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**AMENDED AND RESTATED DECLARATION OF TRUST AGREEMENT BETWEEN  
RITA SUE HENNINGSEN, TRUSTOR, AND RITA SUE HENNINGSEN, TRUSTEE**

THIS AGREEMENT made this 11 day of July, 2012, between RITA SUE HENNINGSEN as the Settlor, and RITA SUE HENNINGSEN and MICHAEL E. HENNINGSEN, SR., as Trustees (referred to as the "Trustee").

The parties previously entered into the DECLARATION OF TRUST AGREEMENT BETWEEN RITA SUE HENNINGSEN, TRUSTOR, AND RITA SUE HENNINGSEN, TRUSTEE, dated February 26, 1998 (the "Agreement") and amended the same on August 20, 2007, and February 23, 2012. The Settlor desires to exercise the Settlor's retained power to amend the Agreement by restating the same in its entirety as follows.

**ARTICLE 1 Trustee**

~~MICHAEL E. HENNINGSEN, SR. and RITA SUE HENNINGSEN serve as co-Trustees of the trust created by this document.~~

**ARTICLE 2 Family**

2.1 Settlor. The Trustor is RITA SUE HENNINGSEN, referred to as the "Settlor" throughout this agreement. The Settlor is married to MICHAEL E. HENNINGSEN, SR.

2.2 Children. The Settlor is the parent of MICHAEL E. HENNINGSEN, JR. ("MIKE, Jr."), MARY SUE WALLACE ("MARY"), CHRISTOPHER R. HENNINGSEN ("CHRIS"), and JOSEPH ERIC HENNINGSEN ("ERIC"). All references to the "Settlor's children," or words of similar effect, are to the children named above.

**ARTICLE 3 Transfer to Trust**

3.1 Prior Transfers to Trust. The Settlor has transferred to the Trustee and its successors, in trust, various assets, and the Trustee will continue hold the same subject to the following trust purposes and conditions.

3.2 Transfers to Trust. The Settlor transfers to the Trustee and its successors, in trust, to hold the same subject to the following trust purposes and conditions, all of the Settlor's interest, now owned or hereafter acquired, in all real property and all tangible and intangible personal property, of whatever nature and wherever situated, and the Settlor's personal articles (including but not limited to jewelry, household furniture and furnishings, clothing, art objects, memorabilia, personal vehicles, recreational equipment, and other tangible property for personal and household use, including all unexpired insurance policies covering those items), frequent flyer miles (including flight coupons and other airline flight plan benefits or programs issued, sponsored or awarded by any airline), stocks, bonds, mutual funds, partnership interests, leases, promissory notes, savings accounts, checking accounts, and contents of safe deposit boxes.

3.2.1 This Paragraph 3.2 does not apply to life insurance policies and assets held in any qualified retirement plan or qualified retirement account.

3.2.2 Notwithstanding any other provision in this assignment, no interest of the Settlor shall be transferred to the Trustee pursuant to this Paragraph 3.2 if the transfer of such interest to the Trustee would cause such interest to become subject to any right, duty, or option to purchase, repurchase, liquidate, or terminate all or any portion of such interest, of any person or entity not a party to this assignment.

3.2.3 This Paragraph 3.2 shall become effective as to all assets not transferred because of Paragraph 3.2.2 upon waiver or release by the third party of the rights that precluded the transfer.

3.3 Subsequent Transfers. The Settlor or any other person may transfer or devise to the Trustee additional assets, real or personal, and may name the Trustee as the beneficiary of life insurance policies, and such assets and the proceeds of such insurance policies, upon delivery to and acceptance by the Trustee, shall be a part of the trust estate, subject to all the terms of this Agreement.

#### **ARTICLE 4 Amendment and Revocation**

4.1 Retained Rights. During the lifetime of the Settlor, the Settlor reserves the following rights.

4.1.1 Amendment. To amend this Agreement by an instrument in writing signed by the Settlor. Such amendment shall be effective when delivered to the Trustee; provided, however, that no such amendment shall have the effect of changing the trustee duties without the prior written approval of the Trustee.

4.1.2 Revocation. To revoke this Agreement by an instrument in writing signed by the Settlor and delivered to the Trustee.

4.1.3 Withdrawal of Assets. To withdraw any or all assets from the trust estate.

4.1.4 Investment Direction. To direct investments of trust assets as provided in Paragraph 15.2.

4.2 Exercise of Retained Rights. The powers retained in Paragraph 4.1 shall be exercised by the Settlor personally, and shall not be exercised by any agent, guardian, Executor, or other person acting for or on behalf of the Settlor; provided, however, that an agent acting under a power of attorney may exercise a power of revocation or amendment if such power is expressly granted in that power of attorney.

4.3 Suspension of Retained Rights. The personal rights retained pursuant to this Article 4 shall be suspended immediately if the Settlor becomes incapacitated, as defined in Paragraph 16.1; provided, however that an agent acting under a power of attorney may exercise a power of revocation or amendment if such power is expressly granted in that power of attorney.

#### **ARTICLE 5 Successor Trustee**

If a Co-Trustee resigns, becomes incapacitated, dies, or otherwise becomes unable or unwilling to serve, then the Settlor appoints the following, individually and in succession one to the next, to serve as successor co-Trustee with the remaining Trustee. If only one individual appointed is able and willing to serve as Trustee, then that individual shall serve as the sole Trustee.

