

# THE BELINDA STRONACH 445 FAMILY TRUST

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THIS TRUST INDENTURE made this 29th day of October 2013.

BETWEEN:

MICHAEL ROGERS, of the Township of King, in the Regional Municipality of York, in the Province of Ontario  
(the "Settlor")

and

FRANK STRONACH, of Oberwaltersdorf, Austria, BELINDA STRONACH, of the Town of Aurora, in the Regional Municipality of York and the Province of Ontario, and ALON OSSIP, of the City of Toronto in the Province of Ontario  
(the "First Trustees")

WHEREAS the Settlor wishes to establish a Trust for the benefit of the Beneficiaries as herein described,

NOW THEREFORE this deed witnesses as follows:

## ARTICLE 1 CREATION OF THE TRUST

### 1.1 Name of the Trust.

Unless and until changed by the Trustees, this Trust may be referred to as THE BELINDA STRONACH 445 FAMILY TRUST.

### 1.2 Settlement and Acceptance of the Trust.

The Settlor hereby settles the Settlor's Gift upon the First Trustees. The First Trustees acknowledge receipt of the Settlor's Gift and by joining in the execution of this document, signify their acceptance of this Trust and the duties and obligations contained in it.

### 1.3 Trust is Irrevocable.

This Trust shall be irrevocable by the Settlor.

## ARTICLE 2 INTERPRETATION

### 2.1 Definitions.

In this Trust and in any supplemental or ancillary instrument unless the context requires otherwise:

- (a) "Appointment Limit Date" means the day prior to the twenty-first (21<sup>st</sup>) anniversary of the date of settlement of this Trust.
- (b) "Beneficiaries" means at any particular time any one or more of:
  - (i) BELINDA STRONACH;

- (ii) The children of BELINDA STRONACH (whether born before or after the establishment of this Trust) and the issue of such children (whether born before or after the establishment of this Trust);
- (iii) A trust created under the laws of any jurisdiction (provided that such trust does not infringe any rule against perpetuities applicable to this Trust) which is for the benefit of any one or more of the individuals referred to in clauses 2.1(b)(i) or 2.1(b)(ii) of this Article 2 (whether or not such trust is in existence at the time of establishment of this Trust), provided that the Trustees, pursuant to an exercise of their discretion, evidenced by instrument in writing executed by a majority of the Trustees, determine that such trust is a Beneficiary;
- (iv) A corporation the shares of which are owned by any one or more of the individuals and trusts referred to in clauses 2.1(b)(i) through 2.1(b)(iii) of this Article 2 (whether or not such corporation is in existence at the time of establishment of this Trust), provided that the Trustees, pursuant to an exercise of their discretion, evidenced by instrument in writing executed by a majority of the Trustees, determine that such corporation is a Beneficiary;
- (v) A trust created under the laws of any jurisdiction (provided that such trust does not infringe any rule against perpetuities applicable to this Trust) for the benefit of any one or more of ELFRIEDE STRONACH, the children of the marriage of ELFRIEDE STRONACH and FRANK STRONACH and the issue of such children (whether born before or after the establishment of this Trust);
- (vi) A corporation the shares of which are owned by any one or more of the trusts referred to in clause 2.1(b)(v) of this Article 2 (whether or not such corporation is in existence at the time of establishment of this Trust), provided that the Trustees, pursuant to an exercise of their discretion, evidenced by instrument in writing executed by a majority of the Trustees, determine that such corporation is a Beneficiary,

whether a Beneficiary's interest is contingent or absolute.

- (c) **"Beneficiary"** means any one of the Beneficiaries.
- (d) **"Distribution Date"** means the earlier of:
  - (i) one day prior to the Perpetuity Date; and
  - (ii) such date, either before or after the Appointment Limit Date, as the Trustees in their discretion at any time and from time to time prior to the Appointment Limit Date may by instrument in writing appoint, or in default of such appointment prior to the Appointment Limit Date, the date which is the Appointment Limit Date.
- (e) **"incapable of managing property"** shall have the meaning provided in Section 6 of the *Substitute Decisions Act*, S.O. 1992 c.30 as amended, and an individual who is incapable of managing property shall be considered incapacitated.

- (f) **"Income Tax Act"** or any reference to a specific provision thereof means the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.) and the regulations thereto as amended from time to time, or any legislation of the Parliament of Canada from time to time in force of like or similar effect.
- (g) **"issue"** of a person means that person's lineal descendants to the remotest degree and in determining the meaning of *"issue per stirpes"*, the stirpital base shall be taken as the generation in lineal descent most immediate to the common ancestor.
- (h) **"Legal Personal Representative"** means;
  - (i) if an individual is incapable of managing his or her own property:
    - (A) the attorney appointed and acting under a continuing or durable power of attorney for property;
    - (B) the guardian of property of such individual duly appointed by a court of competent jurisdiction; or
    - (C) the statutory guardian of property of such individual;
  - (ii) if an individual is deceased, the executor appointed under and acting pursuant to the individual's last Will and Testament or the person appointed by a court of competent jurisdiction to administer the estate of the deceased individual, and provided if the deceased individual had more than one last Will and Testament naming different persons as executors, then the executor appointed under and acting pursuant to the last Will and Testament which refers to this Trust or which governs any interest in this Trust.
- (i) **"net income"** means, unless otherwise herein provided, all of the income of the Trust Property less the aggregate of:
  - (i) any and all expenses incurred in and about the management of the Trust Property and the assets thereof as determined by the Trustees to be chargeable to income;
  - (ii) such further or other sums in each year as the Trustees in their discretion consider to be proper allowances, reserves, deductions, disbursements and/or outgoings in accordance with generally accepted accounting principles; and
  - (iii) without limiting the generality of the foregoing, such sum in each year as the Trustees shall in their discretion consider necessary and advisable from time to time as being on account of depreciation, depletion, deterioration or obsolescence of any of the assets of the Trust Property.
- (j) **"Perpetuity Date"** means the date which is one day before the twenty-first (21<sup>st</sup>) anniversary of the death of the last survivor of the Personal Beneficiaries who are alive at the date of the settlement of this Trust.
- (k) **"Personal Beneficiaries"** means the Beneficiaries named in clauses 2.1(b)(i) and 2.1(b)(ii).

- (i) **"Settlor's Gift"** means the Fifty Canadian Dollars (\$50 CAN) bearing serial number \_\_\_\_\_ being settled by the Settlor on the First Trustees and attached hereto as Schedule "A."
- (m) **"Special Investment"** means shares in the capital of 445327 Ontario Limited, any shares, debt obligation or other security received from or in exchange for such shares and any similar property which may be hereafter acquired.
- (n) **"Trust"** means this Trust Indenture and the trust constituted by it, as the context requires.
- (o) **"Trust Property"** means collectively the Settlor's Gift, and all other property, real or personal which at any time during the continuance of the trusts hereof may be assigned, transferred or appointed to the Trustees and which the Trustees may be willing but shall not be compelled, to accept and hold upon the trusts set out in this Trust, all property which may at any time be substituted therefor, and all capital accretions to and all income from such property, but excluding all property which has been paid or distributed therefrom (whether out of income or capital) in the normal course of administration or pursuant to the provisions of this Trust.
- (p) **"Trustee Act"** means the *Trustee Act*, R.S.O. 1990, c.T.23, as amended from time to time.
- (q) **"Trustees"** means the First Trustees and any other trustee or trustees appointed as trustees pursuant to this Trust and "Trustee" means any one of the Trustees.

## 2.2 Definition of Relationships.

Unless otherwise specifically provided, any reference in this Trust to a person in terms of a relationship to another person determined by blood or marriage shall not include a person born outside marriage nor a person who comes within the description traced through another person who was born outside marriage, provided that:

- (a) any person who has been legally adopted shall be regarded as having been born in lawful wedlock to his or her adopting parents;
- (b) any person who is born outside marriage and whose natural parents subsequently marry shall be regarded as having been born in lawful wedlock to such parents or parent, as the case may be; or
- (c) any person in respect of whom his or her natural parent has, in the opinion of the Trustees, demonstrated a settled intention to treat such person as his or her child, shall be regarded as having been born in lawful wedlock to his or her natural parent, and decisions by the Trustees, in this regard shall be final and binding upon all persons concerned.

### **2.3 Child Not Born Deemed to be Living.**

Any reference in this Trust to a child shall include any child *en ventre sa mere* at the date of my or any other death or other event referred to in this Trust, but born alive in due time thereafter, and shall be deemed to be living at that date.

### **2.4 Standard Interpretation.**

In this Trust:

- (a) the singular shall mean and include the plural and vice versa;
- (b) any gender shall mean and include all the genders;
- (c) references to a person shall include an individual, corporation, body corporate, partnership, joint venture, syndicate, association and trust, except where a contrary intention appears; and
- (d) a reference to an instrument means a deed or other instrument in writing.

### **2.5 Headings.**

The headings in this agreement are for convenience only and shall not be construed as affecting the interpretations of this Trust.

### **2.6 Severability.**

In the event that one or more of the provisions contained in this Trust shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby. Each of the provisions of this Trust is hereby declared to be separate and distinct.

## **ARTICLE 3 TRUST PROPERTY**

### **3.1 Settlor's Gift.**

The Trustees are directed after executing this Trust:

- (a) to place the Settlor's Gift in safe keeping;
- (b) not to sell or otherwise deal with the Settlor's Gift prior to the Distribution Date; and
- (c) not to commingle the Settlor's Gift with other assets of the Trust Property.

