# SAMPLE IRREVOCABLE TRUST

## DECLARATION OF TRUST

**DECLARATION OF TRUST**, made as of this _____ day of _____, 20__, among _____, having an address at _____, as grantor (hereinafter referred to as the "Grantor"), and _____, having an address at _____, and _____, having an address at _____, as trustees (collectively hereinafter referred to as the "Trustees").

## W I T N E S S E T H:

**WHEREAS**, the Grantor is the owner of the property more particularly described in Schedule A attached hereto and made a part hereof; and

**WHEREAS**, the Grantor's [husband/wife] has predeceased the Grantor, and the Grantor has two children, _____ and _____; and

**WHEREAS**, the Grantor desires to create an irrevocable trust of the property described in Schedule A hereto, together with such monies, securities and other assets as the Trustees hereafter may hold or acquire hereunder (said property, monies, securities and other assets, together with any additions thereto received pursuant to the Grantor's last will and testament or otherwise, being hereinafter referred to as the "trust estate"), for the purposes and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the covenants herein contained and other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Grantor hereby irrevocably transfers, conveys, assigns and delivers to the Trustees as and for the trust estate the property more particularly described in Schedule A hereto, to hold the same, and any other property which the Trustees hereafter may acquire, **IN TRUST**, for the purposes and upon the terms and conditions hereinafter set forth:

**FIRST**: The Trustees shall hold, manage, invest and reinvest the trust estate, shall collect the income therefrom, and shall pay the net income to or for the benefit of the Grantor, in convenient installments but at least quarter-annually, during the life of the Grantor.

The Trustee shall have no right to invade principal of the Trust Estate for the benefit of the Grantor. The Grantor directs that the provisions of section 7-1.6 of the Estates, Powers and Trusts Law of the State of New York shall not be available to require any invasion of principal by the Trustee or any Court.

In the event that this Trust holds residential real property used by the Grantor, then Grantor shall have the exclusive right to occupy and use such real property and shall not be required to pay rent for the use of such property.

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**SECOND**: Upon the death of the Grantor, the Trustees shall pay and distribute the trust estate at that time remaining to the Grantor's then living issue, in equal shares, per stirpes, discharged of trust. If there are no issue of the Grantor then living, the trust estate shall be paid and distributed to such persons and in such proportions as the same would be distributed under the laws of the State of New York then in force had the Grantor then died intestate, a resident of New York and the owner of said property.

**THIRD**: In any case in which the Trustees are authorized or directed by any provision of this Agreement to pay or distribute income or principal to any person who shall be a minor or incompetent, the Trustees, in their absolute discretion and without authorization of any court, may pay or distribute the whole or any part of such income or principal to such minor or incompetent personally, or may apply the whole or any part thereof directly to the health, education, maintenance or support of such minor or incompetent, or may pay or distribute the whole or any part thereof to the guardian, committee, conservator or other legal representative, wherever appointed, of such minor or incompetent or to the person with whom such minor or incompetent may from time to time reside, or in the case of a minor, may pay or distribute the whole or any part thereof to a custodian for such minor under any gifts to minors or transfers to minors act. Evidence of such payment or distribution or the receipt therefor by the person to whom any such payment or distribution is made shall be a full discharge of the Trustees from all liability with respect thereto, even though the Trustees may be such person.

The Trustees, in their absolute discretion, may defer payment or distribution of any or all income or principal to which a minor may be entitled until such minor shall attain the age of twenty-one (21) years, or to make such payment or distribution at any time and from time to time, during the minority of such minor, holding the whole or the undistributed portion thereof as a separate fund vested in such minor but subject to the power in trust hereby given to the Trustees to administer and invest such fund and to use the income or principal thereof for the benefit of such minor as if such fund were held in trust hereunder. The Trustees shall pay and distribute any balance of such fund to such minor when such minor shall attain the age of twenty-one (21) years. Except as is herein above provided, if such minor shall die before attaining the age of twenty-one (21) years, the Trustees shall pay and distribute such balance to the executors, administrators or legal representatives of the estate of such minor.

The word "minor", wherever used in this Article THIRD, shall mean any person who has not attained the age of twenty-one (21) years.

**FOURTH**: This Agreement and the trusts created hereunder are irrevocable. The Grantor shall execute such further instruments as shall be necessary to vest the Trustees with full title to the property which is the subject of this Agreement.

