

**MG TRUST COMPANY, LLC**

**GRANTOR TRUST AGREEMENT**

## TABLE OF CONTENTS

	Page
COMPANY AND PLAN INFORMATION .....	1
COMPANY NAME (PLAN SPONSOR): .....	1
BACKGROUND .....	2
AGREEMENT .....	2
Section 1. Definitions .....	2
(a) Agreement .....	2
(b) Beneficiary .....	3
(c) Board .....	3
(d) Chief Executive Officer .....	3
(e) Code .....	3
(f) Company .....	3
(g) Designated Representative .....	3
(h) ERISA .....	3
(i) Force Majeure .....	3
(j) Insolvent or Insolvency .....	4
(k) Instruction(s) .....	4
(l) Investment Manager .....	4
(m) Participant .....	4
(n) Payment Schedule .....	4
(o) Plan .....	4
(p) Trust .....	4
(q) Trust Fund .....	4
(r) Trustee .....	4
Section 2. Trust .....	4
(a) Establishment .....	4
(b) Grantor Trust .....	5
(c) Trust Assets .....	5
(d) Non-assignment .....	5
(e) Additional Deposits .....	5

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 3. Receipt of Assets .....	5
(a) Receipt of Assets; Directed Trustee .....	5
(b) Custody of Assets .....	5
(c) Location of Evidence of Ownership .....	5
(d) Unidentified Assets .....	6
Section 4. Disbursements; Taxes .....	6
(a) Payments to Participants and Beneficiaries .....	6
(b) Taxes .....	6
Section 5. Payments to the Company .....	7
(a) In General .....	7
(b) Return of Amounts to the Company .....	7
Section 6. Investments .....	7
(a) Investment Authority .....	7
(b) Investment Control .....	7
(c) Investment Restrictions .....	8
(d) Nondiscretionary Investment Authority .....	8
(e) Valuation of Assets .....	9
(f) Processing Transactions .....	9
(g) Legitimate Delay .....	10
(h) Performance Standards .....	10
(i) Other Limitations .....	10
(j) Plan Assets Not Held in Trustee's Trust .....	10
Section 7. Disposition of Income .....	10
Section 8. Trustee Services .....	10
(a) Accounting by the Trustee .....	10
(b) Inspection and Audit .....	11
Section 9. Directions .....	11
(a) Company Direction to the Trustee .....	11
(b) Designation of Representatives .....	11

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 10. Compensation and Expenses of Administration.....	12
(a) Generally.....	12
(b) Disclosure .....	13
(c) Indemnified Expenses.....	13
Section 11. Indemnification .....	13
(a) Indemnification of the Trustee .....	13
(b) Acts of Prior Trustees.....	14
Section 12. Company Insolvency.....	14
(a) Trustee Responsibility Regarding Payments to Participants and Beneficiaries.....	14
(b) Notice to Trustee; Instructions.....	15
(c) Court Appointment of New Trustee .....	15
(d) Dissolution of the Company .....	15
(e) Fees .....	15
Section 13. Resignation or Removal of the Trustee; Successor Trustee .....	15
(a) Resignation; Removal of the Trustee .....	15
(b) Appointment of Successor Trustee .....	15
(c) Transfer of Assets to Successor Trustee .....	16
(d) Terminating Trustee’s Accounting.....	16
(e) Changes in Organization of Trustee.....	16
Section 14. Amendment or Termination.....	17
Section 15. Arbitration.....	17
Section 16. USA Patriot Act Notification .....	17
Section 17. Administrative Provisions .....	18
(a) Notices .....	18
(b) Proxies .....	18
(c) Securities Laws .....	18
(d) Compliance .....	18
(e) Record Retention .....	18
(f) Waiver of Jury Trial .....	18

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
(g) Limitation on Claims.....	18
(h) Evidence .....	18
Section 18. Miscellaneous Provisions.....	19
(a) Performance by Trustee, its Agents or Affiliates .....	19
(b) Entire Agreement .....	19
(c) Waiver .....	19
(d) Counterparts .....	19
(e) Successors and Assigns .....	19
(f) Severability .....	19
Section 19. Governing Law .....	19
Section 20. Effective Date.....	19
APPENDIX A ADDITIONAL PLAN(S) .....	21

**COMPANY AND PLAN INFORMATION**

**COMPANY NAME (PLAN SPONSOR):** \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Tax ID #: \_\_\_\_\_

**Non-Qualified Plan and Trust Name:** \_\_\_\_\_

Original Effective Date of Plan and Trust: \_\_\_\_\_

Trust Tax ID#: \_\_\_\_\_

Trustee(s) (list all): \_\_\_\_\_

*(List any additional Plans in Appendix A)*

**Designated Representative:** \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Tax ID #: \_\_\_\_\_

## BACKGROUND

A. The Company has adopted the Plan(s) designated above and listed in Appendix A, if applicable.

B. The Company has incurred or expects to incur liability under the terms of such Plan(s) with respect to the individuals participating therein.

C. The Company wishes to establish a trust (hereinafter called the "Trust") and to contribute to the Trust assets that shall be held therein, subject to the claims of the Company's creditors in the event of the Company's Insolvency, as herein defined, until paid to Participants and Beneficiaries in such manner and at such times as specified in the Plan(s).

D. The Company intends that this Trust shall constitute an unfunded arrangement that will not affect the status of a Plan as an unfunded plan maintained for the purpose of providing deferred compensation for a select group of management or highly compensated employees for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

E. The Company intends to make contributions to the Trust to provide itself with a source of funds to assist it in the meeting of its liabilities under the Plan(s).

## AGREEMENT

This Grantor Trust Agreement (the "**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the Company, the Designated Representative, if any, and MG Trust Company, LLC (the "**Trustee**").

The Trust hereby established in Section 2 below shall [*select one of the following*]:

- be revocable by the Company.
- be irrevocable.
- become irrevocable upon approval by the Board of Directors.

If no election is made, the Trust will be irrevocable.