### **3.2 Acceptance and Holding of Special Investment.**

The Trustees are directed forthwith after executing this Trust to accept the Special Investment as an investment of the Trust Property. The Trustees shall not have a duty to dispose of and shall not be compelled by any Beneficiary or by any Court to dispose of the Special Investment for any reason including because of yield or lack thereof or lack of diversity provided that the Trustees may sell, transfer, exchange or otherwise dispose of all or any part of the Special Investment at any time or times, in such manner and on such terms as they consider necessary

or advisable. It is not intended that this power contradict or delay any direction or authority given to the Trustees to distribute such shares to any Beneficiary at any particular time.

#### **ARTICLE 4 DISTRIBUTION PRIOR TO THE DISTRIBUTION DATE**

##### **4.1 Discretionary Income Payments.**

The Trustees shall hold the Trust Property and keep it invested. Prior to the Distribution Date, the Trustees may from time to time pay to or apply for the benefit of such one or more of:

- (a) the Beneficiaries referred to in clauses 2.1(b)(i) through 2.1(b)(iv) of Article 2, and
- (b) during any period in which FRANK STRONACH is alive and is a Trustee of this Trust, the Beneficiaries referred to in clauses 2.1(b)(v) and 2.1(b)(vi) of Article 2,

to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine.

##### **4.2 Accumulation of Income.**

Any net income not paid to or applied for the benefit of one or more of the Beneficiaries in a year shall be accumulated by the Trustees and added to the capital of the Trust Property and dealt with as a part of it, provided that after the expiration of the maximum period permitted by law for the accumulation of income, the Trustees shall pay to or apply for the benefit of such one or more of the Beneficiaries referred to in clauses 2.1(b)(i) through 2.1(b)(iv) of Article 2 to the exclusion, even to the complete exclusion, of the other or others, as the Trustees determine, the whole of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine.

In default of such determination, or to the extent that it shall be void or shall not extend or take effect in whole or in part in any year, the Trustees shall divide any part of the annual net income not so paid or applied among the children of BELINDA STRONACH in equal shares, to be dealt with in accordance with the provisions of paragraph 5.3 of this Trust, provided that if a child of BELINDA STRONACH is not then living leaving issue then alive, the share to which such deceased child would have been entitled if living shall be divided among such issue in equal shares *per stirpes*, to be dealt with in accordance with the provisions of paragraph 5.3 of this Trust. If no such children or issue are then alive, any part of the annual net income not so paid or applied shall be paid or applied to BELINDA STRONACH if she is then alive, provided that if BELINDA STRONACH is not then alive, the Trustees shall pay or apply any part of the annual net income not so paid or applied shall be distributed equally between or among the children of ANDREW STRONACH then living, to be dealt with in accordance with the provisions of paragraph 5.3 of this Trust.

##### **4.3 Discretionary Capital Payments.**

Until the Distribution Date, the Trustees may at any time and from time to time pay to or apply for the benefit of such one or more of:

- (a) the Beneficiaries referred to in clauses 2.1(b)(i) through 2.1(b)(iv) of Article 2, and

- (b) during any period in which FRANK STRONACH is alive and is a Trustee of this Trust, the Beneficiaries referred to in clauses 2.1(b)(v) and 2.1(b)(vi) of Article 2;

to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the capital of the Trust Property, in such proportions and in such manner as the Trustees determine.

#### **4.4 Decision-making.**

No Trustee, other than FRANK STRONACH, who:

- (a) is also a Beneficiary or any of whose issue is a Beneficiary,
- (b) who is, or any of whose issue is, a beneficiary of a trust referred to in clause 2.1(b)(v), or
- (c) who is, or any of whose issue is, a shareholder, whether directly or indirectly, of a corporation referred to in clause 2.1(b)(vi),

may participate in a decision to make any discretionary distribution of income or capital to such Beneficiary pursuant to paragraphs 4.1 and 4.3.

### **ARTICLE 5 DISTRIBUTION ON THE DISTRIBUTION DATE**

#### **5.1 Distribution of Trust Property.**

- (a) On the Distribution Date, the Trustees shall divide and pay or transfer the Trust Property to one or more of:
  - (i) the Beneficiaries referred to in clauses 2.1(b)(i) through 2.1(b)(iv) of Article 2, and
  - (ii) during any period in which FRANK STRONACH is alive and is a Trustee of this Trust, the Beneficiaries referred to in clauses 2.1(b)(v) and 2.1(b)(vi) of Article 2,

to the exclusion, even to the complete exclusion of the other or others, in the manner, in such proportions and upon such trusts, terms and conditions and to the extent that the Trustees may, but shall not be compelled, to decide by instrument in writing.

- (b) In no event shall the Settlor or any other person who has contributed to the Trust Property, whether directly or indirectly, receive or otherwise be entitled to the Trust Property or any part of it.
- (c) No Trustee, other than FRANK STRONACH, who:
  - (i) is also a Beneficiary or any of whose issue is a Beneficiary, or
  - (ii) who is, or any of whose issue is, a beneficiary of a trust referred to in clause 2.1(b)(v), or

- (iii) who is, or any of whose issue is, a shareholder whether directly or indirectly, of a corporation referred to in clause 2.1(b)(vi),

may participate in a decision to make any discretionary distribution of capital to such Beneficiary pursuant to this paragraph 5.1.

## 5.2 Decision not Made.

In default of the decision referred to in paragraph 5.1 of this Trust, or to the extent that it shall be void or shall not extend or take effect in whole or in part, the Trustees shall deal with such part of the Trust Property then remaining as follows:

- (a) If any of BELINDA STRONACH and her issue are alive on the Distribution Date, the Trustees shall set aside and hold in trust that part of the Trust Property then remaining (hereinafter in this paragraph 5.2 referred to as the "Belinda Trust") for the benefit of BELINDA STRONACH, and her issue alive from time to time, until such time, which shall not exceed twenty (20) years following the Distribution Date, as the Trustees in their discretion shall determine (such time being hereinafter referred to as the "Belinda Trust Distribution Date"). Until the Belinda Trust Distribution Date, the Trustees may pay or apply the annual net income derived from the Belinda Trust to or for the benefit of BELINDA STRONACH, her issue, if any, and to any trusts established for the benefit of BELINDA STRONACH and/or her issue, or any corporations the shares of which are owned by any one or more of BELINDA STRONACH, her issue and any such trust, or any one or more of them, in such amounts, in such proportions, at such time or times and in such manner as the Trustees in their discretion consider advisable from time to time.
- (b) Upon the Belinda Trust Distribution Date, the Trustees shall divide the balance of the Belinda Trust then remaining into as many equal shares as may be necessary to carry out the following provisions and shall deal with such shares as follows:
  - (i) to pay or transfer sixty-two and one half (62-1/2) of such shares to BELINDA STRONACH, if she is living on the Belinda Trust Distribution Date, for her own use absolutely. If BELINDA STRONACH is not living on the Belinda Distribution Date leaving issue then alive, to divide such sixty-two and one half (62-1/2) shares among such issue in equal shares *per stirpes*, such shares to be dealt with in accordance with paragraph 5.3 hereof;
  - (ii) to pay or transfer eighteen and three-quarters (18-3/4) of such shares to FRANK WALKER, if he is living on the Belinda Distribution Date, for his own use absolutely. If FRANK WALKER is not living on the Belinda Distribution Date leaving issue then alive, to divide such eighteen and three-quarters (18-3/4) shares among such issue in equal shares *per stirpes*, such shares to be dealt with in accordance with paragraph 5.3 hereof; and
  - (iii) to pay or transfer eighteen and three-quarters (18-3/4) of such shares to NICOLE WALKER, if she is living on the Belinda Distribution Date, for her own use absolutely. If NICOLE WALKER is not living on the Belinda Distribution Date leaving issue then alive, to divide such eighteen and

three-quarters (18-3/4) shares among such issue in equal shares *per stirpes*, such shares to be dealt with in accordance with paragraph 5.3 hereof.

- (c) Notwithstanding anything herein contained, until the Belinda Trust Distribution Date the Trustees may, in their discretion, encroach upon the capital of the Belinda Trust and pay or transfer any amount or amounts of the capital of the Belinda Trust to or for the benefit of any one or more of the beneficiaries of the Belinda Trust at such times, in such proportions and in such manner as the Trustees, in their discretion, shall determine. In making any such encroachments upon the capital of the Belinda Trust, the Trustees may, in their discretion, completely exclude any one or more of the said beneficiaries.
- (d) If at any time that the Trustees are holding the Belinda Trust none of BELINDA STRONACH and her issue are living, the Trustees shall set aside and hold in trust the remainder of the Belinda Trust for the benefit of ANDREW STRONACH, and his issue alive from time to time, until the date which is the earlier of the death of ANDREW STRONACH and such date as the Trustees in their discretion shall determine, at which time the Trustees shall divide the remainder of the Belinda Trust among the issue of ANDREW STRONACH then living, in equal shares *per stirpes*, to be dealt with in accordance with the provisions of paragraph 5.3 of this Trust.
- (e) If none of BELINDA STRONACH and her issue are living on the Distribution Date, the Trustees shall set aside and hold in trust that part of the Trust Property then remaining (hereinafter in this paragraph 5.2 referred to as the "Andrew Trust") for the benefit of ANDREW STRONACH, and his issue alive from time to time, until such time, which shall not exceed twenty (20) years following the Distribution Date, as the Trustees in their discretion shall determine (such time being hereinafter referred to as the "Andrew Trust Distribution Date"). Until the Andrew Trust Distribution Date, the Trustees may pay or apply the annual net income derived from the Andrew Trust to or for the benefit of ANDREW STRONACH and his issue, if any, and to any trusts established for the benefit of ANDREW STRONACH and/or his issue, or any corporations the shares of which are owned by any one or more of ANDREW STRONACH, his issue and any such trust, or any one or more of them, in such amounts, in such proportions, at such time or times and in such manner as the Trustees in their discretion consider advisable from time to time. Upon the Andrew Trust Distribution Date, the Trustees shall divide and pay or transfer the balance of the Andrew Trust then remaining among and to or for the benefit of ANDREW STRONACH and his issue, if any, and to any trusts established for the benefit of ANDREW STRONACH, his issue, or any corporations the shares of which are owned by any one or more of ANDREW STRONACH, his issue and any trust or corporation as described above in this subparagraph 5.2(e), or any one or more of them, in such amounts, in such proportions, at such time or times and in such manner and upon such terms as the Trustees in their discretion consider advisable.

