

## **DR. GRETCHEN ROUS BESSER TRUST**

### **Second Amendment and Restatement of Trust**

I, DR. GRETCHEN ROUS BESSER (a/k/a GRETA ROUS BESSER), presently of Morrisville, Vermont, established a trust under a Trust Declaration executed on August 8, 2005, by and between me as Donor and me as Trustee, as amended and restated in its entirety by Amendment and Restatement dated March 26, 2014, and as further amended by First Amendment dated September 16, 2016 (together, the "Trust"). I am the current sole Trustee of the Trust (the "Trustee"). Pursuant to the powers reserved to me under Article 1.3 of the Trust, I hereby delete the terms of the Trust in their entirety and substitute the following in lieu thereof:

### **"WITNESSETH**

To create a trust estate for the beneficiaries named in this Declaration, the Trustee shall continue to hold the property described in Schedule A attached to and incorporated into this Declaration. The term "Trust Estate" as used in this Declaration shall include the property described on Schedule A as well as all other property that may from time to time be in the Trustee's possession.

This Declaration, and the trusts created under this Declaration, shall be known as the "Dr. Gretchen Rous Besser Trust" dated August 8, 2005, as amended and restated in its entirety by this Declaration dated August 16, 2018.

### **ARTICLE 1: DISPOSITION OF TRUST ESTATE DURING MY LIFE**

#### **1.1 RESERVED RIGHTS**

I reserve the right to increase or decrease the amount of the Trust Estate, to remove any Trustee, and to amend or revoke this Declaration at any time during my lifetime. Each removal and amendment and any revocation shall be in writing and delivered to the Trustee and may be made without the consent of any person or Trustee; provided, however, that no amendment of this Declaration shall change the duties, powers, or liabilities of the Trustee without its written consent. During my lifetime, the Trustee shall be under no duty to inform and report to any beneficiary other than me and my Spouse.

#### **1.2 MANAGEMENT OF TRUST ESTATE**

(a) Distributions. During my lifetime, the Trustee shall hold, manage, invest and reinvest the Trust Estate and shall dispose of so much or all of the net income and principal as I may from time to time request. In the absence of any such request, the Trustee may pay over to or apply for my benefit so much or all of the net income and principal as it shall in its discretion deem advisable for my support.

(b) Incapacity. If I become incapacitated, the Trustee may use so much or all of the net income and principal as it in its discretion deems advisable for the support of me and my spouse, ALBERT G. BESSER ("my Spouse"), and for the support of any of my children who are financially dependent upon me, by making payments directly to or by applying the same for any one or more of us at such time or times, in such amounts, proportions and manner as the Trustee shall deem appropriate. The Trustee's decision, supported by a certificate of a disinterested physician, as to my incapacity shall be final and binding on all persons.

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(c) Undistributed Income. The Trustee may accumulate all or any part of any undistributed net income for future use or may add the same to principal.

(d) Make Gifts. During my lifetime, the Trustee may, in its discretion, make gifts from the Trust Estate to as many donees as the Trustee for any reason deems desirable, including, but not limited to, gifts which fully use the annual exclusions available to me, gifts which fully use the unified transfer tax credit available to me, and gifts which require the payment of gift tax. If the Trustee makes gifts requiring the payment of tax, the Trustee may pay such taxes from the Trust Estate. Any property so gifted shall be deemed to have been withdrawn from the trust by me and, in turn, gifted directly by me to the donee.

### 1.3 EXECUTION OF DOCUMENTS

The Trustee shall execute any and all instruments necessary to permit me to exercise any rights reserved to me under this Declaration.

### 1.4 ADDITIONAL PROPERTY

I, or any other person(s), may give by duly probated will, or may otherwise transfer and deliver, any property to the Trustee. The Trustee, in its sole and complete discretion, may accept or reject such property. The Trustee may require such documentation as it, in its sole and complete discretion, shall deem to be necessary and proper.

## ARTICLE 2: TRUSTEESHIP; ADMINISTRATION OF TRUST ESTATE AT MY DEATH

### 2.1 TRUSTEESHIP

(a) During My Lifetime. If at any time during my lifetime I am unable or unwilling to continue to serve as a Trustee, I nominate and appoint my Spouse as sole Trustee. If at any time neither my Spouse nor I am able or willing to serve or to continue to serve as Trustee, I nominate and appoint TRUST COMPANY OF VERMONT, of Burlington, Vermont as successor sole Trustee.

(b) Following My Death. After my death, I nominate and appoint my Spouse as successor Trustee. If at any time my Spouse is unable or unwilling to serve or to continue to serve as Trustee, then I nominate and appoint TRUST COMPANY OF VERMONT as successor sole Trustee.

(c) Power to Remove and Replace Trustees.

(1) I may remove any then-serving Trustee of a trust under this agreement. After my death, and during my Spouse's lifetime, my Spouse may remove any individual or corporate Trustee (or co-Trustee) then serving under this Declaration. Upon any such removal by anyone other than me, such individual exercising such removal power shall appoint a successor Trustee (or co-Trustee) to serve in place of the removed Trustee; *provided, however*, that the successor so appointed shall be an "independent" Trustee (or co-Trustee) as defined in paragraph (e) of Article 7.2. Each removal and appointment of a Trustee under this paragraph shall be in writing, shall be signed by each person then entitled to remove the Trustee and shall indicate the effective date of the removal, the identity of the next-serving Trustee and the agreement of that next-serving Trustee to

serve, may be made without court intervention, and shall be delivered to those individuals to whom such Trustee is required to account.

(2) A person designated as Trustee under this paragraph shall have the right to serve even if there is already a different successor Trustee named elsewhere in this Declaration. A successor Trustee named elsewhere in this Declaration shall have the right to serve as Trustee if the designated person is thereafter unable or unwilling to continue serving, subject only to the repeated exercise of the appointment right under this paragraph.

(3) No cause or justification shall be required for any removal or appointment under this paragraph. Adult beneficiaries shall act for themselves or through a legal guardian.

## 2.2 ADMINISTRATION OF TRUST ESTATE

(a) Tangible Personal Effects. The Trustee shall distribute my tangible personal property in accordance with the provisions set forth on Schedule B, attached hereto, which shall be signed and dated by me. Said Schedule may be amended and/or replaced by me from time to time. In the absence of a signed, dated Schedule B, the Trustee shall distribute such tangible personal property to my Spouse, if he is then living, or, if not, the Trustee shall either distribute some or all of the same to my children in accordance with what the Trustee knows of my wishes, or shall sell, or otherwise dispose of, any such undistributed property and dispose of the proceeds in accordance with Article 3.2 hereof. In such event, the Trustee's decision shall bind all persons. Tangible personal property does not include property that is held for investment or business purposes, or case, securities and the like.

(b) Pay Expenses. Following my death, the Trustee shall pay any amounts necessary or appropriate to meet those expenses or taxes payable in accordance with Article 5.1.

(c) Distribution of Remainder. Subject to paragraphs (a) and (b) of this Article, the Trustee shall distribute the remainder of the Trust Estate in accordance with Article 3 of this Declaration.

## ARTICLE 3: ADMINISTRATION OF TRUST ESTATE FOR BENEFIT OF SPOUSE AND DESCENDANTS

### 3.1 TRUST FOR BENEFIT OF SURVIVING SPOUSE

(a) Income. Following my death, if my Spouse shall survive me, then the Trustee shall, not less frequently than quarterly, pay or apply all of the net income of the Trust Estate to or for the benefit of my Spouse so long as my Spouse shall live.

(b) Principal. The Trustee is hereby authorized, during the lifetime of my Spouse, to distribute to or for the benefit of my Spouse so much or all of the principal of the Trust Estate as the Trustee deems to be necessary for my Spouse's support.