### **Section 1. Definitions.**

For purposes of this Agreement, the following terms shall have the meanings respectively indicated unless the context clearly requires otherwise:

(a) Agreement. "Agreement" means this MG Trust Company, LLC Grantor Trust Agreement between the Company, the Designated Representative(s), if any, and the Trustee, as reflected herein, provided that if this instrument, pursuant to its terms, be amended, "Agreement" as of that particular date, shall mean this instrument, as amended and in force on such date.

(b) Beneficiary. “Beneficiary” means any Person or entity entitled to receive benefits which are payable upon or after a Participant’s death pursuant to the Plan.

(c) Board. “Board” means the Board of Directors of the Company, as from time to time constituted, or such other persons or group of persons as shall be designated by the Company. Any formal action herein permitted or required to be taken by a Company shall be deemed authoritative if taken:

(1) If and when the Company is a partnership, by written instrument executed by one or more of its general partners or by written instrument executed by a person or group of persons who has been authorized by written instrument executed by one or more general partners as having authority to take such action;

(2) If and when the Company is a proprietorship, by written instrument executed by the proprietor or by written instrument executed by a person or group of persons who has been authorized by written instrument executed by the proprietor as having authority to take such action; or

(3) If and when the Company is a joint venture, by written instrument executed by one of the joint venturers or by written instrument executed by a person or group of persons who has been authorized by written instrument executed by one of the joint venturers as having authority to take such action.

(d) Chief Executive Officer. “Chief Executive Officer” means the highest-ranking Company officer, member, partner, manager, administrator, executive, or executive officer, as applicable, who is in charge of total management of the Company.

(e) Code. “Code” means the Internal Revenue Code of 1986, as amended from time to time. References to any section of the Code shall include any successor provision thereto.

(f) Company. “Company” means the sponsor of the Plan(s) and related Trust(s), as designated above and in Appendix A.

(g) Designated Representative. “Designated Representative” means any person (individual, committee of individuals, partnership, limited liability partnership, joint venture, corporation, limited liability corporation, mutual company, joint-stock company, non-profit or not-for-profit organization, trust, estate, unincorporated organization, association or employee organization) named at the beginning of the Agreement or otherwise identified to the Trustee in Instructions, and authorized by the Company to give Instructions to the Trustee, or to vote or otherwise manage any asset of the Trust.

(h) ERISA. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

(i) Force Majeure. “Force Majeure” means a cause or event outside the reasonable control of the parties or that could not be avoided by the exercise of due care, such as an act of God or any mechanical, electronic or communications failure.

(j) Insolvent or Insolvency. “Insolvent” or “Insolvency” means that the Company (i) is unable to pay its debts as they become due, or (ii) is subject to a pending proceeding as a debtor under the state law or the United States Bankruptcy Code.

(k) Instruction(s). “Instruction(s)” means any oral, written, or electronic direction given to the Trustee in a form and manner required or accepted by the Trustee. The Trustee may require that any Instruction be in writing or in an electronic format, and may recognize standing requests, directions, or requisitions as Instructions.

(l) Investment Manager. “Investment Manager” means any person defined as such under ERISA Section 3(38) who has been appointed by the Company or a Designated Representative to manage the investment of all or any specified portion of the Trust.

(m) Participant. “Participant” means an employee or director who participates in the Plan, as provided in the Plan, and shall include the Beneficiary(ies) with respect to the account of any deceased Participant until such benefit has been fully distributed or forfeited per the terms of the Plan.

(n) Payment Schedule. “Payment Schedule” shall mean the schedule delivered by the Company to the Trustee that indicates the amounts payable in respect of each Participant that provides a formula or other Instructions acceptable to the Trustee for determining the amount so payable, the form in which such amount is to be paid (as provided for or available under the Plan), and the time of commencement for payment of such amounts.

(o) Plan. “Plan” or “Plan(s)” means the nonqualified deferred compensation plan(s) maintained by the Company for directors and/or a select group of management or non-highly compensated employees the Employer, as specified in Section 201, 301, and 401 of ERISA, as designated above and in Appendix A, if applicable, some or all of the assets of which are held by the Trustee pursuant to the terms of this Agreement.

(p) Trust. “Trust” means the legal entity resulting from the Agreement between the Company and the Trustee that receives the contributions, and holds, invests and disburses funds to and for the benefit of Participants and their Beneficiaries, and each separate trust, if any, existing hereunder at the time in question. If the Plan existed prior to the effective date of this Agreement, the Trust shall constitute a continuation by means of an amendment and restatement of each of the prior trusts from which Plan assets are transferred to the Trustee.

(q) Trust Fund. “Trust Fund” means all assets of whatsoever kind or nature from time to time held by the Trustee pursuant to this Agreement, without distinction as to income and principal.

(r) Trustee. “Trustee” means MG Trust Company, LLC and any duly appointed additional or successor Trustee or Trustees acting hereunder.

## **Section 2. Trust.**

(a) Establishment. The Company hereby establishes the Trust and deposits with the Trustee in trust assets which shall become the principal of the Trust to be held, administered and disposed of by the Trustee as provided in this Agreement.

(b) Grantor Trust. The Trust is intended to be a grantor trust, of which the Company is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended (the "Code"), and shall be construed accordingly.

(c) Trust Assets. The principal of the Trust, and any earnings thereon, shall be held separate and apart from other funds of the Company and shall be used exclusively for the uses and purposes of Participants and general creditors as herein set forth. Participants shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan(s) and this Agreement shall be mere unsecured contractual rights of Participants and their Beneficiaries against the Company. Any assets held by the Trust will be subject to the claims of the Company's general creditors under federal and state law in the event of Insolvency.

(d) Non-assignment. Benefits payable to Participants and Beneficiaries under this Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.

(e) Additional Deposits. The Company, in its sole discretion, may at any time, or from time to time, make additional deposits of cash or other property in trust with the Trustee to augment the principal to be held, administered and disposed of by the Trustee as provided in this Agreement. Neither the Trustee nor any Participant or Beneficiary shall have any right to compel such additional deposits.