- 5.1 MIKE, Jr.;
- 5.2 CHRIS;
- 5.3 ERIC; and
- 5.4 WELLS FARGO BANK, N.A.

#### **ARTICLE 6 Lifetime Distributions to The Settlor**

During the lifetime of the Settlor, the Trustee shall administer the Trust pursuant to this Article 6.

6.1 Distributions. The Trustee shall distribute to or for the benefit of the Settlor all or such part of the income and principal of the trust estate as the Settlor, from time to time, directs.

6.2 Incapacity of the Settlor. If the Settlor becomes incapacitated as defined in Paragraph 16.1, the Trustee shall pay to or for the benefit of the Settlor and the Settlor's spouse such sums from the income and principal of the trust estate, without regard to the character or source, as the Trustee, in its discretion, determines reasonable and necessary for their health, support, maintenance, and reasonable comforts. The Trustee is authorized to provide for reasonable support and health care for the Settlor and the Settlor's spouse, even if this leaves no assets of the Trust remaining for other beneficiaries.

6.3 Provision for Descendants. While the Settlor is incapacitated, the Trustee may exercise the following powers as attorney-in-fact on behalf of the Settlor, but the primary concern of the Trustee shall be for the welfare of the Settlor and the Settlor's spouse and secondarily for the welfare of the Settlor's descendants or any other beneficiary or for tax planning.

6.3.1 The Trustee may make distributions to the descendants of the Settlor, equally by family line, for the purpose of continuing any gift program initiated by the Settlor that the Trustee reasonably determines will achieve beneficial results for estate or income tax planning purposes.

6.3.2 The Trustee may initiate a gift program on behalf of the Settlor that the Trustee reasonably determines will achieve beneficial results for estate or income tax planning purposes by making distributions to the descendants of the Settlor, equally by family line, so long as such distributions qualify for and are limited to the then applicable annual exclusion for federal gift tax purposes.

6.3.3 If a descendant of the Settlor is a minor or is under the care of a guardian of the person, the Trustee may pay or reimburse the guardian for its out-of-pocket expenses, including any demonstrable economic losses sustained by reason of undertaking the guardianship.

6.3.4 During any incapacity of the Settlor, the Trustee shall be under no obligation to initiate, recommend or consider any tax planning objective or program for the Settlor, and any exercise of its discretion in this regard shall not subject it to liability to any person affected by it.

## **ARTICLE 7 Distributions Upon Death**

Upon the death of the Settlor, the Trustee shall make the following distributions.

7.1 **Payment of Taxes and Expenses.** The Trustee may pay or reimburse, from the assets of the trust estate, the expenses of last illness, the administration expenses of the Settlor's personal estate, and all unsecured debts of every kind for which the Settlor or the Settlor's personal estate is obligated.

7.1.1 All secured debts for which the Settlor or the Settlor's personal estate is obligated may be paid by the Trustee if the Trustee, in its discretion, determines that such payment is in the best interests of the Settlor's personal estate and the trust estate. If the Trustee elects not to pay any secured debt for which the trust estate is obligated, the property subject to such indebtedness shall be held and distributed by the Trustee subject to such indebtedness.

7.1.2 Except as otherwise specifically provided, the Trustee, in its discretion, shall determine whether to pay or not to pay any expense, debt, or claim presented to the Trustee later than four months after the death of the Settlor.

7.1.3 Nothing contained in this Agreement shall be construed, interpreted, or applied to constitute any creditor of the Settlor as a beneficiary under this Agreement.

7.1.4 For purposes of this Agreement, the term "personal estate" shall mean all assets included in the Settlor's gross estate for federal estate tax purposes other than the assets of this trust.

7.1.5 If the trust estate, its income, or any portion of either shall be included in the taxable estate, transfer, or income of the Settlor or any beneficiary of this trust for the purpose of determining any inheritance, estate, transfer, succession, income or generation-skipping transfer ("GST") taxes due as a result of the death of the Settlor, and a tax is levied or assessed in respect of such included amount, the Trustee shall pay or reimburse not less than that portion of such tax or taxes that the part of the trust estate or its income so included in such taxable amount and generating such tax bears to the entire taxable amount so taxed. For purposes of allocating and charging that portion of any tax paid by the Trustee pursuant to this Paragraph, the Trustee shall apportion such tax among the beneficiaries of this trust pursuant to RCW ch. 83.110A, and as the same is hereafter amended, unless otherwise provided by the Settlor. However, no portion of such tax shall be apportioned to the beneficiaries of the assets described in Paragraph 7.2. The Settlor acknowledges that the inheritance, estate, transfer,

succession, income, or GST tax burden on the distributive shares of the beneficiaries described in this instrument may reduce the net benefit received by them, but the Settlor knowingly makes this allocation and intends that no part of such taxes be allocated to the beneficiaries of distributions set forth in Paragraph 7.2. It is not the intention of the Settlor to waive any right of recoupment for the payment of any taxes as provided by Sections 2206, 2207, 2207A or 2207B of the Code.