(c) Disposition of Trust Estate following Death of my Spouse.

(1) Following my Spouse's death, the Trustee shall distribute to my Spouse's estate (or to any revocable trust created by my Spouse named in the residuary clause of my Spouse's last will and testament provided that it would cause inclusion in my Spouse's federal gross estate for federal estate tax purposes) any income from the Trust Estate accrued and undistributed as of the death of my Spouse. Subject to subparagraph (2) of

this paragraph, the Trustee shall distribute the remaining principal of the Trust Estate as provided in Article 3.2 of this Declaration.

(2) Unless my Spouse directs otherwise in my Spouse's Last Will, before making the distribution provided for in subparagraph (1) of this paragraph (c), as to any portion of the Trust Estate which shall, at my Spouse's death, be subject to federal or state estate tax in my Spouse's taxable estate, the Trustee shall pay, or provide for the payment of, the following: (i) the expenses of my Spouse's last illness, funeral and burial; (ii) the expenses of administration of my Spouse's estate, including the fees of my Spouse's personal representative and that personal representative's attorney; and (iii) any federal and state succession, inheritance or estate taxes, together with any interest and penalties thereon, incurred, or the amount by which any federal or state succession, inheritance or estate taxes are increased, by reason of the inclusion for tax purposes in my Spouse's estate of any part or all of the Trust Estate. In making any such payment, the Trustee may rely on and shall be protected by a sworn statement of my Spouse's personal representative describing the relevant facts regarding the taxes so incurred or increased. The Trustee shall make any payment under this paragraph out of that portion of the principal of the Trust Estate that is included in my Spouse's taxable estate for federal or state estate tax purposes and shall pay such taxes either directly or to my Spouse's personal representative as the Trustee deems appropriate.

(3) Limited Power of Appointment. My Spouse shall have the power, which shall come into existence immediately upon my death and shall be exercisable only by specific reference thereto in my Spouse's Last Will, to appoint the entire principal, and any accrued or undistributed net income, of the Trust, or any part thereof, in favor of any child, issue, or charitable organizations, in equal or unequal proportions and in trust or otherwise.

(d) Partial QTIP Election. Notwithstanding the foregoing provisions of this Article 3, the Trustee is permitted to make elections under the tax laws (and in accordance with the requirements of Treas. Reg. § 20.2056 (b) - 7 (b) (2) (ii)) as the Trustee deems advisable and that the Trustee would have the authority to make if no executor is appointed to administer my estate, including, but not limited to, the election to treat any portion or all of the Trust Estate as qualified terminable interest property for federal or state estate tax purposes; *provided, however*, if the Trustee makes a federal or state qualified terminable interest property election as to some, but not all, of the Trust Estate assets (a "Partial QTIP Election") as provided by this Article, then that portion of the Trust Estate with respect to which the Partial QTIP Election was made (the "Elected Portion") shall be administered as a subtrust separate and apart from that portion of the Trust Estate with respect to which no Partial QTIP Election was made (the "Non-Elected Portion"), and the Trustee shall administer such separate Elected Portion in such a manner as to comply with the Partial QTIP Election. In this regard, the Trustee is permitted to make a Partial QTIP Election for state purposes only and not for federal purposes with respect to a portion of the trust estate and to make a Partial QTIP Election for state and federal purposes with respect to a portion of the trust estate.

(e) Retirement Accounts. If the Trust becomes the beneficiary of death benefits under any individual retirement account, qualified retirement plan or similar tax deferred arrangement or annuity (together, the "Retirement Account"), the Trustee must withdraw from the Trust's share of the Retirement Account in each calendar year the amount required to be distributed from the Retirement Account under Section 401(a)(9) of the Internal Revenue Code or other comparable Internal Revenue Code provision or applicable law (the "Minimum Distribution").

Notwithstanding the foregoing, if the Minimum Distribution in any year is less in value than all of the net income of the Trust Estate for that year, the Trustee shall make any additional distribution to my Spouse for that year as required pursuant to paragraph (a) of this Article 3.1 hereinabove. Further notwithstanding the foregoing, the Trustee shall immediately distribute to the beneficiary all amounts received by the Trustee from the Retirement Account.

(f) Simultaneous Death. If my Spouse and I die under circumstances in which the order of our deaths cannot be clearly determined, then, as between the two of us, the spouse with the smaller taxable estate (as would be determined for federal estate tax purposes) shall conclusively be presumed to have survived the other spouse; *provided, however*, that for the purposes of this paragraph, the value of any of our retirement accounts, IRA's and similar retirement accounts, and annuities or life insurance, that are payable to the surviving Spouse, individually, as beneficiary shall not be included in determining the value of my taxable estate compared to the value of my Spouse's estate, it being my intention to maximize the use of the unified credit of the spouse who has the largest amount of assets available to fund the Trust Estate to be herein created by having such spouse be deemed to have predeceased the other spouse.

### 3.2 ADMINISTRATION OF TRUST ESTATE AFTER SPOUSE'S LIFETIME

Subject to Article 2.2, following the death of the second to die of my Spouse and me, the Trustee shall collect and receive any property added to the Trust under Article 3.1 by any other provision of this Declaration of Trust or otherwise, and the Trustee shall then hold, administer and distribute the balance of the Trust as follows:

- (i) If, and only if, I have survived my Spouse, the Trustee shall distribute the sum of Forty Thousand Dollars (\$40,000) to the endowment fund of the JEWISH COMMUNITY OF GREATER STOWE, of Stowe, Vermont ("JCOGS"), or, if there is no endowment fund, directly to JCOGS; *provided, however*, that if there is no endowment fund, such amount should be segregated in a separate account, which shall be invested conservatively, favoring income over capital appreciation, and from which shall be distributed annually Two Thousand Five Hundred Dollars (\$2,500) to the annual benefactor's appeal. In addition, in the discretion of JCOGS's Board of Trustees, an additional Two Thousand Five Hundred Dollars (\$2,500) from such amount may be distributed annually for specifically designated purposes.
- (ii) If, and only if, I have survived my Spouse, the Trustee shall distribute the sum of Twenty-five Thousand Dollars (\$25,000) to the VERMONT HUMANITIES COUNCIL LIVING LEGACY SOCIETY, of Montpelier, Vermont.
- (iii) If, and only if, I have survived my Spouse, the Trustee shall distribute the sum of Five Thousand Dollars (\$5,000) to NORTH COUNTRY ANIMAL LEAGUE ("NCAL"), of Morrisville, Vermont.
- (iv) If, and only if, I have survived my Spouse, the Trustee shall distribute my animals, including horses, dogs and cats, to my son, BRIAN H. BESSER ("Brian"). If Brian is unwilling to accept any one or more of my animals, the Trustee shall: (A) distribute my remaining animals to NCAL; and (B) hold and set apart the sum of Five Thousand Dollars (\$5,000) to be held and set apart as a separate trust for NCAL, to be used for NCAL's care of my animals. The Trustee shall distribute to NCAL so much of the net income from and principal of such

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separate trust as the Trustee, in its sole and complete discretion, shall deem necessary to feed, shelter and care for the animals until the death of the last of the animals to die. Upon the death of the last of such animals to die, this separate trust shall terminate, and the Trustee shall distribute the remaining principal of this separate trust, together with any accrued or accumulated income, to NCAL.