### **Section 3. Receipt of Assets.**

(a) Receipt of Assets; Directed Trustee. Subject to restrictions placed by the Company on the acceptable categories of assets, the Trustee will receive and accept for the Trust all money, securities and other property transferred, assigned and delivered to it from any source by or at the Instruction of the Company or a Designated Representative. The Trustee has no duty or authority to inquire into the source of any assets transferred to it or the authority or right of the transferor of such assets to transfer them to the Trustee. The Trustee shall take, hold, invest, and distribute all of the assets of the Trust in accordance with the terms of this Agreement. The Trustee will serve as a non-discretionary, directed trustee of the Trust. The Trustee is responsible for maintaining custody of the assets held in the Trust, and for investing those assets as directed by the Company or a Designated Representative. Nothing in this Agreement shall be interpreted as causing the Trustee to be responsible for the administration or investment of the Trust other than as directed by the Company hereunder. The Trustee may refuse to exercise any power that it believes, in its sole judgment, will cause it to become a "fiduciary" or "plan administrator" as defined under ERISA, or cause it to be exercising trust powers in contravention of any state or federal law to which it may be subject.

(b) Custody of Assets. The Trustee will maintain safe custody of such money, securities and other property as it actually receives for the Trust. The Trustee has no duty or authority to compute any amount to be contributed or transferred under the Plan to the Trustee or determine whether amounts received by the Trustee comply with applicable law. The Trustee will not be responsible for any transferred asset until it receives such asset.

(c) Location of Evidence of Ownership. Except as permitted by the Company, ERISA, if applicable, and the Code, the Trustee will not maintain the indicia of

ownership of any assets of the Trust outside the jurisdiction of the district courts of the United States.

(d) Unidentified Assets. If the Trustee receives any money, securities or other property from a source other than the Company and has not received appropriate notification that such assets are to be accepted for the Trust, the Trustee is authorized to return such assets to the person from whom they were received. The Trustee will not be liable for any assets returned in such circumstances.

#### **Section 4. Disbursements; Taxes.**

(a) Payments to Participants and Beneficiaries. The Company shall deliver to the Trustee a Payment Schedule and, except as otherwise provided herein, the Trustee shall make payments to Participants and Beneficiaries in accordance with such Payment Schedule. The entitlement of a Participant or Beneficiary to benefits under the Plan shall be determined by the Company or its Designated Representative, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan(s). The Company may make benefit payments directly to Participants and Beneficiaries as they become due under the terms of the Plan(s). The Company shall notify the Trustee of its decision to make payment of benefits directly prior to the time amounts are payable to Participants or Beneficiaries. If the principal of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Plan(s), the Company shall make the balance of each such payment as it falls due. The Trustee shall notify the Company where principal and earnings are not sufficient.

(b) Taxes. The Company or its Designated Representative shall calculate all taxes and withholding and shall provide the Trustee all information necessary for the Trustee to carry out such withholding in a timely fashion, and to file all required returns, reports, or other documents with the applicable taxing authorities with respect to distributions by the Trustee to Participants and Beneficiaries and amounts withheld thereon. If such information is not so provided to the Trustee, the Designated Representative and the Company shall hold the Trustee harmless from and indemnify it for any liability and related expenses that arise in connection with improper withholding or reporting.

The Trustee shall make provision for the withholding, reporting and remitting of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plan and this Agreement, and shall pay amounts withheld to the appropriate taxing authorities. The Trustee may execute, as Trustee, any declarations or certificates pertaining to the Trust that may be required under any tax law(s) or governmental regulation(s) now or hereafter without prior approval of the Company.

The Trustee shall notify the Designated Representative of any tax levied upon or assessed against the Trust Fund of which the Trustee has knowledge. If the Trustee receives no Instructions from the Designated Representative, the Trustee may pay the tax from the Trust Fund. If the Designated Representative wishes to contest the tax assessment, it shall give appropriate and timely Instructions to the Trustee. The Trustee shall not be required to bring any legal actions or proceedings to contest the validity of any tax assessments unless the Trustee has been indemnified to its satisfaction against loss or expense related to such actions or proceedings, including reasonable attorney's fees.

The Trustee shall have no liability for making any distribution or transfer pursuant to the Payment Schedule or other Instruction of the Company or its Designated Representative (including amounts withheld pursuant to this Section), and shall be under no duty to make inquiry as to whether any distribution or transfer directed by the Company or its Designated Representative is made pursuant to the provisions of the Plan or any applicable law, or as to the effect of any Payment Schedule or Instruction for tax purposes or otherwise.

**Section 5. Payments to the Company.**

(a) In General. If the Trust is irrevocable, the Company shall have no right or power to direct the Trustee to return to the Company or to divert to others any of the Trust assets before all payment of benefits have been made to Participants and Beneficiaries pursuant to the terms of the Plan(s).

(b) Return of Amounts to the Company. Except as provided in Section 5(a) above, the Trustee will return contributions to the Company if the Company or a Designated Representative provides an Instruction to the Trustee to do so. The Company is solely responsible for ensuring that any Instruction to return any amount to the Company meets all applicable legal requirements, including those of ERISA, if applicable. The Trustee has no duty or responsibility to question, and may conclusively rely upon, any such Instruction.

**Section 6. Investments.**

(a) Investment Authority. The Trustee shall have no responsibility for the selection of investments except as provided herein. The Company or the Designated Representative shall direct the Trustee as to what investments the Trust shall be invested in. The Trustee may invest in publicly traded securities, including publicly traded stock or rights to acquire stock or obligations issued by the Company, insurance policies, contracts, variable annuities or similar instruments. All rights associated with assets of the Trust shall be exercised by the Trustee pursuant to Instructions received by the Trustee, the Company or the Designated Representative, and shall in no event be exercisable by or rest with Participants. The Company shall have the right at any time, and from time to time in its sole discretion, to substitute assets of equal fair market value for any asset held by the Trust. This right is exercisable by the Company in a nonfiduciary capacity without the approval or consent of any person in a fiduciary capacity.

(b) Investment Control.