Notwithstanding anything herein contained, until the Andrew Trust Distribution Date the Trustees may, in their discretion, encroach upon the capital of the Andrew Trust and pay or transfer any amount or amounts of the capital of the Andrew Trust to or for the benefit of any one or more of the beneficiaries of the Andrew Trust at such times, in such proportions and in such manner as the Trustees, in their discretion, shall determine. In making any such encroachments

upon the capital of the Andrew Trust, the Trustees may, in their discretion, completely exclude any one or more of the said beneficiaries.

### 5.3 Administration of Portions.

For all purposes of this Paragraph each Personal Beneficiary whose share of the Trust Property is to be dealt with in accordance with the terms of this Paragraph shall be referred to as a "Person" and the said share of such Person shall be referred to as the "Portion", although all of the respective Portions may not be of equal value. The Portion set aside for each Person shall be administered by the Trustees in the following manner:

- (a) if such Person has attained the age of thirty (30) years at the time the Trustees commence administering such Portion, the Trustees shall pay or transfer such Portion to such Person at that time.
- (b) if such Person has not attained the age of thirty (30) years at the time the Trustees commence administering such Portion, the Trustees shall hold such Portion for such Person and shall deal with such Portion as follows:
  - (i) The Trustees may from time to time pay to or apply for the benefit of such Person the whole or such part of the annual net income derived from such Portion or from the part thereof from time to time remaining in trust and all or such part or parts of the capital thereof as the Trustees determine.
  - (ii) If in any year that the Trustees hold such Portion or any part thereof, any part of the annual net income is not paid to or applied for the benefit of the Person, such part shall be accumulated by the Trustees and added in the following year to the capital of such Portion and dealt with as part thereof; provided after the expiration of the maximum period for accumulation of income permitted by law, if the Trustees are then holding such Portion or any part thereof, they shall thereafter pay to or apply for the benefit of the Person the whole of the annual net income derived therefrom in such annual or more frequent instalments as the Trustees determine.
  - (iii) The balance of such Portion shall be paid or transferred to such Person when such Person attains the age of thirty (30) years or such earlier age as the Trustees determine.
  - (iv) Notwithstanding anything to the contrary hereinbefore contained with respect to the Portion being held pursuant to the provisions of this Paragraph, if on the date which is one day prior to the date on which the perpetuities period under the common law as modified by the *Perpetuities Act* (Ontario), expires (such date hereinafter referred to as the "Perpetuity Date"), any Portion remains undistributed by reason of the Person for whom such Portion is being held not having yet attained the age of thirty (30) years, such Portion or the part thereof then remaining shall be paid or transferred on the Perpetuity Date to such Person.
  - (v) If such Person dies before becoming entitled to receive all of his or her Portion leaving issue surviving him or her, the Trustees shall divide such Portion or the part thereof then remaining, between or among the issue of

such Person in equal shares *per stirpes*, such shares to be dealt with in accordance with the provisions of this Paragraph.

- (vi) If such Person dies without leaving issue surviving him or her, such Portion or the part thereof then remaining shall be divided between or among the issue of the parent of such Person who was a Beneficiary and a lineal descendant of BELINDA STRONACH, in equal shares *per stirpes*, such shares to be dealt with in accordance with the provisions of this Paragraph.

#### **5.4 Distributions on Failure to Vest.**

If at any time after the Distribution Date any portion of the Trust Property shall not otherwise vest indefeasibly in possession in a beneficiary under the terms hereof, then on the date when it is determined that such portion will fail to so vest, the Trustees shall pay or transfer such portion to the personal representative of FRANK STRONACH, who shall distribute such portion to the next of kin of FRANK STRONACH in accordance with the law of intestate succession in the Province of Ontario, without regard to the entitlement of a spouse to the preferential share (as provided in Part II of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, as amended from time to time).

### **ARTICLE 6 DISTRIBUTION POWERS AND RESTRICTIONS**

#### **6.1 Survivorship Requirement for Certain Beneficiaries.**

Notwithstanding any other provision of this Trust, if a person in whose favour a power to encroach on the capital of the Trust Property or a power to appoint the Trust Property can be exercised is also a person who can exercise that power, then any exercise of such power by such person whether alone or with others, in favour of himself or herself shall not be valid unless such person is alive 30 clear days after the exercise of such power.

#### **6.2 Beneficiaries, Powers and Subsection 75(2).**

- (a) In this paragraph:

- (i) "Transferor" means the Settlor and any other person from whom the Trust has, directly or indirectly, received, as that term is used in subsection 75(2) of the *Income Tax Act*, property; and
- (ii) "Transferred Property" means the property, or property substituted for it, which the Trust has received, as that term is used in subsection 75(2) of the *Income Tax Act*, from a Transferor.

- (b) Notwithstanding any other provision of this Trust and if but for this subparagraph, subsection 75(2) of the *Income Tax Act* would apply to this Trust, the Transferred Property shall not and cannot be transferred or distributed to the Transferor including in his or her capacity as a Beneficiary and any power given to the Trustees or to any other person by this Trust or by law, including any power of encroachment, appointment or sale, to transfer or distribute Transferred Property to a Transferor shall be deemed to be deleted, restricted, and modified to the extent necessary so that subsection 75(2) of the *Income Tax Act* will not apply.

- (c) Notwithstanding any other provision of this Trust, no provision or power contained in this Trust shall be interpreted so as to give the Transferor the power to determine to whom the Transferred Property shall pass or to require the consent or direction of the Transferor for the disposition of the Transferred Property.
- (d) If a person participated in the exercise of a power which, as a result of the restrictions in this Trust (including those in this Article), is of no effect, then such person does so for conformity only and any purported exercise of a power in contravention of such restriction shall be void *ab initio*.

## **ARTICLE 7 TRUSTEES' POWERS**

### **7.1 Powers of an Owner.**

In addition to any other powers given to the Trustees in this Trust, pursuant to the *Trustee Act* or pursuant to any law of this or any other jurisdiction, but subject always to the restrictions and limitations in Article 6, the Trustees shall have the same powers in administering the Trust Property as they would have if they were the sole owners of the Trust Property and without limiting the generality of the foregoing may exercise one or more of the powers given in this Article.

### **7.2 Receive Additional Property.**

The Trustees may receive from any person, but only with the Trustees' prior written consent, additional property or donations by gift or Will or pursuant to the provisions of any other trust or trusts or otherwise, as additions to the Trust Property to be held on the trusts set out in this Trust provided that the Trustees shall not be compelled to accept any additional property and may decline to accept any such additional property without giving reasons for their decision.

### **7.3 Powers to Sell, Mortgage, etc.**

- (a) The Trustees may perform all acts of ownership (including alienation and hypothecation) to the same extent and with the same effect as if they were the absolute owners of the Trust Property and without limiting the generality of the foregoing, may sell (whether by public or private sale and whether for cash or on credit or partly for cash and partly for credit), transfer, pledge, exchange, convey, mortgage, lease, encumber, or otherwise dispose of any assets from time to time forming part of the Trust Property in such manner, at such price, for such consideration and upon such terms as the Trustees shall determine. Such terms may extend beyond the duration of the trusts in this Trust.
- (b) The Trustees may abandon any asset which they deem to be worthless or not of sufficient value to warrant keeping or protecting. The Trustees may abstain from the payment of taxes, rent, assessments, repairs, maintenance and upkeep of any such asset and may permit any such asset to be lost by tax sale or other proceeding or to convey it for a nominal consideration or without consideration.

### **7.4 Retention of Assets.**

The Trustees shall have the separate and substantive power to retain any asset of the Trust Property, whether such asset is personalty, realty, moveable, immoveable, intangible or of any

other form whatsoever, notwithstanding that it may not be in the form of an investment in which trustees are authorized to invest trust funds, whether or not there is a liability attached to any such asset and whether or not it is income producing or appreciating in value (and no asset not actually producing income shall be treated as producing income), for such length of time as the Trustees in their discretion deem advisable, including the entire term of the administration of the trusts created by this Trust, provided that the Trustees may sell, transfer, exchange or otherwise dispose of any assets of the Trust Property at such time or times, in such manner, and on such terms as the Trustees deem necessary or advisable. It is not intended that this power contradict or delay any direction or authority given to the Trustees to distribute any asset or portion of the Trust Property to any Beneficiary at any particular time.

#### **7.5 Payment of Income.**

Whenever the Trustees are directed or authorized to pay or apply the net income of the Trust Property to one or more Beneficiaries, the Trustees may pay such net income in annual or more frequent periodic payments during the year, and for such purpose the Trustees are hereby specifically authorized and empowered to make reasonable estimates of the annual net income for such year in order to ascertain the amount of the annual net income which is accrued to the date of such periodic payment.