- (v) The Trustee shall, for computational purposes only, add to the value of the trust estate the total amount set forth as having been advanced to my children on Schedule C, attached hereto and as may be amended from time to time without a trust amendment (the "Advanced Amount"). The Trustee shall then divide the value of the Trust as so augmented into as many shares as there are sons surviving me. My sons are JAMES M. BESSER ("James"), NEAL S. BESSER ("Neal"), and Brian. If a son is not surviving, then said share shall lapse. The Trustee shall reduce each such share by the amount, if any, which is set forth on Schedule C opposite the name of the son for whom the share is set aside. One (1) of such shares shall be distributed by the Trustee to Brian, outright and free of trust, and one (1) of such shares shall be held and set apart by the Trustee for each of James and Neal, each of which shall be held as a separate trust in accordance with the following provisions of this Article 3.2 and shall be designated by the name of the child for whom it is held. If any child of mine is then deceased, then the number of shares shall be correspondingly reduced and no amount in respect of such child shall be included in the Advanced Amount.

- (A) **Statement of Intent.** My Spouse's and my basic intention is to be equitable in our bequests to all three sons. Hence we apportion one third of our estate to each, with differing provisos. We place their bequests in trust to James and Neal to ensure that these moneys are handled propitiously for their benefit while assuring them proper health care and a comfortable standard of living. Our decision to bequeath his share outright to Brian reflects our confidence in his judgment and fiduciary responsibility.

- (B) **James' Trust.** The Trustee shall invest and from time to time reinvest James' trust, and, after defraying all expenses properly chargeable to income, shall distribute to James, or for his benefit, the sum which *after the payment of all income taxes* will be a net amount equal to Four Thousand Five Hundred Dollars (\$4,500) per month, adjusted at the first of each year for increases in the cost of living from January, 2018. Notwithstanding the foregoing, it is my intention that James receive the said amount after taxes; however, it may be virtually impossible to know exactly what the income taxes will be with respect to a current distribution, therefore, the Trustee may make an estimate based on the effective rate of tax for the previous year with any adjustment the Trustee deems reasonable to include in such calculation. The Trustee shall make such adjustment every January by multiplying Four Thousand Five Hundred Dollars (\$4,500) by a fraction, the denominator of which is the Cost of Living ("COL") published by the United States Department of Labor, All Urban Consumers, Northeast Region, for January, 2018, and the numerator of which is the COL for the month of January in which the

adjustment is being made. That COL may not be available until after the end of that January. Accordingly, the Trustee shall continue the payments in the early months of the year at the prior years' level, and once the adjustment is known, the Trustee shall make up the shortfall in the early months' payments and shall thereafter make the new payment each month.

In addition, on James' request, the Trustee shall distribute to James, or for his benefit, so much of the income and/or principal of his trust as the Trustee deems to be required for his health, support, education, maintenance, and general welfare. In this regard, the Trustee shall have complete discretion with respect to the distribution of either income or principal, however, I desire that the Trustee be liberal in making distributions for medical and psychiatric treatment, and generally to promote comfortable living for James. In investing the trust assets, the Trustee shall favor income over capital appreciation, that is, the Trustee shall favor the income beneficiaries over the remaindermen. James' trust shall terminate on James' death, whereupon the Trustee shall distribute the remaining principal, together with any accrued or accumulated income, in accordance with the provisions of subparagraph (D) of paragraph (v) of this Article 3.2.

(C) **Neal's Trust.** The Trustee shall invest, and from time to time reinvest, Neal's trust, and, after defraying all expenses, properly chargeable to income, shall distribute to Neal, or for his benefit, so much of the income and/or principal of his trust as the Trustee deems to be required for his health, support, maintenance, and general welfare. The Trustee shall have complete discretion with respect to the distribution of either income or principal; however, I desire that the Trustee be liberal in making distributions for medical and psychiatric treatment, and generally to promote comfortable living for Neal. In investing the trust assets, the Trustee shall favor income over capital appreciation, that is, the Trustee shall favor the income beneficiaries over the remaindermen. Neal's trust shall terminate upon Neal's death, whereupon the Trustee shall distribute the remaining principal, together with any accrued or accumulated income, in accordance with the provisions of subparagraph (D) of paragraph (v) of this Article 3.2.

(D) **Termination.** On the termination of either of the trusts described in subparagraphs (B) and (C) of paragraph (v) of this Article 3.2 above, the Trustee shall distribute the remaining principal, together with any accrued or accumulated income to the remaining then active trusts described above in this **Article 3.2(v)**. On the termination of the last of such trusts to terminate, the Trustee shall distribute the remaining principal of such trust, together with any accrued or accumulated income, in equal shares to:

- (1) THE STATE OF ISRAEL;
- (2) YALE LAW SCHOOL of New Haven, Connecticut; and

- (3) SPECIAL COLLECTIONS, MARGARET CLAPP LIBRARY at  
WELLESLEY COLLEGE, Wellesley, Massachusetts.

#### **ARTICLE 4: DISASTER**

If at any time during the term of the Trust Estate none of myself, my Spouse nor any descendant of mine shall be living, then after making the distributions in Article 2.2 (b) and Article 3.2 (i) – (iv), the Trustee shall distribute the remaining principal and any accrued or undistributed net income of the Trust Estate to the beneficiaries listed in Article 3.2 (v) (D). The provisions of this paragraph shall not apply to any part of the Trust Estate which has become indefeasibly vested.

#### **ARTICLE 5: PAYMENT OF CHARGES; FUNDING OF SEPARATE TRUSTS**

##### **5.1 ADMINISTRATION EXPENSES**

(a) Expenses of My Estate. Notwithstanding that the Trustee may be an executor of my estate, the Trustee shall pay over to the executor of my estate (my “Executor”) or, in the discretion of the Trustee, shall pay directly to the appropriate person, taxing authority or other entity for the account of my Executor (the “designated recipients”), such amount(s) from the appropriate portion of the Trust Estate as the Trustee shall determine or as shall be required for the payment or discharge of (i) debts of or claims against my estate, (ii) funeral and administration expenses, and (iii) estate, transfer, inheritance, succession and other death taxes and duties, including any interest and penalties thereon, (the “Death Taxes”) chargeable to my estate, without requiring the abatement of any pre-residuary bequests or devises under my will or the application of any income earned on property in my testamentary estate. The Trustee shall have no duty or obligation to inquire as to the correctness or propriety of any certification made by my Executor or of any amount or amounts so requested, or to see to the application by my Executor or the designated recipients of any payment made by the Trustee, but the payment to my Executor or the designated recipients shall be a full and complete discharge to the Trustee with respect to such payment or payments.

(b) Apportionment. Unless no other assets are available, the Trustee shall not charge the Death Taxes against, nor pay any Death Taxes from, any property that is not subject to Death Taxes. Subject to the foregoing, I direct that any benefits payable to this trust under any qualified retirement plans (of whatever type) under §401 of the Code, individual retirement accounts under §408 of the Code, tax sheltered annuities under §403 of the Code, or other retirement arrangement subject to the “minimum distribution rules” of §401(a)(9) of the Code, or other comparable provisions of law, may not be used or applied for payment of my debts, expenses of administration, taxes, other claims against my estate, nor for payment of estate, inheritance or similar transfer taxes due on account of my death except to the minimum extent that would be required under applicable state or federal tax apportionment law in the absence of any specific provision on the subject in my will or this trust.

(c) Expenses of Trust Estate. The Trustee shall also pay out of the appropriate portion of the Trust Estate all expenses of administration of the trust payable after my death.

##### **5.2 FUNDING OF SEPARATE TRUSTS**

(a) Valuation. Any asset distributed in kind to any share of the Trust Estate shall be valued for such purposes at its value as of the date of distribution to such share.