**7.2 Personal Property.** If MIKE survives the Settlor, the Trustee shall distribute to MIKE all interest then held in this trust in furniture and furnishings, clothing, jewelry, art objects, memorabilia, personal effects, personal vehicles, recreational equipment, and all other tangible personal property customarily intended for personal or household use, including all unexpired insurance covering the same, and all frequent flyer miles (including flight coupons and other airline flight plan benefits or programs issued, sponsored or awarded by any airline). If MIKE does not survive the Settlor, the Trustee shall distribute such property to the Settlor's surviving children in substantially equal shares as they agree or, if they are unable to agree within six months of the Settlor's death, as the Trustee conclusively determines.

**7.3 Spouse Survives.** If MIKE survives the Settlor, the Trustee shall administer the residue of trust estate pursuant to Article 8.

**7.4 Spouse Does Not Survive.** If MIKE does not survive the Settlor, the Trustee shall administer the residue of trust estate pursuant to Article 9.

## **ARTICLE 8 Trusts for the Benefit of MIKE**

**8.1 Division of Trust Estate.** After the payment of the distributions and obligations described in Article 7, the Trustee shall divide the residue of the trust estate into two parts, referred to as the "Marital Trust" and the "Exemption Trust."

**8.1.1 Transfers to Marital Trust.** The Marital Trust shall consist of the fractional share of the residue needed to qualify for the federal estate tax marital deduction to result in the least possible federal estate tax payable in respect of the Settlor's estate ("the Fraction") calculated as follows:

**8.1.1.1** The numerator of the Fraction shall be the smallest amount that, if allowed as a federal estate tax marital deduction, would eliminate or reduce to the lowest possible sum the federal estate tax liability of the Settlor. This amount shall be calculated by taking into account the Settlor's applicable exclusion amount, all amounts passing to or for the benefit of MIKE other than by the terms of this paragraph that also qualify for the federal estate tax marital deduction and all other credits or deductions but only to the extent that state death taxes are not thereby increased.

**8.1.1.2** The denominator of the Fraction shall be the value of the trust estate.

**8.1.2 Transfers to Exemption Trust.** The Exemption Trust shall consist of that portion of the residue not included in the Marital Trust.

8.1.3 Valuation of Assets. For purposes of the division of the residue pursuant to this Paragraph 8.1, values of all assets shall be those finally determined for federal estate tax purposes.

8.1.4 Asset Allocation. The Trustee shall apply the Fraction as determined in this Paragraph above to available assets within the residue, revalued at date of division between the Marital and Exemption Trusts, to determine a dollar value for each trust. The Trustee shall then allocate and distribute assets to the Marital Trust and the Exemption Trust, using such date of distribution values of the selected assets for each trust until the full dollar value of each trust has been satisfied; provided, however, that

8.1.4.1 the Trustee shall first allocate to the Exemption Trust any asset with respect to which a marital deduction for federal estate tax purposes is not allowable due to its character or restrictions associated with it;

8.1.4.2 the Trustee may allocate in whole or in part of each remaining asset, non pro rata, to either or both the Marital Trust and the Exemption Trust;

8.1.4.3 the Trustee shall apply the Fraction to the available residue to determine the dollar amount of the Marital Trust for each successive partial distribution of assets for funding the Marital Trust; and

8.1.4.4 the Trustee shall use the fair market value of assets in successive distributions as of the date of distribution.

8.1.5 Possibility of Disclaimer. If MIKE (or MIKE's legal representative) makes a qualified disclaimer of any portion of MIKE's interest in all or any portion of the trust estate, the disclaimed interest or portion will be held as a separate trust (the "Disclaimer Trust") under the same terms as the Exemption Trust; provided, however, that, notwithstanding any other provisions in this trust agreement, MIKE shall not have a power of appointment over any assets held in the Disclaimer Trust.

8.2 Marital Trust. The Marital Trust shall be applied as follows.

8.2.1 Income Distributions. During the lifetime of MIKE and through the date of MIKE's death, the Trustee shall pay to or for the benefit of MIKE the entire net income of the Marital Trust not less often than quarterly.

8.2.2 Principal Distributions. The Trustee may pay to or for the benefit of MIKE, during MIKE's lifetime, such sums from the principal of the Marital Trust as the Trustee, in its discretion, determines to be reasonable and necessary for MIKE's health, education, support, maintenance, and reasonable comforts, including for tax and financial planning purposes.

8.2.3 Residence and Vacation Property. If any residential real estate used by the Settlor as the Settlor's principal residence or for recreational or vacation purposes, or any interest in such properties or replacement of them, is included in the Marital Trust, then MIKE shall be entitled to use and occupy such properties for the balance of MIKE's lifetime without

the payment of rent. In all other regards the Trustee shall treat such properties as assets of the Marital Trust and shall be fully responsible for their repair, maintenance, and care and shall discharge all financial responsibilities associated with them.

8.2.4 Productive Property. MIKE may at any time require the Trustee to make any asset of the Marital Trust productive.

8.2.5 Qualification for Marital Deduction. It is the intention of the Settlor that the Marital Trust, upon election, shall qualify for the federal estate tax marital deduction under section 2056 of the Code, and all provisions of this Agreement, and the powers and authorities of the Trustee, shall be interpreted and applied consistently with that intent.

8.2.6 Termination of Marital Trust. Upon MIKE's death, the balance of the Marital Trust shall be applied as provided in Article 9, but subject to the provisions of Paragraph 8.4.