#### **7.6 Investments.**

- (a) When investing the Trust Property the Trustees shall not be limited to investments authorized by law for trustees but may make any investments (whether inside or outside Canada, whether or not income producing, including, without being limited to, investments in mutual funds, pooled investment funds or other unit trusts, and whether or not any one of the Trustees is the financial institution or company with which such investment is sourced or administered, or is employed by, associated with, or a partner of such financial institution or company), as they consider advisable and from time to time to alter or vary such investments.
- (b) When making such investments the Trustees shall not be subject to the criteria in planning, or the requirements for diversifying, the investment of Trust Property, which are prescribed by the law for trustees, but may make and retain such investments as they in their discretion may consider appropriate from time to time.
- (c) Except as otherwise in this Trust Indenture provided, the Trustees may purchase as an investment of the Trust Property any assets from the Settlor or a Trustee or any person related to the Settlor or a Trustee on such terms (including price) as the Trustees determine and the Trustees may invest in an investment the terms of which extends beyond the duration of the trusts governed by this Trust.
- (d) The Trustees shall not be liable for any loss that may happen to the Trust Property in connection with any investments made by them honestly and in good faith.

#### **7.7 Even-Handedness not Required.**

In exercising their discretion in the investment of the Trust Property or any part of it, or retaining or selling any particular asset of the Trust Property or any part of it, and in light of the provisions contained in this Trust, the Trustees shall not be required to maintain an even hand between the

Beneficiaries, provided that all such decisions made by the Trustees are made by them honestly and in good faith.

#### **7.8 Insurance.**

- (a) The Trustees may apply for and purchase alone or jointly with others as owner, and may accept as assignees for consideration or as a donation, policies of insurance on the life of any person, which shall be an authorized investment of the Trust Property, and in so doing may pay or prepay any premiums out of the income or capital or partly income and partly capital of the Trust Property or any part of it as the Trustees determine.
- (b) If the Trustees determine that it is no longer advisable to continue to maintain in force or to hold any such policy of life insurance, they may cancel or dispose of it, at such time, in such manner and upon such terms (including consideration, if any) as the Trustees determine.
- (c) The Trustees may also obtain insurance against hazards, including public liability, in such amounts as they determine to be necessary or advisable to protect or secure the assets of the Trust Property but the Trustees shall not be liable for any omission to purchase any insurance or to purchase any particular insurance.
- (d) The Trustees shall not be responsible for the form, genuineness, validity, sufficiency or effect of any policy of insurance at any time forming part of the Trust Property, or for the act of any person which may render any policy null and void, or for the failure of the insurance company or issuing body to make payment under such policy when proceeds thereunder become due and payable, or for any delay occasioned by reason of any restriction or provision contained in any such policy, or if for any reason (other than failure to pay premiums as provided for in this Trust when there are sufficient assets available to satisfy such premium payments) any policy shall lapse or the proceeds thereunder otherwise become uncollectible.

#### **7.9 Purchase Annuities.**

The Trustees may purchase one or more annuities (including an annuity to be held on protective trust for the benefit of a Beneficiary) and any such annuity shall be an authorized investment of the Trust Property. In addition the Trustees may validly exercise any power they have to pay or apply capital to or for the benefit of any Beneficiary by using same to purchase one or more annuities for the benefit to such Beneficiary.

#### **7.10 Employment of Agents.**

If the Trustees consider it necessary to engage any corporation or person to carry out some or all of the directions in this Trust, the Trustees may employ such corporation or person to act as agent for them, and except as otherwise provided in this Paragraph may delegate to the agent any or all of their duties, powers and authorities, including, but without being limited to, those of their functions and duties that are of an administrative nature and that relate to the management of the Trust Property, including keeping all or any books of account, receiving and disbursing money or assets, otherwise managing all or any part of the Trust Property and performing any other duties in connection therewith in accordance with the instructions of and in the manner authorized and directed by the Trustees. The Trustees shall not delegate to such agent any

power, duty or discretion vested in the Trustees in relation to the power to encroach on, to appoint or to advance income or capital of the Trust Property to or for any one or more of the Beneficiaries. The Trustees may terminate or revoke any such agency at any time and, if they so desire, engage any other corporation or person for the purposes hereinbefore mentioned and so on from time to time. The Trustees may pay to any such agent so employed for the purposes hereinbefore mentioned out of the capital or income or partly out of income and partly out of capital of the Trust Property or any trusts established by this Trust in such proportions as the Trustees shall determine, such remuneration and reimbursement of expenses as the Trustees shall consider appropriate. Such remuneration shall be in addition to the compensation payable to the Trustees, if any. The Trustees shall incur no liability for any loss resulting from the delegation to or for the conduct of the agent, notwithstanding that the retainer of such agent was not strictly necessary, provided that such agent was selected and retained with reasonable care and that the Trustees have acted honestly and in good faith.

#### **7.11 Professional Advisors.**

Without limiting the generality of the above, the Trustees may:

- (a) act on the advice of or information obtained from any lawyer, accountant, valuator, financial advisor, auctioneer, surveyor, or other experts and professional persons and the Trustees shall not be responsible for any loss, depreciation, or damage occasioned by acting or not acting on such advice provided that the Trustees have acted honestly and in good faith;
- (b) retain and instruct counsel in connection with any matter concerning this Trust or this Trust in any legal proceeding and in connection therewith the Trustees may make claims for punitive, aggravated and exemplary damages in any circumstances in which they determine such to be in the best interests of this Trust; and
- (c) rely and act upon the accuracy of any statement or report prepared by the auditors or accountants for this Trust, any report or opinion from any lawyer for this Trust, and any valuation or evaluation by any valuator retained by this Trust and the Trustees shall not be responsible or held liable for any loss or damage resulting from relying or acting on such statement, opinion, report, valuation or evaluation provided that the Trustees have acted honestly and in good faith.

#### **7.12 Investment Advisors.**

The Trustees may engage the services of one or more investment counsel managers, mutual fund managers or investment advisors (referred to in this Paragraph as the "Investment Advisor") as the Trustees from time to time think fit to advise them with respect to the investment and reinvestment of the Trust Property. The Trustees may delegate to the Investment Advisor, within the limits and for the period, if any, stipulated by the Trustees, any or all of the discretionary powers given to the Trustees by this Trust or by law with respect to investments. The Trustees shall determine the remuneration of the Investment Advisor and the reimbursement of the expenses of the Investment Advisor. Any remuneration and reimbursement of expenses shall be paid by the Trustees out of the capital or income or partly out of the capital and partly out of the income, of the Trust Property in such proportions as the Trustees shall determine. Such remuneration shall be in addition to the compensation payable to the Trustees, if any. The Trustees may place all or any of the assets comprising the Trust Property in the custody of the Investment Advisor and may transfer any such assets into the name of the Investment Advisor or any nominee of the Investment Advisor. The Trustees shall

incur no liability for any action taken as a consequence of following the advice of the Investment Advisor however communicated or for any loss resulting from the delegation of discretion to or the conduct of the Investment Advisor, notwithstanding that the retainer of the Investment Advisor was not strictly necessary, provided that the Investment Advisor was selected and retained with reasonable care and the Trustees have acted honestly and in good faith.

#### **7.13 Corporate Fiduciary.**

Without limiting the generality of the above, the Trustees are authorized from time to time to appoint a trust company or other corporate fiduciary (referred to in this paragraph as the "Corporate Fiduciary") to act as their agent for the management of the Trust Property and to terminate any such appointment. Any remuneration to be paid to the Corporate Fiduciary is to be paid out of the capital or income or partly out of the capital and partly out of the income, of the Trust Property in such proportions as the Trustees shall determine. Such remuneration shall be in addition to the compensation payable to the Trustees, if any. In making such arrangement the Trustees may place all or any of the assets comprising the Trust Property in the custody of the Corporate Fiduciary, may transfer any assets into the name of the Corporate Fiduciary, or any nominee thereof, and may delegate to the Corporate Fiduciary any or all of the discretionary powers given by this Trust or law to the Trustees with respect to the investment of such assets. The Trustees shall incur no liability for any loss resulting from the retention of a Corporate Fiduciary, the delegation of discretion to or the conduct of, a Corporate Fiduciary, notwithstanding that the retainer of the Corporate Fiduciary was not strictly necessary, provided that the Corporate Fiduciary was selected and retained with reasonable care and the Trustees have acted honestly and in good faith.

#### **7.14 Borrowing Power.**

The Trustees may borrow money from time to time, either without security or upon the security of the whole or any part of the Trust Property, in such manner, on such terms and conditions, for such length of time and for such purposes connected with this Trust as the Trustees may from time to time deem advisable. The Trustees may borrow from any person notwithstanding that such person may be a Beneficiary, a Trustee or a person related to them by blood or marriage, and the lender from whom the Trustees borrow shall nevertheless be entitled to receive and be paid for the lender's own benefit, interest at the rate agreed to by the Trustees. To secure the repayment of any amount so borrowed, the Trustees may mortgage, charge, pledge, hypothecate or otherwise encumber any one or more assets or investments of the Trust Property.

#### **7.15 Guarantees, etc.**

The Trustees may give any surety, guarantee, bond, covenant or indemnity (referred to in this Paragraph as an "Indemnity") with respect to any contract, debt, guarantee or other obligation of any person, including a Beneficiary and a Trustee but excluding a corporate Trustee or subsidiary of a corporate Trustee, unlimited or limited in amount, with or without consideration and with or without security. To secure the performance of any such Indemnity the Trustees may mortgage, pledge, hypothecate or otherwise charge all or any part of the Trust Property. The Trustees may apply all or any part of the Trust Property to the payment of any obligation in respect of which the Trustees have given an Indemnity.