(1) The Company's Duties. The Company will control and manage the investment of the Trust except insofar as the Company delegates investment authority over part or all of the Trust assets to one or more Investment Managers, or delegates investment authority over part or all of the Trust assets to one or more other Designated Representatives. If the Company, Designated Representative or Investment Manager directs to the Trustee to invest Trust assets in an insurance policy, contract, variable annuity or similar instrument, the Company, Designated Representative or Investment Manager is solely responsible for selecting and monitoring the insurer.

(2) Investment Instructions. All investment Instructions must be delivered to the Trustee in such manner as the Trustee may reasonably require.

(c) Investment Restrictions. The Trustee will hold only those categories of assets mutually agreed to between the Company and the Trustee. The Company may add or remove types, categories, or classes of assets or investments with reasonable notice to and the consent of the Trustee.

(d) Nondiscretionary Investment Authority.

(1) The Company hereby authorizes and directs the Trustee, in accordance with the provisions of this Agreement, to pay for securities and receive payment from securities or other investment transactions arising out of the instruction of the Company or a Designated Representative.

(2) The Company understands that it is solely the Company's responsibility to direct the Designated Representative to execute trades or other investments for the Trust, and all Instructions and/or confirmations received from the Designated Representative shall be deemed to have been authorized by the Company.

(3) The Trustee may invest any cash balances of the Trust in a demand account at United Western Bank or other like institution. The Trustee shall not be obligated to invest such funds in any interest-bearing account. The Trustee or its affiliate will retain any earnings credited on any funds in the Trust (A) pending investment Instruction and (B) pending distribution, as part of its compensation for services provided.

(4) The Company or Designated Representative shall direct the Trustee to purchase or sell only securities that comply with the Trustee's and/or its affiliate's policies and procedures relating to acceptable securities, and comply with all applicable rules, regulations, customs and uses of any exchange, market, clearinghouse or self-regulatory organization and applicable state and federal laws and regulations. Nothing in this Section 6(d)(4) shall be construed to impose investment discretion on the Trustee or its affiliates.

(5) The assets of the Trust shall be held separate from the other funds or properties of the Trustee.

(6) The Company grants to the Trustee all powers reasonably necessary to carry out its investments and other duties under this Agreement.

(7) The Company shall furnish the Trustee with such information and Instructions as may be necessary to carry out the provisions of this Agreement and to enable the Trustee to fulfill all legal and regulatory reporting requirements.

(8) The Trustee shall have no obligation to place orders for the purchase of securities if there are insufficient funds in the Trust. The Company authorizes the Trustee to charge the Trust for the cost of all securities purchased or received against a payment and to credit the Trust with the proceeds received from the securities sold or delivered against payment. In the event of any trades not settled within two days of placement, the Trustee will have the right to sell securities from the Trust sufficient to recover any funds advanced.

(9) The Company agrees that the Trustee shall not advise or make recommendations to the Company with respect to the purchase, sale or other disposition of any assets of the Trust.

(10) The Company authorizes and instructs the Trustee to register all assets of the Trust in the name of the Trustee or of a nominee. Unless otherwise agreed in writing by the parties, registered securities shall be held in the name of:

**MG Trust Company, LLC, Trustee**  
**FBO: [Name of Company]**

(11) To the extent permitted by law, the Company grants the Trustee a security interest in any and all assets held in the Trust as security for any obligation or liability that arises under this Agreement.

Notwithstanding any powers granted to the Trustee pursuant to this Agreement or to applicable law, the Trustee shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of section 301.7701-2 of the Procedure and Administrative Regulations promulgated pursuant to the Code.

(e) Valuation of Assets. The assets of the Trust will be valued at fair market value.

(1) Assets Managed by Investment Manager. With respect to the portion of the Trust that is invested by an Investment Manager, the Investment Manager will certify the value of any securities or other property in that portion of the Trust. Such certification will be regarded as an Instruction with respect to the fair market value of such assets, and the Trustee will be entitled to rely conclusively upon such valuation for all purposes under this Trust.

(2) Other Assets. With respect to the assets in any portion of the Trust that are not managed by an Investment Manager, or any assets for which an Investment Manager refuses or fails to provide a certification, if the fair market value can be determined by reference to readily available sources then the Trustee will be responsible for determining the fair market value of those assets. For those assets whose value cannot be determined by reference to a readily available source, the Trustee will identify those assets for the Company and the Company will provide Instructions to the Trustee as to the fair market value of those assets. Should the Company in its sole discretion determine that an independent appraisal of some or all of such assets is necessary, the Company will be responsible for hiring a qualified independent appraiser, providing all necessary information to the appraiser, reviewing the report of the appraiser, and reporting the appraised value to the Trustee.

(f) Processing Transactions. No investment transaction for the Trust that is to be processed by the Trustee at the Instruction of the Company or a Designated Representative will be processed until the Trustee receives the Instruction in proper form. Investment transactions will be processed either as soon as administratively practicable thereafter or, if later, on the scheduled date for processing.

The Trustee may rely conclusively on any investment Instructions communicated to the Trustee by the Company or a Designated Representative and will have no responsibility to see that the investment Instructions comply with the terms of the Plan. However, if the Trustee receives any Instruction from the Company or a Designated Representative that appears to the Trustee in its sole judgment to be incomplete or unclear, the Trustee will not be required to act on such Instructions and may hold uninvested any asset without liability until proper Instructions are received from the Company or a Designated Representative. If investment Instructions are incomplete or unclear, the Trustee must notify the Company or a Designated Representative within a reasonable period of time. In the absence of proper investment Instructions, the

Trustee will not be liable for interest, market gains or losses on any cash balances maintained in the Trust.

(g) Legitimate Delay. The Trustee may delay the processing of any investment transaction for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, Force Majeure, the failure of a service provider to provide timely values or prices or to correct for any errors or omissions).

(h) Performance Standards. The Trustee will use reasonable efforts to process investment transactions on their scheduled processing dates, but the Trustee is not a guarantor of timely processing with respect to the Company or any Designated Representative, the Plan, or any Participant or Beneficiary.