### 8.3 Exemption Trust.

8.3.1 Income Distributions. The Trustee may pay to or for the benefit of MIKE such amounts of income of the Exemption Trust as the Trustee, in its discretion, determines to be reasonable and necessary for MIKE's health, education, support, maintenance, and reasonable comforts, including for tax and financial planning purposes.

8.3.2 Principal Distributions. The Trustee may pay to or for the benefit of MIKE such sums from the principal of the Exemption Trust as the Trustee, in its discretion, determines to be reasonable and necessary for MIKE's health, education, support, maintenance, and reasonable comforts, including for tax and financial planning purposes. To the extent practicable, no payments of principal will be made to or for the benefit of MIKE from the Exemption Trust until the principal of the Marital Trust has been consumed; however, because the assets of the three trusts will be affected by changing conditions, the Trustee will have sole discretion regarding the source of payments.

8.3.3 Residence and Vacation Property. If any residential real estate used by the Settlor as the Settlor's principal residence or for recreational or vacation purposes, or any interest in such properties or replacement of them, is included in the Exemption Trust, then MIKE shall be entitled to use and occupy such properties for the balance of MIKE's lifetime without the payment of rent. In all other regards the Trustee shall treat such properties as assets of the Exemption Trust and shall be fully responsible for their repair, maintenance, and care and shall discharge all financial responsibilities associated with them.

8.3.4 Productive Property. MIKE may at any time require the Trustee to make any asset of the Exemption Trust productive.

8.3.5 Division of Exemption Trust. The Trustee may, but need not, make an election to qualify all or any part of the Exemption Trust for a marital deduction for Washington or other state estate or inheritance tax purposes if then allowed by Washington or other applicable law. If the Trustee makes such election as to only a portion of the Exemption Trust, the Trustee shall hold the elected amount and the nonelected amount as separate trusts. If the

Trustee makes any discretionary distributions of principal, such distributions shall, to the extent permitted by applicable law, be first allocated to the fund for which the Trustee has made a marital deduction election until the whole is exhausted.

8.3.6 Qualification for State Marital Deduction Election. It is the Settlor's intent that the provisions of this Paragraph 8.3 will cause the elected portion of the Exemption Trust to qualify for a Washington or other state estate or inheritance tax marital deduction under Washington law or any state statute or administrative rule then applicable and in effect, and all provisions in this Paragraph 8.3 shall be interpreted consistently with such intent.

8.3.7 Termination of Exemption Trust. Upon MIKE's death, the balance of the Exemption Trust shall be applied as provided in Article 9, but subject to the provisions of Paragraph 8.4.

8.4 Limited Power of Appointment. The Settlor grants to MIKE, during his lifetime after the death of the Settlor, a limited power of appointment to alter the division and distribution of the Marital Trust and the Exemption Trust provided in this Article 8.

8.4.1 Permissible Appointees. MIKE may change the beneficiaries of the shares so described by adding or deleting any descendant of the Settlor, the spouse of any descendant of the Settlor, the widow or widower of any deceased descendant of the Settlor, or any organization described in Section 501(c)(3) of the Code, contributions to which are deductible under Sections 170, 2055 and 2522 of the Code, and may alter the division of the trust estate among the beneficiaries, as presently identified or as altered, in such manner as MIKE shall designate, including the extension or reduction of the term of this Trust as it pertains to any trust share and the creation of other trusts.

8.4.2 Exercise of Power of Appointment. MIKE shall exercise such limited power of appointment in a Last Will or in a written instrument that (i) specifically refers to this power, (ii) is acknowledged before a notary public or other person authorized to administer oaths, (iii) is filed with the Trustee during the lifetime of MIKE, and (iv) remains unrevoked at the time of her death. MIKE is not limited to one exercise of this limited power of appointment, and any exercise of this power may be revoked or modified by a subsequent written instrument as described above.

## **ARTICLE 9 Final Distributions**

The Trustee shall apply any assets subject to this Article (the "trust estate") pursuant to the following terms and conditions.

9.1 Creation of GST Descendants Trust. The Trustee shall retain all shares of the trust estate for which the generation-skipping transfer tax inclusion ratio is zero and shall hold and administer such assets pursuant to Article 10. If the generation-skipping transfer tax is not then applicable, the Trustee shall retain the residue of the trust estate pursuant to this paragraph and shall hold and administer the trust estate pursuant to Article 10.

9.2 Residue. After making the distribution described in Paragraph 9.1, the Trustee shall distribute the residue of the trust estate, if any, to the Settlor's descendants by representation, subject to Paragraph 10.2.

#### **ARTICLE 10 Descendants Trust**

The Trustee shall divide all assets made subject to this Article (the "trust estate") into shares for the Settlor's then living descendants by representation and shall hold such shares as separate trusts pursuant to this Article.

10.1 Separate Trust for a Child. The Trustee shall administer each separate share held for the benefit of a child of the Settlor (a "Beneficiary") as a separate trust as follows.

10.1.1 The Trustee shall distribute to or for the benefit of the Beneficiary such amounts of income of the separate trust as the Trustee determines to be reasonable and necessary for that Beneficiary's health, education, maintenance, and support.