#### **7.16 Loans.**

The Trustees may lend all or any part of the Trust Property to any individual, including any Beneficiary or Trustee but excluding a corporate Trustee or a subsidiary of a corporate Trustee,

or any person related to them by blood or marriage, or to any corporation, partnership, or proprietorship, whether or not any one or more of the Beneficiaries or the Trustees has or have any interest therein. Any such loan shall be in such amount, upon such terms, with such rate of interest (if any) and with such security (if any) as the Trustees determine. The Trustees shall not be liable for any loss that may happen to the Trust Property in connection with any loan made by them honestly and in good faith.

#### **7.17 Banking Arrangements.**

The Trustees may open and operate such account or accounts as may be expedient in the opinion of the Trustees and deposit any cash balances in the hands of the Trustees at any time in any chartered bank, trust company or other financial institution, and, for the purposes of this Trust, draw, make, endorse, deposit, or deal in cheques, bills of exchange, promissory notes, drafts, or any other mercantile, commercial or security document of any nature or kind, and enter into contracts or agreements of any nature or kind, with such bank, trust company, or financial institution. The Trustees may designate in writing one or more persons (including a person who is not a Trustee) as authorized signatories and in that case, the signatures of the Trustee or Trustees so designated shall be valid and binding upon this Trust.

#### **7.18 Powers relating to Corporations.**

The Trustees may incorporate any corporation or corporations under the laws of any jurisdiction in the world at the expense of the Trust Property for the purpose of investing all or any part of the Trust Property wholly or partly in shares or other securities of such corporation or corporations and to retain in their existing form as investments of the Trust Property for so long as the Trustees shall see fit, any shares, bonds, dividends, debentures, securities, or other evidences of indebtedness in any corporation, whether incorporated by the Trustees or not, without being responsible for any loss occasioned thereby. With respect to any shares or other securities of any nature whatsoever in any corporation or corporations, whether or not incorporated by the Trustees, the Trustees shall have the following powers:

- (a) to vote in person or by proxy the securities held by them and to delegate their discretionary powers in respect thereof;
- (b) to exercise options, conversions, privileges or rights to subscribe for additional securities attaching to any securities held by them, and to make payment therefor and to consent to or participate in dissolutions, re-organizations, consolidations, mergers, pooling agreements, reconstructions, amalgamations, voting trusts, or sales affecting securities of corporations held by them and in such connection to delegate their discretionary power and pay assessments, subscriptions and other charges;
- (c) to vote for the election of themselves or of any one or more of themselves to any executive office or to membership on any board of directors or executive or other committee of any such corporation or association, and to serve in any such office or on any such board or committee and accept and receive remuneration for such services, without diminution of their compensation as fiduciaries hereunder and without being required to account therefor;
- (d) to grant proxies, discretionary or otherwise, to vote at meetings of shareholders or of directors;

- (e) to transfer shares to the Trustees or any of them or to other individuals for the purpose of representation and for the purpose of the appointment of such persons as directors or officers or both;
- (f) to unite with other owners of property similar to any which may be held at any time in the Trust Property (or property which can be conveniently dealt with jointly) in carrying out any plan for the consolidation, subdivision or merger, dissolution or liquidation, foreclosure, lease or sale of the property, incorporation or reincorporation, reorganization or readjustment of the capital or financial structure of any corporation, company, or association the securities of which may form a portion of the Trust Property;
- (g) to join in or take any action, or to exercise any rights, powers and privileges which at any time may exist or arise in connection with any shares or other securities to the same extent and as fully as they could if they would the sole owner thereof; and
- (h) to become and serve as members of any stockholders' or bondholders' or creditors' protective committee; to present proposals; to oppose proposals presented; to approve or disapprove what is discussed, and to protect against any matter or thing which the Trustees might consider contrary to the best interests of this Trust; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses and sums of money that may be required for the protection or furtherance of the interests of the Beneficiaries of this Trust with reference to any such plan; and to receive and retain as investments of this Trust any new securities issued as a result of the execution of such plan, whether or not they would be authorized investments but for this provision of this Trust.

#### **7.19 Carry on Business.**

Without in any way restricting the general power and discretion given to the Trustees in this Trust, the Trustees are authorized to carry on any business, and either alone or in partnership with any person or persons, including any of the Trustees, who may be a partner or partners therein for the time being, for such length of time as the Trustees may consider to be in the best interests of this Trust, with power to do all things necessary or advisable for the carrying on of any such business, in particular, but without limiting the generality of the foregoing, the following powers:

- (a) from time to time upon the expiration of the term of any partnership, to renew the same for any period determined or otherwise and at any time or times vary any or all of the terms contained in any partnership articles;
- (b) to advance or employ therein or withdraw therefrom, with or without taking security, all or any part of the Trust Property which they consider desirable for effectually carrying on such business;
- (c) to arrange and agree to the introduction at any time or times of any person or persons as a partner or partners therein, and to determine the division of the profits thereof, the payment of any sum or sums in lieu of profits to any partner, the hiring or employment of any person or persons therein (including any one or more of the Trustees) at such salary or remuneration as they shall think proper,

and the extension or curtailment of the business thereof or the adoption of any new line of business; and

- (d) to form or join in forming a corporation or corporations for the purpose of taking over or purchasing all or any part of any such business or may sell the same to any corporation or corporations at such price and subject to such terms and conditions as the Trustees may determine, and in consideration for any such taking over or sale, to accept cash, bonds, notes, preference or common shares of any corporation, whether or not such corporation is the corporation taking over or purchasing as aforesaid, or to do all or any of the aforesaid as the Trustees think fit; and any bonds, notes, preference or common shares so received shall be an authorized investment of the Trust Property.

#### **7.20 Options.**

The Trustees may grant to any person an option to purchase any asset of the Trust Property, for such consideration (if any), exercisable at such time or times, for such periods, all as the Trustees decide.

#### **7.21 Freeze Transactions.**

Without in any way limiting the generality of any other provisions of this Trust the Trustees are specifically authorized and empowered:

- (a) to incorporate and organize a corporation for the purpose of acquiring assets of the Trust Property; and
- (b) to sell any assets of the Trust Property to a corporation incorporated by the Trustees as aforesaid or to any other corporation controlled by or for any one or more of the Trustees and the Beneficiaries, in return for shares (with such rights, privileges, restrictions and conditions attaching to any such class or classes of shares as the Trustees may in their discretion deem advisable) or debt obligations, whether secured or unsecured, of such corporations or any combination of such securities and may invest the assets of the Trust Property in such shares or obligations. Any such shares or obligations so acquired shall be authorized investments of the Trust Property and shall be retained by the Trustees for such length of time as they may in their discretion determine and whether or not income producing or appreciating in value.

In connection with the foregoing, and for greater certainty, the Trustees shall be entitled to transfer any shares held as assets of this Trust which are participating shares in exchange for shares which have a value fixed at the fair market value of the participating shares at the time of the transfer, notwithstanding that this may allow the future growth in the value of the participating shares in any corporations forming part of the Trust Property to accrue to the benefit of any one or more of the Beneficiaries otherwise than by the terms hereof or to others. However, it is intended that any necessary arrangements or transactions completed for this purpose take place incurring little or no immediate liability for income taxes imposed by this or any other jurisdiction. Therefore, the Trustees are authorized to take whatever steps they deem necessary or advisable at any time and from time to time, to freeze the value of the interest of this Trust or any part of it in any shares of any corporation or any other appreciable asset, and in connection therewith the Trustees are authorized to consult with the accountants and lawyers of their choice, to advise them of the most appropriate form that the arrangements or transactions should take. If after obtaining such advice, the Trustees are of the opinion that

certain arrangements or transactions would accomplish the foregoing, the Trustees are authorized to take all necessary steps to give effect to such arrangements or transactions. In this regard and without limiting the generality of the foregoing or of any other provisions of this Trust, the Trustees shall have the authority to cause or to permit any or all of the following to occur:

- (a) the reorganization of the capital structure of any such corporations;
- (b) the transfer of or the exchange of shares or other interests of this Trust in any such corporation for any other shares or other consideration or both in the corporation or in any other corporation having an aggregate value equal to the fair market value of such shares or other interests at the time of the exchange;
- (c) the transfer of any other appreciable property held by this Trust for any shares or other consideration or both in any corporation having an aggregate value equal to the fair market value of such property at the time of the exchange;
- (d) the issuance of any shares of any class or classes of shares of any such corporations to the Trustees, to any of the Beneficiaries or to others; and
- (e) the redesignation of any class or classes of shares, or the authorization of any new class or classes of shares, as the Trustees may deem advisable, in any such corporations and the issue of any such shares to the Trustees, to any of the Beneficiaries or to others. The rights, privileges, restrictions and conditions attaching to any such class or classes of shares shall be determined by the Trustees as they may consider advisable.

In making their decisions in connection with the foregoing, the Trustees need not give consideration to the maintaining of an even hand between or among the Beneficiaries of this Trust.

#### **7.22 Act as Director, Officer or Employee.**

Any of the Trustees and any person who is a director, officer, shareholder, or employee of a corporate Trustee may act as a director, officer or employee of any corporation whose shares, bonds, debentures, notes or other securities form part of the Trust Property and may act as a director, officer or employee of any affiliate or subsidiary of any such corporation. Any such Trustee or person who so acts may retain personally any remuneration which such Trustee or person receives as a director, officer or employee notwithstanding that the voting or the withholding of votes or other rights attaching to any shares, bonds, debentures, notes or other securities forming part of the Trust Property may have been instrumental (in whole or in part) in procuring or continuing for such Trustee or person any such position. It shall not be an obligation of any of the Trustees to act as a director, officer or employee of any corporation in which any part of the Trust Property is invested and any Trustees or such person who does not act as a director, officer or employee of any such corporation will not be required directly or indirectly to oversee or account for the part of the Trust Property that is invested in such corporation.