(i) Other Limitations. The Trustee will invest the Trust as directed by the Company or a Designated Representative, and the Trustee will neither have discretionary control over, nor any other discretion regarding, the investment or reinvestment of any asset of the Trust. The Trustee has no duty or authority to provide investment advice with respect to the assets of the Trust, monitor investment performance or the diversification of assets, question any investment Instruction the Trustee receives in proper form, or inquire into the authority or right of the Company or a Designated Representative to make any investment Instruction which the Trustee receives in proper form. The Trustee will not be liable for any loss of any kind which may result from any action taken by it in accordance with an investment Instruction it receives in proper form or from any action omitted because no such Instruction is received.

(j) Plan Assets Not Held in Trustee's Trust. If, as provided in the Plan, other trustees of separate trusts under the Plan may be appointed, the Trustee under this Agreement shall have no duties or responsibilities for Plan assets not held in the Trust by the Trustee, except as required by applicable law.

## **Section 7. Disposition of Income.**

The Trustee is authorized to collect all Trust investment earnings of any nature, including interest, dividends, proceeds of the sale and other monies due and collectable, that arise from the investment of the assets of the Trust (collectively, "Trust Income"), and to credit such Trust Income to the Trust.

## **Section 8. Trustee Services.**

(a) Accounting by the Trustee. The Trustee shall keep accurate and detailed records of all investments, receipts, disbursements, and all other transactions required to be made, including such specific records as shall be agreed upon in writing between the Company and the Trustee. Within sixty (60) days following the close of each calendar year and within sixty (60) days after the removal or resignation of the Trustee, the Trustee shall deliver to the Company a written account of its administration of the Trust during such year or during the period from the close of the last preceding year to the date of such removal or resignation, setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable being shown separately), and showing all cash, securities and other property held in the Trust at the end of such year or as of the date of such removal or resignation, as the case may be. An accounting

will be deemed to have been approved by the Company unless the Company or Designated Representative objects to the contents of an accounting within sixty (60) days of its mailing or electronic transmission by the Trustee. Any objections must set forth the specific grounds on which they are based. The Trustee's accounting will be at the Trust level rather than the Participant level, and the Trustee will not be responsible for Participant-level reporting including, but not limited to, allocating contributions or gains or losses to recordkeeping accounts of Participants, or preparing or providing benefit statements to Participants, unless it agrees to do so in a separate written agreement with the Company or a Designated Representative.

(b) Inspection and Audit. All accounts, books, and records relating thereto shall be open to inspection and may be audited from time to time by any person designated by the Company during the Trustee's regular business hours, as mutually agreed to in writing by the parties.

### **Section 9. Directions.**

(a) Company Direction to the Trustee. Except as provided herein, the Company shall provide direction to the Trustee in the form of Instructions. The Trustee shall have no duty to take any action other than as specified in this Agreement unless the Company provides the Trustee with Instructions in the form and manner required by the Trustee. The Trustee may require that any Instruction be in writing or in an electronic format, and may recognize standing Instructions. However, each Instruction is contingent upon the determination by the Trustee that the Instruction can be administered by the Trustee.

The Trustee may conclusively rely upon and be protected in acting in good faith upon any written Instruction or order from the Company, or any other notice, request, consent, certificate, or other instrument or paper believed by the Trustee to be genuine and properly executed, or any instrument or paper if the Trustee believes the signature thereon to be genuine.

The Trustee may, but is not required to, rely on an Instruction given by the Company that addressed a particular topic for a single instance in any subsequent and similar instance, unless the prior Instruction expressly stated to the contrary.

(b) Designation of Representatives. The Company hereby designates and authorizes its Designated Representative(s) to place orders for the purchase and sale of securities, and authorizes the Trustee to disburse funds from the Trust on behalf of the Company upon instruction from such Designated Representative. Designation of a Designated Representative is subject to the following provisions:

(1) The Company agrees that the Trustee may rely on Instructions from the Designated Representative, and the Company agrees that the Trustee shall be under no duty to make an investigation with respect to any Instructions received from the Designated Representative;

(2) The Company is solely responsible for managing the investment of the Trust and for supervision of the Designated Representative. All Instructions and/or confirmations received by the Trustee from a Designated Representative shall be deemed to have been authorized by the Company;

(3) The Company agrees that a Designated Representative is not an agent of the Trustee;

(4) The Company may remove a Designated Representative and designate a new representative at any time by written notice to the Trustee or in any other form satisfactory to the Trustee. The Company will give the Trustee prompt written notice of any change in the identity or authority of any Designated Representative. Removal of a Designated Representative will not have the effect of canceling any instruction that has been received by the Trustee from the Designated Representative prior to the date that notice of removal is received by the Trustee. Until written notice of such change is received, the Trustee may conclusively rely upon and be protected in acting as entitled to rely on the latest identification provided to it without further inquiry or verification;

(5) The Trustee may rely on all written (including electronic) Instructions and upon the non-written Instructions, given by the Designated Representative which the Trustee believes to be genuine. The Trustee's records of a transaction will be conclusive as the content of any Instructions. Unless otherwise agreed to in writing by the Trustee, Instructions shall be taken solely from the Designated Representative and not the Company. Upon application by the Company, on a form acceptable to the Trustee and upon approval by the Trustee, the Trustee will accept non-written Instructions from the Company or Designated Representative subject to immediate confirmation of such Instructions by email or in writing by the Designated Representative.

(6) The Trustee may, but is not required to, rely on an Instruction given by the Designated Representative that addressed a particular topic for a single instance in any subsequent and similar instance, unless the prior Instruction expressly stated to the contrary.

(7) The Company waives any and all claims of any nature it now has or may have against the Trustee and its affiliates, and their respective directors, managers, officers, employees, agents and other representatives, which arise, directly or indirectly, from any action that it takes in good faith in accordance with any certificate, notice, confirmation, instruction or other written or oral communication from the Designated Representative.