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(b) Funding of Trust Shares. The Trustee shall allocate any items deemed to be "income in respect of a decedent" under the Code first to any share of the Trust Estate passing to a charitable organization such that it would qualify for a charitable deduction in my estate and to any other share of the Trust Estate that the Trustee, in its discretion, determines would minimize estate and income taxes for my estate, the Trust Estate, and the beneficiaries hereunder. Subject to the foregoing limitations, and to any specific provisions of this Declaration that provide otherwise, the Trustee shall have sole and complete discretion to satisfy each share of the Trust Estate in cash or in kind and to select, allocate, and distribute to each such share any assets, including real estate and interests therein, without regard to the basis of any such asset for federal income tax purposes with respect to the recipient. The Trustee's decisions under this Article shall be final on all persons. Notwithstanding the foregoing provisions of this Declaration, if I shall die while the provisions of Section 1022 of the Internal Revenue Code are applicable to this trust, then the Trustee shall have the ability to allocate assets to the Elected Portion in such amounts as the Trustee deems beneficial or advisable for the purposes of reducing or minimizing income taxes.

## **ARTICLE 6: POWERS AND DUTIES OF TRUSTEE**

### **6.1 POWERS**

(a) Powers. The Trustee shall have all rights, powers, and obligations of trustees under the Vermont Trust Code, 14A V.S.A. § 101 et seq., as amended from time to time, with specific reference to Sections 815 and 816 setting forth the general and specific powers of trustee it being my intention to incorporate said powers, by reference thereto, in this Trust with the same effect as though such language were set forth verbatim in this instrument. Notwithstanding the foregoing, the Trustee shall also have the following specific powers and obligations:

(1) Retention of Unproductive Property. To retain indefinitely without liability for loss any property or interest in property received in kind by the Trustee as an addition to the Trust Estate regardless of degree of risk, effect on diversification or unproductivity of the asset; *provided, however,* that anything in this Declaration to the contrary notwithstanding, my Spouse shall have the power to require the Trustee to make productive and to convert into productive property within a reasonable time any unproductive property which shall at any time be an asset of the Elected Portion. In lieu of making the property productive or converting the unproductive property, the Trustee may distribute quarterly to my Spouse other assets from the Elected Portion the value of which is equal to the income that would have been produced during the calendar quarter if the property had been made productive or converted into income-producing property. Unproductive property shall include any benefit held in a qualified retirement plan as defined in Section 401(a) of the Code, any qualified retirement annuity as defined in Section 403(a) or 403(b) of the Code, and any individual retirement account as defined in Section 408(a) of the Code, but only if and only to the extent that income generated or deemed to be generated by the plan benefit, annuity or account is not distributed to the trust at least annually;

(2) Sale. To sell, exchange, lease, grant options to purchase and execute contracts concerning real or personal trust property for such consideration (or without consideration) and upon such conditions and payment terms as the Trustee may determine without regard to the termination date of any trust;

(3) Business Powers. To acquire or retain any business interest, as shareholder, security holder, creditor, partner, proprietor or otherwise, even though such business interest may

constitute all or a substantial part of the trust estate, and to participate in the conduct and management of any such business in the same manner and to the same extent as I in my individual capacity might do, including, but not limited to, the determination of all questions of policy and the voting of securities held by the Trustee, except that if possession of this voting power as to any security would adversely affect the issuing company or the Trustee's ability to retain or vote such security, the Trustee shall vote such securities as directed by the income-beneficiary or income-beneficiaries of the Trust in which such securities are held; to participate in the formation of a general or limited partnership and to execute such partnership agreements and amendments thereto as the Trustee shall deem proper and advisable; to incorporate, or join in the incorporation of, any sole proprietorship or partnership or any part thereof in which the Trustee shall have an interest hereunder, and to accept for the interest of the Trust Estate therein such shares in such new corporation or corporations as the Trustee shall deem fair and proper. The Trustee may rely upon the reports of certified public accountants as to the operations and financial condition of any such business without independent investigation. The Trustee shall exercise ordinary business judgment in determining how long any such business interest shall be retained as an investment of the Trust Estate and in deciding upon such action as it may take in the management or supervision of the management of any such business. If any such business is continued by the Trustee, the Trustee shall not be liable for any loss that may result from the honest exercise of its powers and discretions pursuant to this subparagraph. To the extent that any Trustee, or any director, officer, employee or nominee of any corporate Trustee then acting as such hereunder shall render services to any such business, such Trustee, or such director, officer, employee or nominee of any corporate Trustee, shall be entitled to compensation for such services either from such business, or from the Trust Estate, or partly from each as the Trustee shall deem equitable and proper;

- (4) Real Estate. To operate, improve, or develop real estate; to construct, alter, raze, or repair buildings or structures on real estate; to partition, subdivide, dedicate to public use, grant easements or other rights with respect to or otherwise deal with real estate and to exchange any real estate or any part thereof for any other real or personal property upon any terms; to lease, contract to lease, grant options to lease and renew, extend, amend and otherwise modify leases on any real property or any part thereof from time to time, for any period of time, for any rental and upon any other terms and conditions, and to release, convey or assign any other right, title or interest whatsoever in any real property or any part thereof;
- (5) Advisors. To employ and compensate attorneys, accountants, stock brokers, agents, custodians, investment advisors, specialists, and such other agents as the Trustee deems necessary or desirable. The Trustee shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the Trust, and to delegate to said manager investment discretion. Such appointment shall include the power to acquire and dispose of such assets. The Trustee may charge the compensation of such advisors and any other related expenses against the Trust;
- (6) Indebtedness. To borrow, at interest, money from the Trustee's own banking department or from others, and to assume indebtedness and encumber trust property by mortgage or pledge;
- (7) Accounting. To allocate receipts and disbursements between principal and income on a reasonable basis and in good faith to all beneficiaries giving consideration to its usual

custom and any principal and income statutes then applicable to its determinations; to establish reserves out of income, if it sees fit, for depreciation of property, depletion of natural resources and anticipated expenses; *provided, however*, that nothing herein contained shall limit or affect the right of my Spouse to all of the income from the Elected Portion so long as my Spouse is living;

- (8) Interested Transactions. To enter into any transaction authorized by this Article with the trustee and personal representatives of other trusts or estates in which any beneficiary hereunder has an interest or which by its terms distributes to any trust established hereunder even though the trustee also serves the other trust or estate in a fiduciary capacity; and in any such transaction to purchase property, or make loans on notes secured by property, even though similar or identical property constitutes a large proportion of the balance of the Trust Estate, and to retain any such property or note as if it had been received in kind as an addition to the Trust Estate;
- (9) Value. To determine the market value of any investment for any purpose on the basis of such quotations or information as the Trustee deems pertinent and reliable;
- (10) Renunciation of Powers. To surrender, release, renounce, or disclaim any one or more of the powers given to the Trustee by written instrument duly signed and acknowledged. After any power has been so surrendered, released, renounced, or disclaimed, the Trustee shall never again exercise that power;
- (11) Elections. To make such permitted elections under the tax laws as the Trustee deems advisable and that the Trustee would have the authority to make if no executor is appointed to administer my estate;
- (12) Discretion and Delegation. To do all acts which the Trustee in its judgment deems necessary or desirable for the proper and advantageous management, investment and distribution of the assets of the trusts hereby created, including, without limitation, to delegate to another the authority to perform non-discretionary, ministerial acts in its stead as attorney-in-fact;
- (13) Delegate Power. To delegate his/her power to an attorney-in-fact;
- (14) Securities. To buy, sell and trade in securities of any nature; *provided, however*, that short sales, buying, selling or trading on margin and any investment in cryptocurrencies shall be prohibited;
- (15) Digital Assets. To access, handle, distribute and dispose of my digital assets. The term digital assets includes files stored on my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops or such comparable items as technology develops. The term digital assets also includes but is not limited to emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, filesharing accounts, financial accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts and similar digital items which currently exist or may exist as technology develops or such comparable items as technology develops, regardless of the ownership of the physical device upon which the digital item is stored;