#### **7.23 Power to appoint Directors.**

The Trustees may appoint such person or persons as they in their discretion consider appropriate to act as a director of any corporation whose shares, bonds, debentures, notes or other securities form part of the Trust Property, or of any affiliate or subsidiary of any such

corporation and may approve any reasonable remuneration to be paid to any such person or persons. It shall not be an obligation of the Trustees to oversee or be responsible for the acts, decisions or conduct of any such director.

#### **7.24 Income Tax Elections and Allocations.**

Subject to any specific provision contained in this Trust to the contrary and specifically the restrictions in Article 6, the Trustees may, in their discretion from time to time and at any time or times, make or not make any elections, determinations, distributions or allocations (collectively referred to in this paragraph as "Elections") and allocate tax credits and allowances (collectively referred to in this paragraph as "Allocations") under any taxing statute, including the *Income Tax Act* or any similar legislation of any province or other jurisdiction inside or outside of Canada in force from time to time, as they deem advisable, whether or not such Elections or Allocations may or would have the effect of conferring an advantage on any one or more of the Beneficiaries or could otherwise be considered as not being an impartial exercise by the Trustees of their powers or as not maintaining an even hand among the Beneficiaries. For the purpose of making an Election or Allocation, a deemed receipt shall be treated in the same manner as it would have been had it been an actual receipt. The Trustees are exonerated from any responsibility with respect to any such Elections and Allocations made by them honestly and in good faith.

#### **7.25 Taxable Capital Gains Account.**

Subject to the Trustees realize a capital gain on the disposition or deemed disposition of any assets of the Trust Property, or any part of it in a year, they may allocate the taxable portion of such gain to an account in respect of the Trust Property or such part to be known as the "taxable capital gain account" and may allocate the non-taxable portion of such gain to the capital of the Trust Property or such part. The Trustees may charge any payments of capital in the year to or for a Beneficiary either to the taxable capital gain account or to the capital of the Trust Property or such part or both in such proportions as the Trustees determine. At the end of the year, the Trustees shall add the amount then remaining in the taxable capital gain account to the capital of the Trust Property or such part.

#### **7.26 Avoidance of Deemed Disposition.**

Without limiting the discretion of the Trustees to determine what is the best course of action in any particular circumstance, the Trustees are specifically authorized and empowered to take whatever steps may be necessary to exercise their power of encroachment, or to otherwise act to distribute such assets of the Trust Property as they deem necessary or advisable in order to avoid the deemed disposition of any assets in the Trust Property and thus avoid any taxes which would otherwise be exigible pursuant to the provisions of subsection 104(4) of the *Income Tax Act* or any similar or successor legislation. In exercising such power, or performing such act, the Trustees shall not be required to maintain an even hand among the Beneficiaries of this Trust.

#### **7.27 Allocations of Payments Made or Received.**

The Trustees may determine whether payments made or received by them in the administration of this Trust shall be credited to or charged against capital or income or partly to or against capital and partly to or against income. For greater certainty, "payments" shall include any dividend, whether cash or stock. This provision shall not be construed as a direction to pay or treat capital gains as income. Notwithstanding anything contained in this Trust to the contrary, this discretion shall be subject to the direction of a court of competent jurisdiction.

#### **7.28 Settle Claims.**

The Trustees may compromise, settle, waive or pay, as the case may be, any claim or claims at any time owing or alleged to be owing by this Trust, or which this Trust may have against others, for such consideration or no consideration, and upon such terms and conditions as the Trustees deem advisable, and to refer to arbitration or mediation, all such claims if the Trustees deem it to be advisable.

#### **7.29 Property Vested In Minors.**

Except as otherwise provided in this Trust, if any person becomes entitled indefeasibly to any share of or interest in the Trust Property, whether of income or capital, before attaining the age of majority, the Trustees may hold and invest the share or interest of such person and any income derived therefrom until such person attains the age of majority and until such time, the Trustees may accumulate the income derived therefrom and add it to the share or interest from which it arose, provided the Trustees are authorized to pay or apply such part or parts of the income and capital of such share or interest as they consider necessary or advisable to or for the benefit of such person until such person attains the age of majority.

#### **7.30 Payment to Parent or Guardian.**

The Trustees may make any payments or transfers for any person under the age of majority or otherwise under disability to a parent, guardian of the person or guardian of the property of such person, or anyone to whom the Trustees in their discretion consider it advisable to make such payments. The Trustees shall not be under any duty to see to the application of funds so paid, and the receipt of the recipient of such payment shall be a full and sufficient discharge to the Trustees. Such payment, whether it constitutes income or capital, may be made in cash, kind or specie, in the discretion of the Trustees.

#### **7.31 Manner of Payments to Person Under Disability.**

The Trustees have full power and authority to make any payment payable to or for any person under the age of majority or otherwise under disability pursuant to the terms of this Trust, in any one or combination of the following ways:

- (a) directly to such person;
- (b) directly in payment of the expense of support, maintenance, advancement, betterment, schooling, development, and medical, surgical, hospital, or other institutional care of such person (notwithstanding that such person's parent or guardian may also be liable for the support and maintenance of such person);
- (c) to the parents, guardians of the person, or guardians of the property of such person or any of them; or
- (d) to any other person, whether or not appointed guardian of the person or guardian of the property of the person, who has the care and custody of the person.

The Trustees shall not be under any duty to see to the application of funds so paid, and the receipt of the recipient of such payment shall be a full and sufficient discharge to the Trustees. Such payment, whether it constitutes income or capital, may be made in cash, kind or specie, in the discretion of the Trustees. Neither the Trustees nor the person receiving any payment for any person pursuant to the provisions of this Paragraph shall be liable to such person for any

loss, neglect, default, damage or reduction in value suffered by such person or such person's interest by their having so acted.

#### **7.32 Division in Specie.**

In making any division of the Trust Property or any part of it, or in setting aside or paying any share or interest in the Trust Property or any part of it, the Trustees may, but are not obligated to, either wholly or in part divide, set aside or pay over in specie the assets then forming the Trust Property or any such trust as they deem advisable. For these purposes, the Trustees shall have the power to determine the value of the assets in any manner the Trustees shall see fit. Any such valuation shall be made as of the date selected for the distribution of any such assets and, notwithstanding any fluctuation in market value or that one or more of the Trustees may be beneficially interested in any asset so valued, shall be final and binding upon all the Beneficiaries of the Trust Property. No Beneficiary shall have the right to insist that the Trustees exercise the foregoing discretion or to insist they first sell and convert any asset into cash or any other form of investment prior to satisfying such Beneficiary's interest in the Trust Property or any part of it. All decisions by the Trustees in this regard shall be made by them in their discretion, and shall be final and binding upon all of the Beneficiaries of this Trust.

#### **7.33 Allocation of Assets.**

Where any specific funds or shares are established by the terms of this Trust unless expressly provided otherwise, the Trustees shall have the power to determine which specific assets shall form such funds or shares, as the case may be.

#### **7.34 Leasehold and Mortgaged Property.**

The Trustees shall have the right to let or lease any real or leasehold property forming part of the Trust Property, from month to month, or from year to year or for any term of years, subject to such covenants and conditions as they shall think fit, to accept surrenders of leases and tenancies, to expend money in repairs, improvements and, generally, to manage any such property. The Trustees shall also have the right to renew and keep renewed any mortgage or mortgages upon any real estate forming part of the Trust Property, or any part thereof, to borrow money on any such real estate upon the security of any mortgage or mortgages, and to pay off any mortgage or mortgages which may be in existence at any time forming part of the Trust Property.

#### **7.35 Reserves.**

The Trustees may set up out of the income derived from the Trust Property or any part of it, reserves for taxes, assessments, insurance, repairs, depreciation, depletion, deterioration or obsolescence of any of the assets of the Trust Property and for such other purposes as might properly be established for the administration of the Trust Property and this Trust. Any such reserve shall be deemed to form part of the capital of the Trust Property.

#### **7.36 Move Trust Property to Another Jurisdiction.**

Subject to any express provision to the contrary in this Trust, the Trustees may hold all or any part of the Trust Property at any place or places in the world and may move the same at any time and from time to time from place to place inside or outside Canada or any province.

## **ARTICLE 8 DUTIES, RIGHTS AND PRIVILEGES OF TRUSTEES**

### **8.1 Safekeeping of Documents.**

The Trustees shall provide for the safekeeping of all title documents and securities which form part of the Trust Property and may, at the expense (which may include any charges for the safe custody of securities and the collection and remittance of income) of the Trust Property deposit same in the custody of any bank, corporate trustee, stockbroker or other organization in any part of the world that undertakes the safe custody of securities as part of its business.

### **8.2 May Have Accounts Verified.**

The Trustees may have the accounts of their trusteeship verified at the expense of the Trust Property by a firm of accountants or a law firm selected by the Trustees and the reasonable compensation of such firm shall be charged to the income or capital of the Trust Property in such proportions as the Trustees shall determine.

### **8.3 Professional's Fees.**

Any Trustee engaged in a profession or business such as a lawyer, chartered accountant or stockbroker may charge and be paid all usual professional fees or other charges for all work and business done and time expended by such Trustee in the capacity as a Trustee in connection with the administration of this Trust as if that Trustee was not a trustee and had been retained by this Trust to do that work or business, including matters which a trustee not being in any profession or business could have done personally.

### **8.4 Professional Services.**

Any Trustee engaged in a profession or business such as a lawyer, chartered accountant or stockbroker and any partner, associate or employee of the Trustee's firm may charge and be paid for all professional services rendered to this Trust at his or her usual professional or other charges on the basis of full indemnity.