10.1.2 The Trustee shall distribute to or for the benefit of the Beneficiary such amounts of principal of the separate trust as the Trustee determines to be reasonable and necessary for that Beneficiary's health, maintenance, and support.

10.1.3 Limited powers of appointment.

10.1.3.1 During a Beneficiary's lifetime and upon the death of a Beneficiary, the Trustee shall distribute the remaining balance of the separate trust, or any part of it, to such person or persons, in such amounts and at such times, including in further trust, as the Beneficiary appoints with specific reference to this limited power of appointment, but the Beneficiary may not appoint such property to the Beneficiary, the Beneficiary's estate, the Beneficiary's creditors, or the creditors of the Beneficiary's estate.

10.1.3.2 The Beneficiary shall exercise this limited power of appointment in a Last Will or in a written instrument that (i) specifically refers to this power, (ii) is acknowledged before a notary public or other person authorized to administer oaths, (iii) is filed with the Trustee during the lifetime of the Beneficiary, and (iv) remains unrevoked at the time of the Beneficiary's death. The Beneficiary is not limited to one exercise of this limited power of appointment, and any exercise of this power may be revoked or modified by a subsequent written instrument as described above.

10.1.4 Upon the death of a Beneficiary who leaves at least one surviving descendant, if such Beneficiary fails to completely and effectively exercise the power of appointment granted above, the remaining assets of the separate trust not appointed by the Beneficiary shall be divided into separate shares for the benefit of the Beneficiary's descendants by representation and held and administered pursuant to Paragraph 10.2.

10.1.5 Upon the death of a Beneficiary who leaves no surviving descendant, if such Beneficiary fails to completely and effectively exercise the power of appointment granted above, the remaining assets of the separate trust not appointed by the Beneficiary shall be divided into separate shares for the benefit of the Settlor's descendants by representation. Any

share created for the benefit of a child of the Settlor shall be held and administered pursuant to this Paragraph 10.1. Any share created for the benefit of a grandchild or more remote descendant of the Settlor shall be held and administered pursuant to Paragraph 10.2.

10.2 Separate Trust for a Grandchild or More Remote Descendant. The Trustee shall distribute each separate share held for the benefit of a grandchild or more remote descendant of the Settlor who has then reached age 30 to the descendant outright and free of trust. Any separate share created for the benefit of a grandchild or more remote descendant of the Settlor who has not then reached age 30 (a "Beneficiary") shall be retained as a separate trust as administered as follows.

10.2.1 The Trustee may pay to or for the benefit of the Beneficiary such sums from the income and principal of the separate trust as the Trustee, in its discretion, determines to be reasonable and necessary for the Beneficiary's health, education, support, and maintenance.

10.2.2 When the Beneficiary attains the age of 30 years, the Trustee shall distribute the entire remaining balance of the separate trust to the Beneficiary, free of trust.

10.2.3 If the Beneficiary dies prior to receiving full and final distribution of the separate trust, the Trustee shall distribute the remaining balance of the separate trust to such person or persons, in such amounts and at such times, including in further trust, as the Beneficiary appoints in the Beneficiary's Last Will with specific reference to this limited power of appointment, but the Beneficiary may not appoint such property to the Beneficiary, the Beneficiary's estate, the Beneficiary's creditors, or the creditors of the Beneficiary's estate.

10.2.4 If the Beneficiary dies prior to receiving full and final distribution of the separate trust and fails to completely and effectively exercise the power of appointment granted in above, the Trustee shall distribute the remaining balance of the separate trust by representation to the Beneficiary's descendants or, if none, by representation to the Settlor's descendants, but if any distributee entitled to receive a share or part of the separate trust has not then attained the age of 30 years, the share or part otherwise distributable to such individual shall be retained in further trust for the exclusive benefit of such individual pursuant to this Paragraph 10.2.

#### **ARTICLE 11 Contingent Beneficiaries**

If the last beneficiary of a trust share dies before its full and final distribution and there are no other alternate provisions directing the disposition of such share, then such share shall be distributed as follows:

11.1 One-half to Paul Gard Henningsen, if he is then living. If he is not then living, then this share shall be distributed to his then living descendants by representation. The Trustee shall, if practicable, allocate to this share any interest that the Trustee then holds in Henningsen Cold Storage Co., its affiliates, and successors.

11.2 One-half in equal shares to each of the following who is then living or by representation to the then living descendants of any of the following who is then deceased:

11.2.1 Lester Leo Bergeron,

- 11.2.2 James Joseph Bergeron,
- 11.2.3 Robert Neil Bergeron, and
- 11.2.4 Mary Rae Gardner.

## **ARTICLE 12 Protection of Trust Interests**

The interest of any beneficiary in the principal or income of the trust estate or any share of it shall not be subject to the claims of his or her creditors or others, or to legal process, and may not be voluntarily or involuntarily anticipated, alienated, or encumbered in any manner whatsoever. Any attempt to anticipate, alienate, or encumber such interest shall be void and of no effect, and the Trustee shall suffer no liability by reason thereof.

## **ARTICLE 13 Retirement Plans**

If any employee benefit or retirement plan or account subject to the minimum distribution rules of Code section 401(a)(9) or any comparable provision of law ("Retirement Plan") is payable at the death of any individual (the "Owner") to the trustee of a trust established under this Trust Agreement, the following provisions apply to the extent specified below.