- (16) Affiliated Investments. To hold and retain stock or other securities issued by the Trustee in its corporate capacity and/or issued by a bank holding company to which it is affiliated and which stock or securities constitute a part of the Trust Estate.
- (17) Section 1022 of the Code. Notwithstanding the foregoing provisions of this Declaration, if I shall die while the provisions of Section 1022 of the Internal Revenue Code are applicable to the Trust, then the Trustee shall have the ability to allocate assets to the Elected Portion in such amounts as the Trustee deems beneficial or advisable for the purposes of reducing or minimizing income taxes.
- (b) Savings Provision. Any powers granted to the Trustee hereunder shall be deemed void if either the right to exercise or the exercise itself of such power would cause my Estate to lose any of the tax benefits otherwise available to my Estate under the Code.
- (c) Powers of Executor. Upon my death, the Trustee shall have, in addition to any other powers that may be granted by law, to be exercised in its sole and complete discretion, without court order, any and all powers given to my Executor pursuant to my Will.
- (d) Benefit Plans. Without in any way limiting the powers of the Trustee, I expressly authorize the Trustee to make direct "trustee-to-trustee" or similar type transfers of the assets contained in any individual retirement account; qualified pension, profit sharing, stock bonus, Keogh or other retirement plan benefits; or other benefits or rights under similar arrangements. For example, I authorize the Trustee to arrange for the direct transfer of assets in an individual retirement account of which it is the beneficiary to another individual retirement account of which it will be the beneficiary. At any time when there is more than one trust hereunder that is a beneficiary of a plan, separate accounts or shares shall be maintained for each such trust in proportion to the trust's interest, by initially determining the benefits that are owed to the trust at such time. From that time forward, each such account or share shall bear its own pro rata share of gains and losses and shall otherwise be separately accounted for. It is intended that such separate accounts or shares shall be separate accounts or shares within the meaning of Proposed Regulations Section 1.401(a)(9)-1, Q&A H-2(b) and H-2A. All distributions to the Trust shall be charged to the Trust's respective separate account or share.

## 6.2 RELIANCE ON ACTS OF TRUSTEE; LIABILITY

(a) Reliance on Acts of Trustee. Every act of the Trustee and any instrument executed by the Trustee, with respect to any real or personal property delivered to or transferred in any manner by the Trustee or with respect to any other aspect of the administration of the trusts under this Declaration, shall be conclusive evidence in favor of any person relying on any such act or instrument that, at the time of such act or execution of such instrument: (i) this Declaration was in full force; (ii) the Trustee had full authority under this Declaration to perform the act or execute the instrument; (iii) the Trustee's act or execution of such instrument complied with the terms of this Declaration; (iv) no consent of any beneficiary or other party was required in connection with the act or execution; and (v) each such act or instrument so executed is binding on the beneficiaries under this Declaration and upon any successor trustee under this Declaration. No person dealing with the Trustee in any manner shall be obliged to inquire beyond such act or instrument nor to see to the application of any property transferred to the Trustee in connection with any such dealings.

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(b) Liability of Trustee. No Trustee shall be individually liable, and each Trustee shall be held harmless from and indemnified by me and the beneficiaries under this Declaration, for any losses arising in connection with this Declaration other than losses arising from the Trustee's own willful misconduct or gross negligence or that of persons in its employ. No successor Trustee under this Declaration shall be individually liable for any losses arising from the acts of any predecessor Trustee or from the acceptance of accounts rendered and property transferred to it by any predecessor Trustee. For the purposes of this Declaration, "losses" shall include any and all damages, expenses, and liabilities arising or incurred because of the Trustee's compliance with and execution of the terms of this Declaration, including, but not limited to, its ownership, as Trustee, of legal title to any assets in the Trust Estate.

### 6.3 DECISIONS WITH RESPECT TO BENEFICIARIES

(a) Disabled Beneficiary. Payments of income or principal to any beneficiary, including myself, who is under age eighteen (18), who is under any legal disability or who, although not adjudicated incompetent or disabled is, in the Trustee's opinion, unable properly to administer his affairs by reason of illness or mental or physical disability, may be made by the Trustee for such beneficiary's support without the intervention of any guardian, conservator or other legal representative. The Trustee may make such payments to such beneficiary; to such beneficiary's legally appointed guardian or conservator; to a custodian for any minor beneficiary under any applicable Uniform Gifts to Minors Act, Uniform Transfers to Minors Act or any similar statute then in force in the state in which such minor is domiciled; to any person or institution who has or is entitled to the legal custody of such beneficiary or to some near relative or friend; or directly to any other person or institution for the support of such beneficiary.

(b) Beneficiary Resources. In exercising its discretion to distribute income or principal to any beneficiary under this Declaration, the Trustee may, but need not, take into consideration the income and resources available to such beneficiary from all other sources known to the Trustee and any other factors which the Trustee deems pertinent, but the Trustee need not require the exhaustion of the beneficiary's personal resources as a condition to making such distributions. In making such determination the Trustee may rely on information provided to it by such beneficiary. No person shall have the right, power, authority or privilege to question any action or non-action of the Trustee in the exercising of its discretion under this paragraph.

(c) Notice of Power of Appointment. If, within three (3) months after the death of any beneficiary possessing a power of appointment hereunder, the Trustee shall have no notice or knowledge of the existence of a Last Will or other instrument executed by such beneficiary that exercises, in whole or in part, the power of appointment given to the beneficiary under this Declaration, the Trustee shall be fully protected in acting upon the assumption that such beneficiary failed to exercise such power of appointment and in making distribution of the property over which the beneficiary held such power of appointment accordingly. Such distribution shall be without prejudice to the rights of any appointee of such beneficiary to recover the distributed property from any person to whom the Trustee made distribution in the event a Last Will or other instrument shall be found after such distribution in which such beneficiary shall have validly exercised such power of appointment. The Trustee may conclusively rely on any instrument admitted to probate in any jurisdiction as the Last Will of such beneficiary.

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#### 6.4 SEPARATE SHARES

The Trustee shall not be required to make a physical division of any separate trusts into separate shares, but the Trustee may hold an undivided proportion of any property for any separate trust or share, it being nevertheless understood that there shall at all times be in existence hereunder a separate trust for each beneficiary at any time currently entitled to income from any portion of the Trust Estate. The Trustee may make the divisions, allotments and distributions of income and principal herein provided in any form of property or cash, and in such proportions thereof, as it may determine. After my death, the Trustee may transfer any of the trust property from one such separate trust to another, and the values placed by it upon any property held among any separate trusts, transferred from one separate trust to another, or divided or distributed, shall be final and conclusive upon that subject.

### ARTICLE 7: TRUSTEE PROVISIONS

#### 7.1 BOND

No Trustee shall be required to furnish any bond or security for the performance of its duties, or if a bond is required by law, no surety shall be required.

#### 7.2 SUCCESSION AND RESIGNATION

(a) Succession of Trusteeship; Acceptance. Upon the death, removal or resignation of a Trustee, or at any time that a then serving Trustee is otherwise unable or unwilling to continue to serve, the rights, powers and privileges of the Trustee ceasing to serve, including, but not limited to, title to the property held under this Declaration, shall vest automatically in the successor Trustee named or appointed in accordance with this Declaration, and such successor Trustee shall succeed to the trusteeship of the trusts established under this Declaration without the need for any deeds of conveyance, court order or other evidence of transfer of title, upon the successor Trustee's acceptance of the trusteeship under this Declaration. Any successor Trustee shall accept such office by a written instrument delivered to the co-Trustee then serving, if any, and to the individuals to whom such Trustee is required to account.