### **8.5 No Bond Required.**

No Trustee, wherever resident or domiciled, shall be required to give any bond or security for the administration of this Trust in any part of Canada or any Province thereof or in any Commonwealth or foreign country or place.

### **8.6 Purchase by Beneficiary.**

Any one or more of the Beneficiaries (notwithstanding that any such Beneficiary may be one of the Trustees), may purchase assets of the Trust Property, either at public auction or by private contract, provided in the latter case the sale shall be conducted by the Trustees (or by the disinterested Trustees in the event that the Beneficiary so purchasing is also one of the Trustees), and shall be at such price or prices and subject to such terms and conditions and either for cash or credit or for part cash and part credit as the Trustees conducting the sale shall consider fair and reasonable.

### **8.7 Purchase by Trustees.**

Any Trustee may, in such Trustee's personal capacity, purchase assets of the Trust Property provided that the purchase price and other terms and conditions of the purchase are approved

by all other trustees so long as there is more than one Trustee then in office. The Trustees shall not be required to obtain the approval of any court for the purchase.

#### **8.8 Conflict of Interest.**

Except as otherwise herein contained, any Trustee is expressly authorized to participate or to continue to participate personally with this Trust in any business or investment activities, whether such activities exist at the date of the settlement of this Trust or arise subsequent thereto, and such Trustee shall not be required to account in any way for any profits made by such Trustee as a result thereof. Without limiting the generality of the foregoing, any Trustee is expressly authorized and empowered to participate or to continue to participate personally in any corporation, partnership or joint venture in which this Trust and such Trustee may have an interest either at the date of the settlement of this Trust or subsequent thereto. The participation referred to in this Paragraph shall not in any way restrict or prohibit any such Trustee from participating on behalf of this Trust in any decisions relating to any such business or investment activities in which such Trustee may have a personal interest. Nothing contained herein, however, shall absolve a Trustee from any obligations to this Trust which such Trustee may have in such Trustee's personal capacity or as partner, co-venturer, shareholder or director.

#### **8.9 Trustees not bound to interfere in Management.**

The Trustees shall not be required to interfere in the management of any corporation which the Trustees directly or indirectly control nor in any subsidiary of it but may leave the management (including decisions regarding the payment of dividends), wholly to the directors of the corporation so long as they have no notice of any dishonesty or misappropriation of monies on the part of such directors. The Trustees shall not be compellable by any Beneficiary to exercise any power the Trustees have to cause a corporation, shares of which form part of the Trust Property, to redeem, purchase, cancel or pay dividends on such shares.

#### **8.10 Trustees' Procedure.**

- (a) The Trustees may adopt any rules and regulations which they may from time to time deem advisable to govern their own procedure and at any time that there are two or more Trustees, the Trustees may divide their administrative duties (but not any discretionary powers) between or among themselves as they may from time to time deem advisable.
- (b) Except as otherwise herein contained, in all matters requiring action by the Trustees, if there is a difference of opinion, the decision of a majority of the Trustees shall prevail, notwithstanding that any one or more of the Trustees may be personally interested or concerned in the matter requiring action. The Trustees may act either by a resolution passed by a majority of the Trustees then in office at a meeting attended by all the Trustees then in office and of which notice has been given to all the Trustees then in office, or by an instrument submitted to all the Trustees then in office and signed by a majority of them. Any Trustee who acts in good faith and does not form part of any majority decision shall not be personally liable for any loss suffered by this Trust by reason of the acts or omissions which result from such majority decision.
- (c) Every deed or other document executed by a majority of the Trustees then in office shall be as valid, effectual and binding as if executed by all and all parties may rely on such deed or document for all purposes.

- (d) No Trustee shall be liable for any act of the majority of which such Trustee does not form part and in which such Trustee joins for conformity only.

#### **8.11 Power to Bind Trust Without Liability.**

The Trustees shall have the power to bind this Trust without rendering themselves personally liable. The Trustees shall not be personally liable for any monies due from or other claims against this Trust or upon any instrument executed by the Trustees under the provisions of this Trust provided that the Trustees acted honestly and in good faith.

#### **8.12 Compensation**

The First Trustees shall not be entitled to compensation for so acting. The Trustees, other than the First Trustees, may take and transfer at reasonable intervals, out of the income and capital of the Trust Property, such amount or amounts on account of compensation which the Trustees reasonably anticipate they will be entitled to receive at the end of the accounting period in progress, either upon the audit of the Trust's accounts or on approval by the adult Beneficiaries. If the amount subsequently awarded on court audit or agreed to by the Beneficiaries is less than the amount taken, the excess shall be repaid to this Trust without interest. The Trustees shall be entitled to reimbursement for any reasonable expenses incurred by them in the administration of the Trust.

#### **8.13 No Liability for Losses.**

The Trustees shall not be liable for any loss that may happen to the Trust Property or be suffered by any Beneficiary hereunder resulting from the exercise by the Trustees of any discretion given to them by this Trust or law which is exercised honestly and in good faith. The Settlor directs that all persons including any court of competent jurisdiction who may interpret the provisions of this Trust shall interpret it fairly as against the Trustees from time to time in office. For this purpose the Settlor acknowledges that the Trust Property comprises or may comprise assets that are subject to significant business risk, and therefore directs that this Trust shall be interpreted so as to prevent the Trustees from, in effect, becoming insurers of the Trust Property. So long as the Trustees have acted in good faith, the risk of the loss or diminution in value of all or any part of the Trust Property shall belong solely to the Beneficiaries. In particular, the Settlor directs that the provisions of this Trust shall not be interpreted so as in effect to second guess the propriety of any act or omission of the Trustees without there being a wilfully dishonest or wrongful act or default on their part.

#### **8.14 Limit on Responsibility.**

No Trustee shall be liable for the acts, omissions, receipts, neglects or defaults of any other Trustee or person, firm or corporation employed or engaged by the Trust, or for joining in any receipt or act of conformity, or for any loss, damage or expense suffered by the Trust through the absence, insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be placed out or invested, or for any loss or damages arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustee, or for any other loss, damage or misfortune which may happen in the execution of the duties of the office of Trustee, or in relation thereto, unless the same shall happen by or through the Trustee's own wilfully dishonest or wrongful act or default. Without limiting the generality of the foregoing, each Trustee shall be responsible only for so much money or assets as such Trustee shall actually receive, and such Trustee shall not be answerable for involuntary losses, for the acts of any

banker or broker in whose hands any of the assets of the Trust Property shall be placed, or for the acts or defaults of any other Trustee. Any one of the Trustees who shall pay another of the Trustees, or shall do or concur in any act enabling another of the Trustees to receive any assets or monies for the general purposes of this Trust, or for any definitive purpose authorized by this Trust, shall not be obliged to see to the due application thereof nor shall such Trustee subsequently be held responsible by an express notice or intimation of the actual misapplication of the said assets, but the provisions hereof shall not restrict the power of any of the Trustees to require any other of the Trustees to account for the application of assets in the hands of such other Trustee, or to insist on such other Trustee replacing monies misapplied by such other Trustee.

#### **8.15 Trustee's Indemnity.**

It is understood and agreed that each and every Trustee of this Trust (including successor Trustees) shall be deemed to have assumed the office of trustee on the express understanding and agreement and condition that each Trustee and each Trustee's heirs, Legal Personal Representative, and assigns shall have the benefit of the indemnifications contained in this Paragraph. Each Trustee and each Trustee's heirs, Legal Personal Representative and assigns, shall from time to time, and at all times, be indemnified and saved harmless out of the Trust Property, from and against all claims, including costs, charges and expenses in connection therewith, whatsoever which are brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, permitted by such Trustee to be done, or omitted in or about the execution of the duties of the office of Trustee, and also from and against all other costs, charges and expenses which they sustain or incur in or about or in relation to the affairs and the administration of the Trust, provided that the Trustee has acted honestly and in good faith. A Trustee shall not be liable for any error in judgment.

### **ARTICLE 9 TRUSTEE APPOINTMENT, RETIREMENT & REPLACEMENT**

#### **9.1 Court Approval not Required.**

A Trustee may resign, be removed and be appointed as provided in this Article 9. The resignation or removal of any Trustee and the appointment of new Trustees hereunder shall be effective and binding on all persons interested without the necessity of obtaining any order or judgment of any court of competent jurisdiction.

#### **9.2 Resignation.**

Any Trustee may resign on giving not less than 30 clear days written notice of resignation to the other Trustee or Trustees, or on such shorter period of notice as they will accept as sufficient.

#### **9.3 Resignation Requested.**

The Trustees may request the resignation of a Trustee at any time by instrument requesting the Trustee's resignation (the "Resignation Request") delivered personally, by prepaid registered mail, by courier or by mail to the Trustee. The said Trustee shall be deemed to have resigned on the date on which the Resignation Request states that the resignation is to be effective, or if it does not state a date, then the Trustee's resignation shall be effective from the date the Resignation Request is received by the Trustee.

#### **9.4 Incapable Individual Trustee.**

An individual Trustee shall cease to be a Trustee *ipso facto* if, in the opinion of the other Trustees then in office, such Trustee is incapable of managing his or her own property, or if such Trustee becomes subject to any proceedings under any bankruptcy or insolvency laws applicable to him or her.

#### **9.5 Incapable Corporate Trustee.**

A corporate Trustee shall cease to be a Trustee *ipso facto* if it enters into liquidation or dissolution whether compulsory or voluntary, not being merely a voluntary liquidation for the purposes of amalgamation or reorganization.

#### **9.6 Number of Trustees.**

There shall always be at least three (3) Trustees serving in the office of trustee hereunder, of which a majority must be resident in Canada (as such term is defined in the *Income Tax Act*).