**FIFTH**: In the administration of any property, real or personal, at any time forming a part of the trust estate, including accumulated income, and in the administration of any trust created hereunder, the Trustees, in addition to and without limitation of the powers conferred on trustees under the New York Estates, Powers and Trusts Law, as amended or any successor thereto, or otherwise provided by law, shall have the following powers to be exercised in the absolute discretion of the Trustees, except as otherwise expressly provided in this Agreement:

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(a) To retain such property for any period, whether or not the same is of the character permissible for investments by fiduciaries under any applicable law, and without regard to the effect any such retention may have upon the diversity of investments;

(b) To sell, transfer, exchange, convert or otherwise dispose of, or grant options with respect to, such property, at public or private sale, with or without security, in such manner, at such times, for such prices, and upon such terms and conditions as the Trustees may deem advisable;

(c) To invest and reinvest in common or preferred stocks, securities, limited liability companies, investment trusts, mutual funds, regulated investment companies, bonds and other property, real or personal, foreign or domestic, including any undivided interest in any one or more common trust funds, whether or not such investments be of the character permissible for investments by fiduciaries under any applicable law, and without regard to the effect any such investment may have upon the diversity of investments;

(d) To render liquid the trust estate or any trust created hereunder in whole or in part, at any time and from time to time, and to hold unproductive property, cash or readily marketable securities of little or no yield for such period as the Trustees may deem advisable;

(e) To lease any such property beyond the period fixed by statute for leases made by fiduciaries and beyond the duration of any trust created hereunder;

(f) To join or become a party to, or to oppose, any reorganization, readjustment, recapitalization, foreclosure, merger, voting trust, dissolution, consolidation or exchange, and to deposit any securities with any committee, depository or trustee, and to pay any fees, expenses and assessments incurred in connection therewith, and to charge the same to principal, and to exercise conversion, subscription or other rights, and to make any necessary payments in connection therewith, or to sell any such privileges;

(g) To form one or more corporations or limited liability companies, alone or with any person, in any jurisdiction, and to transfer assets to any new or existing corporation or limited liability company in exchange for stock or membership interests; to form one or more partnerships with any person in any jurisdiction, to have any trust or a nominee be a general or limited partner, and to transfer assets to any new or existing partnership as a capital contribution; to enter into one or more joint ventures or associations with any person in any jurisdiction, and to commit assets to the purposes of those ventures or associations; and to retain as an investment for any period any securities, partnership interests or other assets resulting from any such actions;

(h) To vote in person at meetings of stock or security holders and adjournments thereof, and to vote by general or limited proxy with respect to any stock or securities;

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(i) To hold stock and securities in the name of a nominee without indicating the trust character of such holding, or unregistered or in such form as will pass by delivery, or to use a central depository and to permit registration in the name of a nominee;

(j) To initiate or defend, at the expense of the trust estate, any litigation relating to this Agreement or any property of the trust estate which the Trustees consider advisable, and to pay, compromise, compound, adjust, submit to arbitration, sell or release any claims or demands of the trust estate or any trust created hereunder against others or of others against the same as the Trustees may deem advisable, including the acceptance of deeds of real property in satisfaction of notes, bonds and mortgages, and to make any payments in connection therewith which the Trustees may deem advisable;

(k) To carry insurance of the kinds and in the amounts which the Trustees consider advisable, at the expense of the trust estate, to protect the trust estate and the Trustees personally against any hazard;

(l) To make distribution of the trust estate or of the principal of any trust created hereunder in cash or in kind, or partly in kind, and to cause any distribution to be composed of cash, property or undivided fractional shares in property different in kind from any other distribution; to hold the principal of separate trusts in a consolidated fund and to invest the same as a single fund; and to merge any trusts which have substantially identical terms and beneficiaries, and to hold them as a single trust;

(m) To employ and pay the compensation of accountants, attorneys, experts, investment counselors, custodians, agents and other persons or firms providing services or advice, irrespective of whether the Trustees may be associated therewith; to delegate discretionary powers to such persons or firms; and to rely upon information or advice furnished thereby or to ignore the same, as the Trustees in their discretion may determine;

(n) To execute and deliver any and all instruments or writings which it may deem advisable to carry out any of the foregoing powers; and

Notwithstanding anything to the contrary contained herein, during such time as any current or possible future beneficiary of any trust created hereunder may be acting as a Trustee hereunder, such person shall be disqualified from exercising any power to make any discretionary distributions of income or principal to himself or herself or to satisfy any of his or her legal obligations, or to make discretionary allocations of receipts or disbursements as between income and principal. All such powers shall be exercisable, if at all, only by any other Trustee acting at the time with such beneficiary. No Trustee who is a current or possible future beneficiary of any trust hereunder shall participate in the exercise of any powers of the Trustees which would cause such beneficiary to be treated as the owner of trust assets for tax purposes.

**SIXTH**: The Grantor hereby appoints _____ and _____ as joint Trustees hereunder.

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If either of the Trustees for any reason shall fail or cease to act as Trustee, the other Trustee, at any time after qualifying to act as Trustee, shall have the right to serve as sole Trustee hereunder, without appointment of a successor co-Trustee.

The term "Trustees" wherever used herein shall mean the trustee or trustees in office from time to time. Any such trustee shall have the same rights, powers, duties, authority and privileges, whether or not discretionary, as if originally appointed hereunder.

No bond, surety or other security shall be required of any Trustee acting hereunder for the faithful performance of the duties of Trustee, notwithstanding any law of any State or other jurisdiction to the contrary.

**SEVENTH**: The Trustees, at any time and from time to time, may render an account to the living person or persons who are entitled, at the time of such account, to receive all or a portion of the income of the trusts herein created.