(b) Resignation. Any Trustee may resign at any time by delivering not less than thirty (30) days written notice to: (i) me or, if I am not living, my Spouse or, if my Spouse is not living, to the adult income beneficiaries of the Trust; and (ii) the co-Trustee then serving or, if none, then to the successor Trustee named in Article 2.

(c) Vacancy in Trusteeship. Subject to the powers reserved to me under this Declaration and those granted to my Spouse under Article 2.1, if at any time there is no individual or corporation named and otherwise able and willing to serve under this Declaration, the last Trustee to serve under this Declaration shall appoint a successor individual and/or corporate Trustee within thirty (30) days of such Trustee's resignation. If the last Trustee to serve fails for any reason to make such appointment, my Spouse shall do so within thirty (30) days after receiving notice of the last Trustee's resignation or death. If my Spouse fails to do so, the adult income beneficiaries may, by a majority vote, do so instead. Each appointment of a successor Trustee shall be in writing, may be made without court intervention, shall be acknowledged by the successor Trustee, and shall be delivered to those individuals to whom such Trustee is required to account.

(d) Independent Co-Trustee. Except as otherwise provided with respect to the removal and replacement of independent Trustees under Article 2.1, if there is no independent co-Trustee

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named under Article 2 who is willing and able to serve as a co-Trustee with any individual Trustee then serving who is also an income beneficiary under this Declaration (other than me), at least one individual or corporation shall be appointed as an independent co-Trustee (as defined in paragraph (e) of this Article) in accordance with this paragraph. Within thirty (30) days of such vacancy, the last individual Trustee to act hereunder may appoint a successor individual and/or corporate Trustee, and if the last individual Trustee to act shall fail to appoint a successor Trustee, my Spouse shall do so. If my Spouse fails to make any appointment, the adult income-beneficiaries other than my Spouse may do so instead. Each appointment of an independent co-Trustee shall be in writing, may be made without court intervention, shall be acknowledged by the independent co-Trustee so appointed, and shall be delivered to those individuals to whom such Trustee is required to account.

(e) "Independent" Trustee. An "independent" Trustee under this Declaration shall be an individual or corporation that is not related to or subordinate to my Spouse or to any other income beneficiary (as contemplated under paragraph (d) of this Article) within the meaning of Section 672(c) of the Code. No person acting as a Trustee under this Declaration shall have the right to participate in any decisions of the Trustee regarding any discretionary distribution of income or principal hereunder to such person or to any person to whom such person owes a legal obligation of support to the extent that such distribution would relieve such person of a legal obligation of support.

(f) Appointment by Court. If, for any reason and at any time, no appointment of a successor Trustee or independent co-Trustee is made in accordance with this Declaration, any Trustee may resign by application to any court of competent jurisdiction and such court shall then appoint a successor individual and/or corporate Trustee or independent co-Trustee.

(g) Corporate Trustee Provisions.

(1) If any corporate Trustee acting as such hereunder shall merge or become consolidated with any corporation, such merged or consolidated corporation is appointed as Trustee hereunder.

(2) If, at any time, a corporate Trustee is unable or unwilling to act with respect to any property comprising a part of the Trust Estate then, subject to Article 7.8 of this Declaration, the individual Trustee then serving shall be the sole Trustee with respect to such property. If no individual Trustee is able or willing to act as Trustee with respect to such property, then, subject to Article 7.8 of this Declaration, the corporate Trustee shall designate an individual or corporate trustee of its choosing to act with respect to such property. Any individual so designated may be an employee of the corporate Trustee. The Trustee acting as such with respect to such property shall have the same titles, powers, rights, authorities, immunities, discretions, and interests as if it were a Trustee named in this Declaration and shall be charged with all the duties and obligations imposed under this Declaration without any further assurance or conveyance whatsoever. Said Trustee shall remit the net income from such property and the net proceeds from the sale of any part or all thereof to the corporate Trustee then acting as such hereunder.

### 7.3 ACCOUNTING

(a) During My Lifetime. During my lifetime, the Trustee has no obligation to provide any information with regard to (1) this Declaration, its provisions, and any subsequent amendment(s)

thereto, and (2) the Trust Estate, including but not limited to any financial information or accounting, to any beneficiary other than me and my Spouse.

(b) Following my Death. After my death, the Trustee shall prepare an accounting of its management of the trust if requested, in writing, by a beneficiary to do so and such writing is delivered to the Trustee in accordance with Article 9.4. The Trustee shall deliver, by first class mail, postage pre-paid, each such account to each income beneficiary (or guardian or other legal representative of an income beneficiary known to the Trustee) at the address last known to the Trustee. If, within sixty (60) days after such account has been deposited in the mail, no written objection has been filed with the Trustee, it shall be conclusively presumed that each beneficiary has approved and assented to all of the actions and transactions reflected in such account. If a written objection is filed with the Trustee, such assent shall nevertheless be presumed if the written objection is thereafter withdrawn in writing by the party who originally filed it.

#### 7.4 TRUST ESTATE ADMINISTRATION

(a) Merger. If, at any time after my death there is in existence any other trust(s) of any kind created by me or by any other person with the Trustee, the beneficiaries, and their respective interests substantially the same as the Trustee and the beneficiaries under any trust created under this Declaration, the Trustee may commingle the trusts created under this Declaration with such other trust(s) and hold and otherwise deal with such commingled trust(s) as though they were one. If at any time after the Trustee has commingled such trusts it is necessary to divide the trusts into their respective parts, the Trustee, in its sole and complete discretion, may separate the respective trusts as nearly as may be practicable.

(b) Small Trust Termination. Subject to Article 7.8 of this Declaration, anything herein to the contrary notwithstanding, if at any time any trust or separate share thereof created hereunder shall, in the sole judgment and determination of the Trustee then acting as such, be of a value which makes retention of such trust or share economically burdensome to the beneficiary or beneficiaries, such Trustee, in its sole and complete discretion, may terminate such trust or share and distribute the entire remaining principal thereof to the income-beneficiary or income-beneficiaries thereunder. In exercising such discretion, the Trustee shall take into consideration the age, capacity, maturity, and financial experience of each such income-beneficiary and any such factors that the Trustee deems pertinent.

#### 7.5 ACTIONS OF TRUSTEES

(a) Delegation. Subject to Article 7.8 of this Declaration, any individual Trustee, by written notice to each co-Trustee then serving, may delegate to any such co-Trustee any or all powers, duties, and obligations reserved to the individual Trustee under this Declaration, including, without limitation, the power to sign and endorse checks and execute other instruments. Any person may rely on the written certification of a co-Trustee that such co-Trustee has the power to act without concurrence of any other Trustee.

(b) Substitute Trustee. The Trustee other than my Spouse may transfer the situs of any trust property to any other jurisdiction as often as it deems such action advantageous to the Trust Estate, appointing a substitute Trustee to itself to act with respect thereto and, in connection therewith, the Trustee may delegate to the substitute Trustee any or all of the powers given to the Trustee, who may elect to act as advisor to the substitute Trustee. The Trustee may remove any substitute Trustee and, in the event of the death, resignation or removal of any substitute Trustee, may appoint another substitute Trustee or reappoint itself at will.

(c) Delegation by Trustee of Powers to Agents. Pursuant to Section 807 of Title 14A of the Vermont Statutes Annotated, the trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (i) selecting an agent;
- (ii) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (iii) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(d) Declaration to Actions. Subject to Article 7.8 of this Declaration, if at any time there shall be two (2) Trustees acting as such hereunder, they shall act by mutual agreement and if at any time(s) there shall be more than two (2) Trustees acting as such hereunder, they shall act by majority vote. Failure to obtain a majority shall be treated as if the Trustees failed to act. Any Trustee who shall cast a negative vote with respect to any action or any failure to act shall in no way be liable or responsible for such action or failure to act.