#### **Section 10. Compensation and Expenses of Administration.**

(a) Generally. The Trustee will be entitled to receive compensation for its services provided hereunder as may be agreed upon in writing with the Company and/or its Designated Representative. The Trustee or its affiliate will retain any earnings credited on any funds in the Trust pending investment direction and pending distribution as part of its compensation for services provided. The Trustee will also be entitled to reimbursement for all reasonable and necessary costs, expenses, and disbursements incurred by it in the performance of such services, including, without limitation, attorneys' fees. Such compensation and reimbursements shall be a charge against and may be withdrawn by the Trustee from the Trust Fund within a reasonable time, as specified by the Trustee; provided, however, that such amounts may be paid by the Designated Representative on behalf of the Company, as outlined in a separate written agreement between said parties. In addition, the Company shall also be bound by and authorizes the Trustee to pay fees and expenses pursuant to written schedules of fees entered into from time to time by the Company and/or the Designated Representative and the Trustee. The Company also authorizes the Trustee to debit such fees and expenses from the Trust from time to time without further authorization from the Company. The schedule of fees may be changed from time to time upon agreement between the Company and the Trustee. The Trustee may invest any cash balances of the Fund in a demand account at United

Western Bank or other like institution. The Trustee shall not be obligated to invest such funds in any interest-bearing account.

(b) Disclosure. The Designated Representative shall disclose any compensation, reimbursements, fees and/or expenses payable from the Trust pursuant to this Agreement, and any changes to such amounts, to the Company and the Participants.

(c) Indemnified Expenses. Expenses incurred by the Trustee that it believes to be subject to indemnification under Section 11(a) of this Agreement shall be paid by the Company upon the Trustee's request, provided that the company may delay payment of any amount in dispute until such dispute is resolved according to the provisions of Section 14 hereof. Such resolution may include the award of interest on unpaid amounts determined to be payable to the Trustee under this Section.

### **Section 11. Indemnification.**

(a) Indemnification of the Trustee. The Company hereby agrees to indemnify, defend and hold the Trustee and its affiliates, and their respective directors, manager, officers, employees, agents and other representatives (the "Indemnified Parties") harmless from any and all losses, costs, excise taxes, expenses, fees, liabilities, damages, claims of any nature whatsoever, including but not limited to legal expenses, court costs, legal fees, costs of or associated with enforcement actions, investigations, suits, and regulatory or other actions and appeals thereof resulting from their reliance upon any certificate, notice, confirmation, or Instruction, purporting to have been delivered by an Investment Manager or a Designated Representative hereunder ("Plan Representative(s)"). The Company waives any and all claims of any nature it now has or may have against the Indemnified Parties, which arise, directly or indirectly, from any action that the Trustee takes in good faith in accordance with any certificate, notice, confirmation, or Instruction from a Plan Representative. The Company also hereby agrees to indemnify, defend and hold the Indemnified Parties harmless from and against any and all losses, costs, excise taxes, expenses, fees, liabilities, damages, claims of any nature whatsoever, including but not limited to legal expenses, court costs, legal fees, costs of or associated with enforcement actions, investigations, suits, and regulatory or other actions and appeals thereof, arising, directly or indirectly, out of any loss or diminution of the Trust Fund resulting from changes in the market value of the Trust Fund assets; reliance, or action taken in reliance, on Instructions from Company or one or more Plan Representatives; any exercise or failure to exercise investment Instructions provided by the Company or by a Plan Representative; the Trustee's refusal on advice of counsel to act in accordance with any investment Instruction provided by Company or a Plan Representative; any other act or failure to act by Company or a Plan Representative; or any other act that the Trustee takes in good faith hereunder that arises under this Agreement or the administration of the Trust Fund.

The Trustee shall not be liable to Company for any act, omission, or determination made in connection with this Agreement except for its gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Trustee shall not be liable for any losses arising from its compliance with Instructions from the Company or a Plan Representative; or executing, failing to execute, failing to timely execute or for any mistake in the execution of any Instructions, unless such action or inaction is by reason of the gross negligence or willful misconduct of the Trustee.

The provisions of this Section 11(a) shall survive the termination, amendment or expiration of this Agreement.

(b) Acts of Prior Trustees. The assets of the Trust Fund or evidence of ownership shall be held by the Trustee under the terms of the Plan and this Agreement. If the assets represent amounts transferred from another trustee, the Trustee named hereunder shall not be responsible for any actions or inactions of prior fiduciaries, including the review of the propriety of any investment under the former trust; said review to be the responsibility of prior fiduciaries. The Trustee named hereunder shall not be required to examine or question in any way the administration of the Trust prior to its appointment.

**Section 12. Company Insolvency.**

(a) Trustee Responsibility Regarding Payments to Participants and Beneficiaries.

(1) The Trustee shall cease payment of benefits to Participants and Beneficiaries if the Company is Insolvent.

(2) At all times during the continuance of this Trust, hereof, the principal and income of the Trust shall be subject to claims of general creditors of the Company under federal and state law as set forth below.

(i) The Board and the Chief Executive Officer of the Company shall have the duty to inform the Trustee in writing of the Company's Insolvency. If a person claiming to be a creditor of the Company alleges in writing to the Trustee that the Company has become Insolvent, the Trustee shall determine whether the Company is Insolvent and, pending such determination, the Trustee shall discontinue payment of benefits to Participants or Beneficiaries.

(ii) Unless the Trustee has actual knowledge of the Company's Insolvency or has received notice from the Company or a person claiming to be a creditor alleging that the Company is Insolvent, the Trustee shall have no duty to inquire whether the Company is Insolvent. The Trustee may in all events rely on such evidence concerning the Company's solvency as may be furnished to the Trustee and that provides the Trustee with a reasonable basis for making a determination concerning the Company's solvency.

(iii) If at any time the Trustee has determined that the Company is Insolvent, the Trustee shall discontinue payments to Participants or Beneficiaries and shall hold the assets of the Trust for the benefit of the Company's general creditors. Nothing in this Agreement shall in any way diminish any rights of Participants or Beneficiaries to pursue their right as general creditors of the Company with respect to benefits due under the Plan(s) or otherwise.

(iv) The Trustee shall resume the payment of benefits to Participants or Beneficiaries in accordance with Section 4 of this Agreement only after the Trustee has determined that the Company is not Insolvent (or is no longer Insolvent).