13.1 **Restrictions on Use for Payment of Taxes and Expenses.** Notwithstanding any other provision of this trust agreement or any apportionment, abatement, or other provision of state law, to the extent any Retirement Plan is payable by beneficiary designation to the Trustee, no assets held in such Retirement Plan and no proceeds receivable from or assets traceable to it shall be distributed in payment of debts, claims, funeral expenses, costs of administering the Owner's estate, or the Owner's estate and inheritance taxes.

13.2 **Conduit Trust for Spouse, Child, or Other Descendants.** Notwithstanding any other provision of this trust agreement, during any calendar year in which a beneficiary of any trust for the benefit of the Settlor, a child, or a more remote descendant of the Settlor is treated as the designated beneficiary whose life expectancy is being used to determine minimum distributions under Code section 401(a)(9)(B) from any such Retirement Plan of the Owner:

13.2.1 The Trustee shall elect to receive or shall withdraw from any such Retirement Plan the minimum required distribution for such plan for such year that is necessary to satisfy the requirements of Code section 401(a)(9) (the "MRD"), or such greater amount (if any) as the Trustee is required to withdraw under the laws and all regulations then applicable to this trust to avoid penalty; provided, however, that the minimum required distribution for the year of the Owner's death shall mean (a) the amount that the Owner was required to take with respect to such Retirement Plan during such year, minus (b) amounts actually distributed to the Owner with respect to such Retirement Plan during such year.

13.2.2 In addition, the Trustee may elect to receive or withdraw, and then shall distribute pursuant to Paragraph 13.2.3, such additional amount or amounts from such Retirement Plan as the Trustee in its discretion determines under the guidelines set forth in such trust, following the guidelines for distribution of net trust income to the extent such distribution

will be composed of net trust income, and the guidelines for distribution of principal, to the extent such distribution will be composed of principal.

13.2.3 All amounts withdrawn or received by the Trustee from any such Retirement Plan (net of expenses chargeable to such amounts) under Paragraphs 13.2.1 and 13.2.2 shall, upon receipt by the Trustee, be distributed directly to the current trust beneficiary (or, if more than one current beneficiary, in such Trustee's discretion to one or more of such current beneficiaries).

13.2.4 No exercise of a special or general power of appointment over such trust shall be effective with respect to such Retirement Plan, or any assets received from such a plan, until the termination of such trust.

13.3 Exclusion of Certain Descendants as Trust Beneficiaries. Notwithstanding any other provision of this Trust Agreement or state law, if any trust created under this trust agreement is the beneficiary of any Retirement Plan payable upon the Owner's death and such trust benefits the Owner's children or descendants, the term "child," "children," or "descendants," for purposes of such trust, shall not include any individual adopted after the Owner's death, if such individual is older than the oldest beneficiary of such trust who was living at the Settlor's death.

#### **ARTICLE 14 Office of Trustee**

14.1 Removal. Following the death of the Settlor, a majority of the then income beneficiaries of all trusts created pursuant to this trust agreement may remove and replace any acting corporate Trustee at any time by written instrument delivered to the then acting corporate Trustee. Any individuals then incapacitated shall be represented by their legal or natural guardians. Written evidence of such removal and appointment shall be delivered to the Trustee and such removal shall be effective at such time specified by the written notice; provided, however, that such removal shall not become effective until the newly appointed Trustee has accepted appointment as Trustee.

#### **14.2 Limited Liability.**

14.2.1 No successor Trustee shall be liable or responsible in any way for the acts or defaults of any predecessor Trustee, or for any loss or expense caused by anything done or neglected to be done by any predecessor Trustee, and such successor Trustee shall be liable only for its own acts and defaults with respect to the trust estate actually received by it as Trustee.

14.2.2 No Trustee shall be liable or responsible in any way for the acts or defaults of any Special Trustee or any Business Trustee.

14.3 Co-Trustees. During the period any trust is administered by Co-Trustees, the following is applicable:

14.3.1 In the event of the death or incapacity of a Co-Trustee, the remaining Trustee(s) shall continue the trusteeship of the trust estate.

14.3.2 The Co-Trustees may take action by majority vote; provided, however, that if two Co-Trustees are serving, the Co-Trustees must take action unanimously.

14.3.3 The Co-Trustees may, at their option, appoint one of their number from time to time as the "Managing Co-Trustee," who shall be responsible for the day-to-day management of the trust estate, pay and receive all monies due to or from the trust estate, undertake the preparation and preservation of all the books, records and reports (including tax returns) of the trust, and may act as the attorney-in-fact for the remaining Trustee upon the execution of appropriate instruments reflecting the same. Once appointed, the Managing Co-Trustee shall serve at the pleasure of any remaining Co-Trustee.

14.3.4 The signature of any one Co-Trustee shall bind upon the trust as to third parties who act in reliance upon such signature.

14.3.5 If the Co-Trustees are unable to reach agreement as to any proposed action or inaction, any Trustee may present an informal, written statement of the relevant facts and circumstances to the then presiding judge of the Circuit Court in Washington in the county where venue is proper, together with a request for the appointment of a mediator to review and decide the matter presented pursuant to RCW 11.96A.300, or an arbitrator pursuant to RCW 11.96A.310. Upon appointment by the Court, the mediator or arbitrator shall review the matter, determine the procedures of the mediation or arbitration, and receive any additional evidence or information it may request. An arbitrator shall render its written decision, including the award of attorney fees and costs, if any, which decision shall be final and binding for all purposes.

14.4 Resignation. A Trustee may resign by delivering its written resignation to the Settlor, or, if the Settlor is incapacitated or deceased, to the next successor trustee named or provided for, if any, otherwise to the then income beneficiaries of all trusts created under this agreement. Any income beneficiaries then incapacitated will be represented by a natural or legal guardian. A resignation shall become effective 30 days after written notice is delivered personally to the person or persons entitled to notice or mailed by registered or certified United States mail to such person or persons entitled to notice, addressed to the address last of such person on file with the Trustee. If the Trustee resigns, such resignation shall have the same effect as if such Trustee died.

14.5 Vacancy. If a Trustee resigns, becomes incapacitated, dies, or otherwise becomes unable or unwilling to serve and no succession of trustees is otherwise provided, the Settlor, or if the Settlor is incapacitated or deceased, a majority of the then income beneficiaries may, by written instrument filed with the Trustee and accepted in writing by the appointed successor trustee, designate a corporate successor Trustee. Any person then incapacitated shall be represented by his or her natural or legal guardian.

14.6 Court Appointment. Upon the resignation, death, incapacity, or other inability or unwillingness of the Trustee to serve, if no succession of trustees is otherwise provided and if the person or persons entitled to appoint a successor trustee as provided in Paragraph 14.5 fail to make such appointment, a court of competent jurisdiction shall appoint a successor Trustee in accordance with applicable law.

14.7 Succession to Trustee Powers. Each successor Trustee designated or appointed pursuant to this Agreement shall succeed to all property, rights, powers, duties, and discretions vested in or imposed upon the present Trustee. Each reference to the Trustee also refers, without distinction, to each successor Trustee.

14.8 Corporate Trustee Succession. Any successor Trustee to any corporate Trustee, whether by consolidation, merger, transfer of trust business, or otherwise, shall succeed as trustee with all the powers and discretion conferred upon and the privileges granted to its predecessor.

14.9 Environmental Provisions. The following rules govern administration of the Trust with respect to assets that could cause the Trustee to incur liability for environmental contamination or hazardous wastes.

14.9.1 Title to the following types of assets will not vest in any Trustee (including a successor Trustee when it begins to serve) until the Trustee executes a written instrument accepting title to those assets:

14.9.1.1 Real property or any interest of any nature in real property (including mortgages secured by real property), and

14.9.1.2 Any interest in a partnership, limited liability company, or closely held corporation that owns real property or an interest in real property and in which the Trustee would have the ability to vote or otherwise participate in the management and control of the entity's operations.

If the Trustee refuses to accept title to an asset that has never been part of this Trust, title to that asset will revert to the transferor or pass to such other persons (other than the Trustee) as may be provided by applicable law. If a successor Trustee refuses to accept title to such an asset accepted by the prior Trustee, the prior Trustee (or his or her Executor) will continue to hold title to and administer that asset until it is distributed, sold, or otherwise disposed of, or until other relief is granted by a court having jurisdiction over the Trust. Until it accepts title to such an asset, the Trustee will have no fiduciary duty with respect to that asset.

14.9.2 The Trustee may require environmental audits acceptable to it to be made at any time at the expense of the Trust.

14.9.3 The Trustee will not be liable to any beneficiary for any claims against or losses incurred by the Trust because of compliance with laws regulating environmental contamination or hazardous wastes, including reporting or abating contamination, cleaning up property, incurring expenses in connection with administrative or judicial proceedings, and establishing reserves for such payments, even if amounts expended exceed the value of the property. As a condition to accepting trusteeship over contaminated or potentially contaminated assets, the Trustee may require indemnities or other arrangements satisfactory to it that will protect and hold it harmless from liability that might be incurred for environmental contamination or hazardous substances.

14.9.4 These provisions are in addition to other remedial powers and rights given to fiduciaries under applicable law.

14.10 Payment to Beneficiaries. All payments of income or principal shall be made in such of the following ways as the Trustee determines appropriate:

14.10.1 To each respective beneficiary in person, upon his or her personal receipt;

14.10.2 Deposited in any financial institution to the credit of such beneficiary in any account carried in his or her name, or jointly with another;

14.10.3 To the parent or legal representative of the beneficiary;

14.10.4 To a Custodian selected by the Trustee under the Washington Uniform Transfers to Minors Act or a substantially similar Act of another state if jurisdiction over the matter is more appropriate in such other state, and for the maximum period of time allowed under applicable law or a lesser period that the Trustee deems appropriate;

14.10.5 To some near relative, friend, or institution having primary responsibility for the care and custody of the beneficiary;

14.10.6 By the Trustee using such payment directly for the benefit of such beneficiary; or

14.10.7 To the trustee of any revocable trust of which the beneficiary is a settlor.

14.11 Beneficiaries' Other Funds. In making payments committed to its discretion to or for the benefit of any beneficiary, the Trustee shall take into consideration any other income or support received or property possessed by such beneficiary and known to the Trustee, including the beneficiary's ability to obtain gainful employment and the obligation of others to support the beneficiary. Discretionary distributions from the Trust shall be supplemental to such other sources, but the extent to which such income, support, or property must first be liquidated or consumed by such beneficiary shall be determined in the absolute discretion of the Trustee.