#### 7.6 COMPENSATION

Each Trustee shall be entitled to reasonable compensation for its services commensurate with the services actually performed and, as to any corporate Trustee, such compensation shall be based upon such Trustee's regularly issued fee schedule. Each Trustee shall also be entitled to reimbursement for expenses necessarily incurred in administering the Trust Estate, including, but not limited to, termination fees and commissions.

#### 7.7 DISABILITY

Any Trustee shall be considered unable to act as Trustee whenever under legal disability, or, by reason of illness or mental incapacity, is unable to give prompt and intelligent attention to the management of the Trust Estate. The determination that a Trustee is unable to act as such hereunder shall be made by such Trustee's personal physician. Any such determination shall be in writing, shall be delivered to me, if living, to each co-Trustee, if any, and to the successor Trustee herein named or appointed as herein provided and shall continue until a similar determination that such incapacity has ended.

#### 7.8 BENEFICIALLY INTERESTED TRUSTEES

No person (other than me and my Spouse) acting as a Trustee under this Declaration shall have the right to participate as a Trustee or otherwise in any decisions of the Trustee with respect to any discretionary distribution of income or principal of any trust created hereunder to such person or to any person to whom such person owes a legal obligation of support or if such Trustee's participation would constitute a general power of appointment so as to cause inclusion of any portion of the Trust Estate in such Trustee's individual estate for federal estate tax purposes.

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## **ARTICLE 8: LIFE INSURANCE POLICIES AND RETIREMENT PLANS**

### **8.1 ADMINISTRATION**

(a) Transfer of Policies. The provisions of this Article shall apply to any life insurance policies ("the Life Insurance Policies") and retirement plans in which the Trustee may be named as beneficiary after the date of this Declaration. If I transfer to the Trustee any Life Insurance Policies under which I am the insured, I will direct the insurance companies issuing the Life Insurance Policies to designate the Trustee as the beneficiary of any proceeds due upon my death.

(b) Payment of Premiums. The Trustee shall be under no duty to pay any premiums, assessments or other charges necessary to keep the Life Insurance Policies in force, nor to keep itself informed with respect to such payments, nor to take, during my lifetime, any action with respect thereto; provided, however, that if the Trustee is the owner of a Life Insurance Policy, the Trustee shall pay any premiums, assessments or other charges necessary to keep the Life Insurance Policy in force so long as the assets of the Trust Estate are sufficient to meet such charges.

(c) Reserved Rights. I reserve the right, without the consent of the Trustee or any of the beneficiaries under the trusts hereby created: (i) to exercise, at any time, any option, election, right or privilege given to me by any of the Life Insurance Policies or retirement plans, including the right to change beneficiaries thereunder; (ii) to borrow any sums of money in accordance with the provisions thereof; (iii) to use such policies as collateral security for loans obtained by me from any person, firm or corporation; (iv) to use such policies as security for any purpose; (v) to receive any dividends, earnings, distributions or other payments on or from such policies; (vi) to surrender any of such policies for its cash surrender value; and (vii) to substitute any other life insurance policy for any or all of the Life Insurance Policies; provided, however, that no termination or revocation with respect to any Life Insurance Policy shall be effective until I have caused such policy to be surrendered or have changed the beneficiary of such policy in the manner required for such policy.

### **8.2 COLLECTION OF PROCEEDS**

Upon my death, the Trustee shall collect the proceeds of any Life Insurance Policies and retirement plans in which it is named beneficiary or which may be assigned to it hereunder, and, for such purposes, the Trustee shall have full power to execute and deliver any receipts and acquittances for the same; to compromise and adjust in such manner as it shall, in its sole and complete discretion, determine all claims arising under such policies; to institute and prosecute any suit or proceedings; and to do and perform any acts necessary for the purpose of collecting such proceeds; provided, however, that the Trustee need not commence or maintain any litigation to enforce collection of such policies until it has been indemnified to its reasonable satisfaction against all expenses and liabilities with which it may be involved by any such action by it. The Trustee shall hold such proceeds, after deducting the costs and expenses of collection, including its own reasonable compensation therefor, together with all other property that may be held by it hereunder, as a trust fund, the income and principal of which shall be divided and distributed as provided in this Declaration.

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## ARTICLE 9: FORMAL PROVISIONS

### 9.1 DEFINITIONS

(a) “Children” and “Descendants”. References to “my children” are to only JAMES M. BESSER, NEAL S. BESSER and BRIAN H. BESSER. “Descendants” of a designated individual include each child, grandchild and more remote biological or legally adopted descendant of that individual, taken collectively; provided, however, that “descendants” shall not include a step-child or foster child; and, further, provided that any such descendant, if adopted, was under age fourteen (14) on the date of adoption. “Child(ren)” of a designated individual other than me refers to that individual’s biological or legally adopted descendant(s) in the first degree, but does not include a step-child or foster child. A person *en ventre sa mere* shall be deemed to be in existence if later born alive.

(b) “Education” refers, without limitation, to tuition, room, board, traveling expenses and a reasonable spending money allowance for any beneficiary during attendance at a private elementary or secondary school, at an accredited college, university, post-graduate school or equivalent institution or at a vocational, trade or art school.

(c) “Executor” refers to any one or more fiduciaries currently acting as a personal representative of my estate.

(d) General Construction. The singular, the plural, and the gender of terms used in this Declaration shall be construed as may be appropriate in the context.

(e) “Health” refers, without limitation, to medical, dental, hospital, nursing and medication expenses and expenses of invalidism.

(f) “Income-beneficiary” refers to any person who is currently entitled to mandatory or discretionary payments of income hereunder.

(g) “Internal Revenue Code” and the “Code” refers to the Internal Revenue Code of the United States of America in force and effect at the date of my death, plus any amendments or revisions thereto.

(h) “Support” refers only to the support and maintenance in health and reasonable comfort and education of any beneficiary.

(i) “Trustee” refers to any one or more individual(s) or corporation(s) acting in such fiduciary capacity.

(j) Per stirpes. As used herein, the term “*per stirpes*” shall have its accepted legal meaning, so that, for example, if a distribution is to be made to “descendants, per stirpes” of a specified person and one of said person’s children is deceased, but is survived by children, then the share which would otherwise have been distributable to such deceased child of said specified person shall be divided equally among the children of such deceased child. As a further example, and consistent therewith, if all of the children of said specified person shall be deceased, then the share which would otherwise have been distributable to each such deceased child shall be divided equally among the children of each such deceased child, with the effect that the children of each such deceased child of said specified person will receive by right of representation the share which their parent would have received had he then been living.

## 9.2 INTERESTS OF BENEFICIARIES

(a) Not Assignable. Without in any respect altering or limiting any power of appointment vested in any beneficiary pursuant to this Declaration, the interests of the respective beneficiaries hereunder shall not be grantable, transferable or otherwise assignable or anticipated, in whole or in part, by any voluntary or involuntary act or deed of any beneficiary or by operation of law, and shall not be liable for or be taken for any debt or obligation of such beneficiary, nor be subject to garnishment, claim for alimony, child support or similar distribution in a divorce or separation proceeding, attachment, execution or other process.

(b) Accrued Income. If, at the death of any income-beneficiary, there is any income accrued and uncollected or collected and undistributed to such beneficiary, such income shall be deemed to have accrued and been received after such beneficiary's death, even though such income may have been payable to such beneficiary prior to such beneficiary's death; *provided, however*, that nothing in this paragraph shall limit or affect the right of my Spouse to all income of the Trust Estate following my death and so long as my Spouse is living.