(3) Provided that there are sufficient assets, if the Trustee discontinues the payment of benefits from the Trust pursuant to Section 4(a) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Participants or Beneficiaries under the terms of the Plan(s) for the period of such discontinuance, less the aggregate amount of any

payments made to Participants or Beneficiaries by the Company in lieu of the payments provided for hereunder during any such period of discontinuance.

(b) Notice to Trustee; Instructions. If the Company becomes Insolvent, the Company will notify the Trustee in writing as soon as possible. The notification will include confirmation of the individual(s) who will provide Instructions to the Trustee. If, within sixty (60) days of such filing, the Company does not notify the Trustee, the Trustee may invoke the provisions of Section 11(c).

(c) Court Appointment of New Trustee. Notwithstanding any provision hereof to the contrary, in the case of Insolvency, the Trustee will have the right to petition a court of competent jurisdiction to appoint a new Trustee, the costs of such action being payable from the Trust Fund.

(d) Dissolution of the Company. In the case of dissolution of the Company, or at any other time that the Company does not respond to requests from the Trustee for confirmation of the individuals who will provide direction to the Trustee, the Trustee may, in its sole discretion, assume the Plan has been terminated and distribute assets according to applicable law. Before the Trustee may make such assumption, however, the Trustee will send to the last known address of the Company, and the individuals who last had authority for providing direction to the Trustee, via certified mail, a written notice of the Trustee's intent to begin such action. The Trustee will then wait at least thirty (30) days before beginning such action.

(e) Fees. If the Trustee receives notice of the Company's Insolvency, any fees and other expenses relating to the provision of services under this Agreement (whether current or overdue) may be immediately deducted from the Trust Fund.

### **Section 13. Resignation or Removal of the Trustee; Successor Trustee.**

(a) Resignation; Removal of the Trustee. The Trustee may resign at any time by giving at least thirty (30) days' prior notice of such resignation to the Company, the Plan Administrator and all other fiduciaries of the Plan that have been identified in Instructions provided to the Trustee. The Company may remove the Trustee, with or without cause, upon giving at least thirty (30) days' prior notice to the Trustee, the Plan Administrator and all other fiduciaries of the Plan that have been identified in Instructions provided to the Trustee.

(b) Appointment of Successor Trustee. The Company shall appoint a successor Trustee or additional Trustees to fill the vacancy occurring as the result of the resignation or removal of the Trustee. The Company shall designate the successor Trustee by an instrument, delivered to the Trustee so removed and to the successor Trustee, the Plan Administrator and all other fiduciaries of the Plan that have been identified in Instructions provided to the Trustee. The successor Trustee shall have all of the rights, powers, privileges, liabilities, and duties of a Trustee as set forth in this Agreement. If either party has given notice of termination as provided under this Agreement, and upon the expiration of the advance notice period no other successor Trustee has been appointed or has accepted such appointment, this provision shall serve as (i) notice of appointment as Trustee of a Company officer who is authorized under state law to serve as a trustee, and (ii) as acceptance by that individual of that appointment.

If no appointment of a successor is made by the Company within thirty (30) days after the resignation or removal of the Trustee, after notice to the other party, the Trustee or the Company may apply to any court of competent jurisdiction for appointment of a successor. The Trustee shall be furnished with notice from the Company or the court, as the case may be, of the appointment of the successor, and shall also be furnished with evidence of the successor's acceptance of trusteeship.

(c) Transfer of Assets to Successor Trustee. Upon acceptance of such appointment by a successor Trustee, the Trustee shall assign, transfer, pay over and deliver the assets then constituting the Trust Fund to the successor Trustee. The Trustee is authorized, however, to reserve such reasonable sum of money, as to it may seem advisable, to provide for any sums chargeable against the Trust Fund for which it may be liable, or for its fees and expenses in connection with the settlement of its account or otherwise, and any balance of such reserve remaining after payment of such fees and expenses shall be paid over to the successor Trustee. If the reserve is not sufficient for all amounts otherwise payable hereunder, the resigning or removed Trustee shall be entitled to reimbursement for any deficiency from the successor Trustee and the Company, which shall be jointly and severally liable therefor. Each, successor Trustee shall succeed to the title of all Securities or Other Property then held in the Trust Fund and vested in its predecessor without the signing or filing of any further instrument, but any resigning or removed Trustee shall execute all documents and do all acts necessary to vest such title of record in any successor Trustee. The terminating Trustee shall transfer all property of the Trust Fund then held by it to such successor Trustee.

(d) Terminating Trustee's Accounting. Within thirty (30) days after the transfer to the successor Trustee, the terminating Trustee shall provide the Company with an account in the form and manner prescribed for the annual account by Section 8 hereof. Unless the Company files written objections with the Trustee within sixty (60) days after such account has been mailed or otherwise delivered, the account shall be deemed to have been approved by the Company.

(e) Changes in Organization of Trustee. Any corporation, banking association or trust company into which a corporate Trustee may be merged, converted or with which it may be consolidated, or any corporation, banking association, or trust company, resulting from any merger, reorganization or consolidation to which a corporate Trustee may be a party, or any corporation, banking association or trust company to which all or substantially all of the trust business of a corporate Trustee may be transferred shall be the successor of the corporate Trustee hereunder without the execution or filing of any instrument or the performance of any other act and with the same powers and duties as conferred upon the Trustee hereunder. In any such event, it shall not be necessary for the Trustee or any successor Trustee to give notice thereof to any person, and any requirements, statutory or otherwise, that notice shall be given is hereby waived.

#### **Section 14. Amendment or Termination.**

(a) This Agreement may be amended by a written instrument executed by the Trustee and the Company. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan(s) or shall make the Trust revocable after it has become irrevocable.

(b) The Trust shall not terminate until the date on which Participants and Beneficiaries are no longer entitled to benefits pursuant to the terms of the Plan(s) (unless the Trust is revocable, and is sooner revoked). Upon termination of the Trust, any assets remaining

in the Trust shall be returned to the Company.