#### **9.7 Appointing New Trustees.**

- (a) The Trustees shall be entitled by revocable or irrevocable instrument to appoint any one or more persons to be a Trustee which appointment may be immediate, postponed or contingent on the happening of an event or on the lapse of time.
- (b) Upon FRANK STRONACH ceasing to be a Trustee for any reason, FRANK WALKER and NICOLE WALKER shall be appointed as Trustees in his stead.
- (c) Subject to clause 9.7(d), any other vacancy occurring in the office of trustee for any reason including as a result of the death, resignation or removal of a Trustee or an increase in the number of Trustees, shall be filled as follows:
  - (i) such vacancy shall first be filled in accordance with any instrument of appointment previously executed by the Trustees and then still in effect;
  - (ii) in default of such instrument or insofar as the same is void or shall not extend or take effect, the remaining Trustees in office may by instrument appoint one or more persons to fill such vacancy; and
  - (iii) if the person wishing to resign is the sole Trustee, then such Trustee may resign on appointing one or more persons to act in the place and stead of the Trustee.
- (d) During any period in which FRANK STRONACH is alive and is a Trustee of this Trust, FRANK STRONACH shall be entitled by revocable or irrevocable instrument to appoint any one or more persons to be a Trustee or to remove any Trustee, which appointment or removal may be immediate, postponed or contingent on the happening of an event or on the lapse of time.
- (e) During any period in which: (i) FRANK STRONACH is not a Trustee of this Trust, and (ii) BELINDA STRONACH is alive and is a Trustee of this Trust, BELINDA STRONACH shall be entitled by revocable or irrevocable instrument to appoint any one or more persons to be a Trustee or to remove any Trustee, which appointment or removal may be immediate, postponed or contingent on the happening of an event or on the lapse of time.

**9.8 Filling Vacancies.**

- (a) For the avoidance of doubt, but subject to any provision to the contrary in this Trust, so long as there are at least three (3) Trustees then in office, it shall not be necessary to fill any vacancy in the office of Trustee and the surviving and continuing Trustees may exercise all powers reposed in them.
- (b) If a vacancy occurs which results in there being less than three (3) Trustees in office, the power to appoint Trustees shall be exercised so that at all times there are at least three (3) Trustees acting.

**9.9 Increase Number.**

The Trustees may, from time to time, by instrument in writing, increase the number of Trustees.

**9.10 Trustees' Accounts.**

Upon the resignation or removal of a Trustee, such Trustee shall be entitled to be reimbursed out of the Trust Property for all expenses incurred by such Trustee in connection with the settlement of such Trustee's account as Trustee. The continuing and/or successor Trustee or Trustees shall be authorized to approve and settle the accounts and expenses of any Trustee who resigns or is removed and any such approval and settlement shall be conclusive and binding upon all persons who have or may have an interest in this Trust without the necessity of an audit by a court of competent jurisdiction of the accounts of the Trustee so resigning or removed.

**9.11 Vesting in New Trustees.**

Every person appointed as a Trustee shall, immediately upon appointment, be invested with the Trust Property and with all the trusts, powers and authorities contained in this Trust with the remaining Trustee or Trustees without further assignment, transfer or conveyance of any kind or any order of any court of competent jurisdiction provided that if requested to do so, any Trustee who has retired, resigned or been removed shall execute all instruments and do all acts necessary to vest title to the Trust Property in the remaining and/or successor Trustee or Trustees.

**9.12 Successor not required to Examine Books.**

A successor Trustee shall not be required to examine, question, verify or audit the books, records or accounts with respect to the administration of this Trust prior to the appointment of such successor Trustee.

**9.13 Residence of Trustees.**

Notwithstanding the provisions of subsection 3(1) of the *Trustee Act* or any statutory provision from time to time in force of like or similar effect applicable to this Trust, no person who is a Trustee, whether original, substituted or additional, shall be required to remain in or be a resident of Ontario.

**9.14 Appointment of Separate Trustees.**

Without limiting any other power given under this Trust, the Trustees, may by instrument referring to this Paragraph appoint a separate trustee or separate set of trustees for the assets held on trusts distinct from those relating to any other assets comprising the Trust Property. For

the avoidance of doubt the separate trustee or separate set of trustees shall have the same powers and shall be subject to the same terms and conditions when administering such assets as the Trustees have under this Trust.

## **ARTICLE 10 GENERAL**

### **10.1 Release of Beneficiary's Interest.**

Any person who has attained the age of majority to whom or for whose benefit any capital of the Trust Property may be liable, whether directly or indirectly, to be appointed, transferred or applied in any manner whatsoever by or in consequence of an exercise of any power or discretion given to the Trustees or in any other person may by instrument delivered to the Trustees either revocably (but only before such trust, power or direction has been exercised in his or her favour) or irrevocably, disclaim his or her interest as an object of the trust, power, or discretion, either wholly or with respect to any specified part or share of such capital or renounce his or her rights and entitlements as a Beneficiary, and such instrument shall have effect from the date that it is received by the Trustees or on such later date specified in such instrument.

### **10.2 Beneficiary's Separate Property.**

The Settlor directs that:

- (a) any interest in the Trust Property, whether as to income or capital (referred to in this Paragraph as the "Gift") to which a Beneficiary is or shall become entitled in accordance with the provisions of this Trust, or any property substituted for The Gift (referred to in this Paragraph as the "Substituted Property");
- (b) any fruits, revenues or income at any time subsequently derived from the Gift or Substituted Property;
- (c) any accretion in value to the Gift or Substituted Property; and
- (d) any property into which property referred to in subparagraphs (a) through (c), above, can be traced,

(collectively referred to in this Paragraph as "Excluded Property") shall be excluded from any community property regime to which any of the Excluded Property or the value of the Excluded Property may be subject or to which the Beneficiary or the Beneficiary's spouse or cohabiting partner may be subject, by any legislation or common law in any jurisdiction whatsoever which provides for the division of property or its value between spouses or between cohabiting partners, and without limiting the generality of the foregoing, shall be excluded from the Beneficiary's net family property as such term is defined in the *Family Law Act*, R.S.O. 1990, c.F.3 as amended and shall remain the private property of the Beneficiary, free from the control or interests of the Beneficiary's spouse or partner.

### **10.3 Notice.**

Any notice, document or other communication (each being referred to in the Paragraph as a "notice") required or permitted by this Trust to be given to any person shall be in writing and sufficiently given if delivered personally, sent by prepaid courier, mailed by prepaid ordinary or registered mail posted in Canada, or transmitted by facsimile or electronic mail, to such person

at that person's last known address or facsimile or electronic mail address. Any notice delivered personally shall be deemed to have been given and received on the day of such personal delivery. Any notice sent by prepaid ordinary or registered mail shall be deemed to have been given and received on the 5th day after the day of deposit in a Post Office or public letter box in Canada, except that in the case of disruption in postal service, notice must be given by means other than mail. Notice transmitted by facsimile shall be deemed to have been given and received on the first day after transmission. Notice transmitted by electronic mail shall be deemed to have been given and received on the day that the sender receives confirmation by electronic mail or otherwise of receipt by the addressee of same.

#### **10.4 Amendment.**

The terms of this Trust may be altered, amended or varied at any time and from time to time by an instrument in writing signed by all of the Trustees provided that:

- (a) no alteration, amendment or variation may be made to this Trust which results in a benefit being bestowed upon the Settlor, the spouse of the Settlor, or any other person who has contributed to the Trust Property, whether directly or indirectly; and
- (b) the Trustees shall only concur in any alteration, amendment or variation if in their opinion it appears to be for the benefit of the Beneficiaries and for greater certainty, any amendment of the administrative powers set forth in Article 7 of this Trust whether by addition, alteration or deletion, shall be deemed to be in the best interests of the Beneficiaries.

#### **10.5 Disclosure.**

Subject to any order of a court of competent jurisdiction or the laws of the Province of Ontario, the Trustees shall not be required to disclose to any Beneficiary or person, any document which:

- (a) discloses their deliberations as to the manner in which they have exercised a power or discretion or performed a duty conferred or imposed upon them;
- (b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based;
- (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; or
- (d) relates to or forms part of the accounts of this Trust.

#### **10.6 Proper Law.**

This Trust shall be governed by the laws of the Province of Ontario, Canada, which is the proper law of this Trust. The Trustees may by instrument at any time and from time to time, change the governing law of this Trust or any one or more trusts created by it, to any other jurisdiction in the world and unless the Trustees otherwise provide in the instrument, from the effective date of the instrument the proper forum of the administration of this Trust or such trust or trusts shall be the courts of the other jurisdiction provided that this Trust shall always be irrevocable by the Settlor. The Trustees do not have to treat the various Beneficiaries of this Trust impartially when exercising the foregoing power.

**10.7 Counterparts.**

This Trust may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument and delivery of this Trust may be effected by delivery to each party of an originally signed copy or a photocopy, or a facsimile or other electronically transmitted copy of an originally signed copy.

IN WITNESS WHEREOF the parties have executed this Trust Deed under seal.

SIGNED, SEALED AND DELIVERED

in the presence of:

Witness

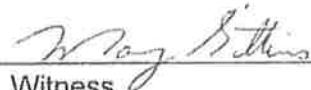


Witness



Witness

Witness

  
MICHAEL ROGERS, Settlor

FRANK STRONACH, Trustee



BELINDA STRONACH, Trustee

  
ALON OSSIP, Trustee

SCHEDULE A

to

THE BELINDA STRONACH 445 FAMILY TRUST

*Fifty (50) Canadian Dollars*

10022584.9