The Trustees shall not be required at any time to file any account in any court, nor shall the Trustees be required to have any account judicially settled. Nothing herein, however, shall be construed as limiting the right of the Trustees to seek a judicial settlement of any account.

**EIGHTH**: The determination of the Trustees in respect of the amount of any discretionary payment of income or principal from any trust established hereunder, and of the advisability thereof, shall be final and conclusive on all persons, whether or not then in being, having or claiming any interest in such trust, and upon making any such payment, the Trustees shall be released fully from all further liability or accountability therefor.

**NINTH**: For purposes of this Agreement, any beneficiary hereunder shall be deemed to have predeceased any other person upon whose death such beneficiary shall become entitled to receive income or principal unless such beneficiary shall survive such other person by more than thirty days. The provisions of this Agreement shall be construed as aforesaid, notwithstanding the provisions of any applicable law establishing a different presumption of order of death or providing for survivorship for a fixed period as a condition of inheritance of property.

**TENTH**: No disposition, charge or encumbrance on the income or principal of any trust established hereunder shall be valid or binding upon the Trustees. No beneficiary shall have any right, power or authority to assign, transfer, encumber or otherwise dispose of such income or principal or any part thereof until the same shall be paid to such beneficiary by the Trustees. No income or principal shall be subject in any manner to any claim of any creditor of any beneficiary or liable to attachment, execution or other process of law prior to its actual receipt by the beneficiary.

**ELEVENTH**: The validity and construction of this Agreement and the trusts created hereunder shall be governed by the laws of the State of New York.

The words "child" and "children", wherever used in this Agreement, shall include not only the child and children of the person or persons designated, but also the legally adopted child and children of such person or persons, at the time in question. The word "issue", wherever used in this Agreement, shall include not only the child, children and issue of the person or persons

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designated, but also the legally adopted child and children of such person or persons and the child, children or issue thereof, at the time in question.

Any provision herein which refers to a statute, rule, regulation or other specific legal reference which is no longer in effect at the time said provision is to be applied shall be deemed to refer to the successor, replacement or amendment to such statute, rule, regulation or other reference, if any, and shall be interpreted in such a manner so as to carry out the original intent of said provision.

Wherever used in this Agreement and the context so requires, the masculine shall include the feminine and the singular shall include the plural, and vice versa.

If under any of the provisions of this Agreement any portion of the trust estate would be held in trust beyond a date twenty-one years after the death of the last survivor of the Grantor and the issue of the Grantor and other beneficiaries hereunder now in being, or such later date permitted by the rule against perpetuities applicable in the State of New York; then, upon such date, the trust of such portion shall terminate and the principal, and any unpaid income thereof, shall be paid and distributed to the person or persons then living who would have been entitled to receive the income therefrom had the trust continued, in the proportions to which they would have been so entitled.

**TWELFTH**: This Agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the undersigned Grantor and upon the Trustees acting hereunder.

**THIRTEENTH**: This Agreement and the trusts created hereunder may be referred to, in any other instrument, by the name: "_____ Irrevocable Living Trust dated _____, 20__." Any transfers to this Agreement or any trust hereunder may refer to the aforesaid name or to "_____ and _____ as Trustees under _____ Irrevocable Living Trust dated _____, 20__," with or without specifying any change in Trustees.

**IN WITNESS WHEREOF**, this Agreement has been duly executed as of the date first above written.

_____
[Name of Grantor]
Grantor

_____
[Name of Trustee]
Trustee

_____
[Name of Trustee]
Trustee

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

On the _____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that [he/she] executed the same in [his/her] capacity, and that by [his/her] signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

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

On the _____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that [he/she] executed the same in [his/her] capacity, and that by [his/her] signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

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

On the _____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that [he/she] executed the same in [his/her] capacity, and that by [his/her] signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

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**SCHEDULE A**

**TRUST ESTATE PROPERTY**

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# MEMORANDUM OF TRUST

**KNOW THAT**, _____, having an address at _____, as Grantor, created an irrevocable trust, known as the _____ Irrevocable Living Trust dated _____, 20__, by executing a Declaration of Trust, dated _____, 20__, naming _____, having an address at _____, and _____, having an address at _____, as trustees (collectively referred to as the "Trustees").

This Memorandum of Trust is executed as evidence of the existence of the foregoing Declaration of Trust. Any person may rely upon this Memorandum of Trust as evidence of the existence of said Declaration of Trust, and is relieved of any obligation to verify that any transaction entered into by a Trustee thereunder is consistent with the terms and conditions of said Declaration of Trust.

The Declaration of Trust and the trusts created thereunder may be referred to by the name: "_____ Irrevocable Living Trust dated _____, 20__". Any transfers to the Declaration of Trust or any trust thereunder may refer to the aforesaid name or to "_____ and _____ as Trustees under _____ Irrevocable Living Trust dated _____, 20__", with or without specifying any change in Trustees.

**IN WITNESS WHEREOF**, the Grantor has executed this Memorandum of Trust as of this _____ day of _____, 20__.

_____
[Name of Grantor]
Grantor

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

On the _____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that [he/she] executed the same in [his/her] capacity, and that by [his/her] signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

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