## 9.3 PERPETUITIES SAVINGS CLAUSE

Anything herein to the contrary notwithstanding, if the terms of this Declaration cause a violation of the Rule against Perpetuities due to the failure of any interest, share or trust to vest within the period required by such Rule, then the interest, share or trust which would otherwise be in violation shall be distributed to the beneficiary or beneficiaries entitled hereto on such earlier date(s) which shall be the latest date(s) permissible to prevent a violation of the Rule.

## 9.4 NOTICES

All notices required to be given under this Declaration shall be given by United States first class mail, postage prepaid, addressed to the person for whom such notice is intended at that person's last known post office address and, if so given, shall be deemed to have been received on the date of mailing.

## 9.5 AUTHENTICITY

In taking any action whatsoever, the Trustee may rely upon any notice, certificate, affidavit or other document deemed by it to be genuine, or upon any other evidence deemed by it to be sufficient.

## 9.6 SEVERABILITY OF ENFORCEMENT

If any provisions of this Declaration should be invalid or unenforceable, the remaining provisions shall continue in force and be fully effective.

## 9.7 ACCEPTANCE OF TRUSTS

The Trustee accepts the trusts created under this Declaration and agrees to act as Trustee in accordance with the terms and conditions set forth in this Declaration.

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9.8 CONSTRUCTION

(a) Governing Law. This Declaration, and the trusts created hereunder, shall be construed under and in accordance with the laws of the State of Vermont; *provided, however*, that the Trustee at any time serving may at the discretion of such Trustee change the situs of such trust to a jurisdiction other than the State of Vermont and the law of the new jurisdiction of such trust shall govern as to all aspects of administration, but shall not affect the validity or construction of any trust hereunder nor shall any such change of situs for purposes of administration create in any beneficiary any right or power other than those to which such beneficiary was then entitled in the State of Vermont.

(b) Headings. The headings in this Declaration have been inserted for convenient reference and shall be ignored in its construction.

9.9 DISCLAIMER

Each of the beneficiaries hereunder is reminded of the disclaimer provision of Section 2518 of the Code. I desire that each beneficiary shall be alert to the possibility of exercising a qualified disclaimer when all of the circumstances surrounding devolution of my estate shall indicate that such an exercise shall prove advantageous to my family.

9.10 RELIANCE ON CERTIFIED COPY

To the same effect as if it were the original, anyone may rely upon a copy certified by a notary public to be a counterpart of this instrument (and of the writings, if any, endorsed thereon or attached thereto). Anyone may rely upon any statement of fact certified by anyone who appears from the original document or a certified copy to be a Trustee hereunder.”

**SIGNED** as of the date set forth on the face of this Declaration.



**In presence of:**

**SETTLOR**


  
DR. GRETCHEN ROUS BESSER

**TRUSTEE**

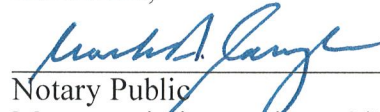
  
DR. GRETCHEN ROUS BESSER

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**STATE OF VERMONT  
CHITTENDEN COUNTY, SS:**

At Burlington, in said County and State, this 16<sup>th</sup> day of August 2018, DR. GRETCHEN ROUS BESSER appeared before me and acknowledged the execution of this Trust Declaration to be a free act and deed.

Before me,

  
\_\_\_\_\_  
Notary Public

My commission expires: 2/10/2019

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## SCHEDULE A

Schedule of the property made a part of the Dr. Gretchen Rous Besser Trust made under a Trust Declaration dated August 8, 2005, between DR. GRETCHEN ROUS BESSER as Settlor and as Trustee:

\$10.00

Ten Dollars

All of my automobiles, household furniture and furnishings, china, silver and glassware, pictures, jewelry, wearing apparel and all other articles of household or personal use or ornament which I own at the date of my death, together with all property and casualty insurance policies which are in force at the date of my death with respect to any of said property.

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## SCHEDULE B

My rare book collection to SPECIAL COLLECTIONS, MARGARET CLAPP LIBRARY at WELLESLEY COLLEGE, Wellesley, Massachusetts, kept in our NYC apartment, as recorded in my computer ("Book Collection" in folder "Books" under "Documents") and in lists updated from time to time given to our insurance agent, Hickok and Boardman, Stowe, Vermont.

All National Ski Patrol books, files, notes, records, computer records, magazines, publications, etc., to the NATIONAL SKI PATROL, Lakewood, Colorado, or, if it does not wish to take such items, to the NATIONAL SKI PATROL archives in the Western History Collection of the Denver Public Library.

All ski related books, pictures and artifacts, including the Bob Bourdon sculpture in our Vermont residence, not including any ski paintings in our Vermont residence, to VERMONT SKI MUSEUM, of Stowe, Vermont; *provided, however*, the Bob Bourdon sculpture shall be distributed to the Vermont Ski Museum only if it has a place for it and it will keep the sculpture and not sell it.

All my ski-related awards, trophies, medals, etc. to my children if they want any of them (if they cannot agree choose by drawing straws). As to any they do not want, give, in order of preference, to National Ski Patrol, or US Ski and Snowboard Hall of Fame, or Vermont Ski Museum.

The gold Tiffany locket with my parents' and sister's (Sidonya Rous, Ben Rous and Nita Manitzas) picture and my Audemars Piguet watch, to my niece, ELENA MANITZAS.

My jeweled bird brooch given to me by Al's mother, Fanny Bear Besser, to our niece MELINDA SCOTT.

My dragon bracelet given to me by Al's mother to our niece ELLEN SCOTT for ultimate bestowal on our grandniece, BAOYING SCOTT.

To my nephew NICOLAS MANITZAS, my rose-gold Patek Philippe watch, given to me by my father, Ben Rous.

To ROBIN ROSENBERG, my sapphire and diamond ring, given to me by my mother, Sidonya Rous.

To KAREN SEGALL, the Van Sleaf & Arpels ballerina pin and matching earrings given to me by my mother, Sidonya Rous.

To JOSEPH BOCCHINO, the Japanese Imari porcelain set in our New York City coop and to BRIAN BESSER, the jeweled water buffalo in the New York City coop.

The remainder of my tangible personal property to Al, if he survives me, or, if not, as follows:

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- (1) My candlesticks, given to me by my grandmother, Leah Rous, to our son, JAMES BESSER.
- (2) One ski painting of his choosing from our house in Vermont to our son, NEAL BESSER, but only if, in the opinion of the Trustee, Neal is in a position to receive and enjoy such painting.
- (3) The bench which is in the entrance to my residence, immediately in front of the door, to our son, BRIAN H. BESSER.
- (4) The wooden rocking chair purchased in New Zealand which is in the living room in my residence, to our son-in-law, JOSEPH BOCCHINO.

I may have made gifts during my lifetime of some of the tangibles identified above. If so, the bequest of such item or items shall lapse.

To each of my sons, James, Neal and Brian Besser, the right to select any items of tangible personal property located in or on my Vermont residence and property, not otherwise bequeathed herein, and only for their personal use, not for resale. My said sons shall draw straws to establish the order in which they may select tangible personal property items under this provision.

Dated: August 16, 2018

Signed: 

Dinse,  
Knapp & McAndrew, P.C.  
209 Battery Street  
P.O. Box 988  
Burlington, VT 05402-0988  
(802) 864-5751

SCHEDULE C

<u>NAME OF SON</u>	<u>ADVANCED AMOUNT</u>
BRIAN H. BESSER	\$250,000
JAMES M. BESSER	\$400,000
NEAL S. BESSER	

Dated: August 16, 2018

Signed: GR Besser

Dinse,  
Knapp & McAndrew, P.C.  
209 Battery Street  
P.O. Box 988  
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