(c) Upon written approval of Participants or Beneficiaries entitled to payment of benefits pursuant to the terms of the Plan(s), the Company may terminate this Trust prior to the time all benefit payments under the Plan(s) have been made. All assets in the Trust at termination shall be returned to the Company.

**Section 15. Arbitration.**

The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. The parties agree that any misunderstandings, controversies or disputes arising from this Agreement shall be decided by binding arbitration which shall be conducted, upon request by either party, in Denver, Colorado, before three (3) arbitrators designated by the American Arbitration Association (the "AAA"), in accordance with the terms of the Commercial Arbitration Rules of the AAA, and, to the maximum extent applicable, the United States Arbitration Act (Title 9 of the United States Code). The decision of the majority of the arbitrators shall be binding and conclusive upon the parties. Notwithstanding anything herein to the contrary, either party may proceed to a court of competent jurisdiction to obtain equitable relief at any time, other than to stay arbitration. Further, any such court proceeding shall only be brought in the federal district court in Denver, Colorado. The arbitration panel shall have no authority to award special, indirect, consequential, punitive or other damages not measured by the prevailing party's actual damages. To the maximum extent practicable, an arbitration proceeding under this Agreement shall be concluded within one hundred eighty (180) days of the filing of the dispute with the AAA. The provisions of this arbitration clause shall survive any termination, amendment or expiration of the Agreement and if any term, covenant, condition or provision of this arbitration clause is found to be unlawful or invalid or unenforceable, the remaining parts of the arbitration clause shall not be affected thereby and shall remain fully enforceable. Judgment on any award rendered by the arbitration panel may be entered in any court having competent jurisdiction. The parties shall each pay one-half of the forum and arbitrators' fees. The prevailing party in the arbitration, or any court proceeding, shall be entitled to its reasonable attorney's fees and expenses from the non-prevailing party.

**Section 16. USA Patriot Act Notification.**

The following notification is provided to the Company pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money-laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for the Company: When the Company opens an account, if the Company is an individual, the Trustee will ask for Company's name, taxpayer identification number, residential address, date of birth, and other information that will allow the Trustee to identify Company and, if the Company is not an individual, the Trustee will ask for the Company's name, taxpayer identification number, business address, and other information that will allow the Trustee to identify Company. The Trustee may also ask, if the Company is an individual, to see Company's driver's license or other identifying documents, and, if Company is not an individual, to see the Company's legal organizational documents or other identifying documents.

**Section 17. Administrative Provisions.**

(a) Notices. The address of the Company shall be as set forth in this Agreement, but may be changed by providing written notice to the Trustee sent by certified mail, return receipt requested. Any notice required under this Trust may be waived in writing by the person or party entitled to the notice.

(b) Proxies. Proxy voting rights with respect to Trust assets will be exercised by the Company.

(c) Securities Laws. The Company acknowledges that it is solely responsible for ensuring compliance with any and all applicable federal and state securities laws and covenants that it has made all filings required under any and all applicable federal and state securities laws.

(d) Compliance. The Company agrees that the Trustee may execute, as trustee, any declarations or certificates pertaining to the Trust that may be required under any tax law(s) or governmental regulation(s) now or hereafter without prior approval of the Company.

(e) Record Retention. The Trustee will retain its records relating to the Trust as long as necessary for the proper administration of the Plan and Trust and at least for any period required by applicable law. Writing, photostating, photographing, micro-filming, magnetic media, mechanical or electrical recording, or other forms of data retention will be acceptable means of record retention.

(f) Waiver of Jury Trial. The parties voluntarily, knowingly and irrevocably waive any right to have a jury participate in resolving any dispute between the Company and the Trustee arising out of or in any way related to this Agreement.

(g) Limitation on Claims. No claim may be made by the Company against the Trustee for any lost profits or any special, indirect or consequential damages in respect of any breach or wrongful conduct in any way related to this Agreement.

(h) Evidence. Evidence required of anyone under the Trust may be by certificate, affidavit, document, facsimile, E-mail or other form which the person acting in reliance thereon considers to be pertinent and reliable, and to be signed, made, or presented by the proper party.

**Section 18. Miscellaneous Provisions.**

(a) Performance by Trustee, its Agents or Affiliates. The Company acknowledges and authorizes that the services to be provided under this Agreement shall be provided by the Trustee, its agents or affiliates, and that certain of such services may be provided pursuant to one or more other contractual agreements or relationships.

(b) Entire Agreement. This Agreement, together with the Appendices attached hereto, which are incorporated by reference herein, contains all of the terms agreed upon between the parties with respect to the subject matter hereof.

(c) Waiver. No waiver by either party of any failure or refusal to comply with an obligation hereunder shall be deemed a waiver of any other obligation hereunder or subsequent failure or refusal to comply with any other obligation hereunder.

(d) Counterparts. This Agreement shall be executed in any number of counterparts, each one of which shall be deemed to be the original although the others shall not be produced.

(e) Successors and Assigns. The stipulations in this Agreement shall inure to the benefit of, and shall bind, the successors and assigns of the respective parties.

(f) Severability. Any provision of this Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.

**Section 19. Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

**Section 20. Effective Date**. The effective date of this Agreement shall be the date first set forth above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

**SIGNATURES:**

**ACCEPTED AND AGREED TO BY THE COMPANY:**

Plan Sponsor: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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**ACCEPTED AND AGREED TO BY THE DESIGNATED REPRESENTATIVE:**

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

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**THIS AGREEMENT IS NOT EFFECTIVE UNTIL COUNTERSIGNED BY AN AUTHORIZED OFFICER OF MG TRUST COMPANY, LLC AND DELIVERED TO THE COMPANY.**

**ACCEPTED AND AGREED TO BY THE TRUSTEE AT ITS OFFICE IN DENVER, COLORADO:**

**MG TRUST COMPANY, LLC**

**BY: \_\_\_\_\_**

**TITLE: \_\_\_\_\_**

**DATE: \_\_\_\_\_**

**APPENDIX A**

**ADDITIONAL PLAN(S)**

List all additional Plans adopted and maintained by the Employer for which assets are held in this Trust: