any time may render a judicial account of their proceedings.

In any accounting or other proceeding in which all persons interested in any trust hereunder are required by law to be served with process, if a party to the proceeding who is not under a disability has the same or a similar interest as a person under a disability, it shall not be necessary to serve process upon the person under a disability, it being the Donor's intention to avoid the appointment of a guardian ad litem whenever possible.

[SPENDTHRIFT CLAUSE - consider for non-New York trusts]

[No beneficiary hereunder shall be authorized to anticipate, alienate, assign, hypothecate or otherwise dispose of or encumber any part of his or her interest in the income or principal of [any/the] trust hereunder, whether or not any such act may be authorized, in whole or in part by any statute or other rule of law whether now or hereafter in force. Any such attempted act on the part of any beneficiary shall be void. No interest of any beneficiary hereunder shall be subject, while in the hands of the Trustees, to legal process on behalf of, or to the claims of the creditors of any such beneficiary.]

During the life of the Donor, the Trustees shall not be entitled to any commissions or other compensation for their services as Trustees, except as may be paid to them under separate written agreement with the Donor filed with this Indenture from time to time. Following the death of the Donor, the Trustees shall be entitled for services hereunder to the same commissions to which testamentary trustees would be entitled from time to time under the laws of the State of New York, to be payable without judicial authorization.

This Indenture and the trusts created hereunder shall be irrevocable, shall take effect upon acceptance by the Trustees, and in all

respects shall be construed and regulated by the laws of the State of New York. [This Trust shall be known as “The \_\_\_\_\_ 200\_ Life Insurance Trust”.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Indenture under seal as of the day and year first above written.

\_\_\_\_\_  
Donor

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

I accept my designation as representative of the Donor’s minor descendants for all purposes of this Indenture.

\_\_\_\_\_

SCHEDULE A

\$10.00

STATE OF NEW YORK        )  
  : ss.:  
COUNTY OF                    )

On this            day of                    in the year 200\_\_ before me,  
the undersigned, personally appeared                    , personally known to me or  
proved to me on the basis of satisfactory evidence to be the individual(s)  
whose name(s) is(are) subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their  
capacity(ies); and that by his/her/their signature(s) on the instrument, the  
individual(s), or the person(s) upon behalf of which the individual(s) acted,  
executed the instrument.

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Notary Public

STATE OF NEW YORK        )  
  : ss.:  
COUNTY OF                    )

On this            day of                    in the year 200\_\_ before me,  
the undersigned, personally appeared                    , personally known to me  
or proved to me on the basis of satisfactory evidence to be the individual(s)  
whose name(s) is(are) subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their  
capacity(ies); and that by his/her/their signature(s) on the instrument, the  
individual(s), or the person(s) upon behalf of which the individual(s) acted,  
executed the instrument.

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Notary Public

State, District of Columbia, territory )  
possession or foreign country : ss.:  
)

On the day of in the year 200\_\_ before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in the (insert the city or other political subdivision and the state or country or other place the acknowledgment was taken).

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Notary Public

State, District of Columbia, territory )  
possession or foreign country : ss.:  
)

On the day of in the year 200\_\_ before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in the (insert the city or other political subdivision and the state or country or other place the acknowledgment was taken).

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Notary Public