14.12 Notice of Birth and Death. Until the Trustee receives written notice of any birth, incapacity, death, or other event upon which the rights to payments from the trust estate may depend, the Trustee shall incur no liability to persons whose interests may be affected by such birth, incapacity, death, or other event for disbursements or distributions made by it in good faith.

14.13 Special Trustee. Notwithstanding any other provision of this document, the following shall be applicable:

14.13.1 If the Trustee is a "Special Trustee" as defined in Paragraph 14.13.5 below, then the Trustee shall have the authority to exercise the powers set forth in the balance of this Paragraph 14.13. If the Trustee is not a Special Trustee as defined in Paragraph 14.13.5

below, then the Trustee may appoint such a Special Trustee who shall have the sole and exclusive authority to exercise the powers set forth in the balance of this Paragraph 14.13.

14.13.1.1 Any Special Trustee appointed by the Trustee shall serve in that capacity for a period of six months from the date of acceptance of the appointment or until it resigns, whichever first occurs.

14.13.1.2 The Special Trustee, when acting in the scope of its fiduciary duty, shall have no liability for actions taken or not taken during the term of its service.

14.13.2 The Special Trustee shall review and evaluate the purposes and objectives of this Agreement, the circumstances of the beneficiaries, and the nature and condition of the trust estate.

14.13.3 If the Special Trustee, in its discretion, determines that (i) the purposes or objectives of this Agreement are not reasonably attainable or have been or likely will be frustrated through external circumstances beyond the Trustee's control without reasonable possibility of correction, or (ii) the circumstances of the beneficiaries, or any of them, is or will be materially and adversely affected by the continuation of the trust or any trust share of it, or (iii) the nature of the trust estate or trust share is not conducive to trust management, or (iv) the condition of the trust estate or trust share will be materially and adversely affected by the continuation of the trust or trust share, then the Special Trustee is granted a limited power of appointment to terminate this trust or any share of it, either in whole or in part, and distribute the trust estate or share, or that portion of it then being terminated, to the beneficiaries of it.

14.13.4 If the Special Trustee, in its discretion, determines that the terms and conditions of this Agreement, as presently stated or as hereafter amended, cannot be reasonably interpreted or applied to (i) comply with the tax laws relating to this trust, (ii) assure, permit, or facilitate the proper administration of the trust estate within the purposes described in it, (iii) accomplish the Settlor's original purposes and intent in light of a change in the law or changed or unforeseen circumstances, or (iv) achieve the best or most appropriate results in the best interests of the beneficiaries, then the Special Trustee is granted a limited power to amend this Agreement for the purpose of correcting, improving, or facilitating any such condition. Such limited power to amend includes the power to change the situs of this trust and to change the jurisdiction of the law that governs it. Any amendment adopted by the Special Trustee shall be in writing and shall specifically refer to the authority granted to it. A copy of any amendment shall be delivered to then income beneficiaries. An incapacitated beneficiary shall be represented by his or her natural or legal guardian. The Trustee shall be held harmless and indemnified from any liability for any of its actions or omissions made in reliance on the Special Trustee's actions or instructions under this Paragraph 14.13.4.

14.13.5 For purposes of this Paragraph 14.13, a Special Trustee is an "independent trustee" to the beneficiaries within the meaning of Section 674(c) of the Code.

**ARTICLE 15 Trustee Powers**

15.1 **Trustee Powers.** Subject to the provisions of Paragraph 15.2, the Trustee shall have all the powers granted to trustees generally by applicable law and in addition and not by way of limitation, shall have the following rights, powers, and immunities and shall exercise the same independently without posting bond and without the intervention of any court in any jurisdiction.

15.1.1 To purchase and hold as an asset of the trust estate interests in any corporation, partnership, limited liability company, or other entity created by the Settlor, including but not limited to Henningsen Cold Storage Co. or any successor to or subsidiary of it, irrespective of the percentage limitations of RCW 11.100.023, as amended, and irrespective of RCW 11.100.047, as amended, or any other applicable law. The Trustee is authorized to continue to operate such business or business interest. However, the Trustee may sell or otherwise dispose of such business or business interest, or any part of the trust estate, if, in its absolute discretion, it deems such action to be to the best interests of the trust estate and its beneficiaries, at such time, at such prices, upon such terms and conditions, to such purchasers and at public or private sale, as it shall deem appropriate.

15.1.2 Upon any division or distribution of the trust estate, either income or principal, to partition, allot, and distribute the trust estate in undivided interests or in kind at valuations determined by the Trustee, or partly in kind or partly in cash, pro rata and non-pro rata, and to sell such property as Trustee deems appropriate in making such division or distribution. The judgment of the Trustee concerning the values for the purpose of any such division or distribution of the trust estate and the choice of any asset to be divided or distributed in fulfillment of it shall be made and determined in its absolute discretion; provided, however, upon any division of the trust estate, each share shall be fairly representative of the appreciation or depreciation in value to the date or dates of division of all assets available for distribution, unless otherwise provided elsewhere in this Agreement or the beneficiaries who are not incapacitated agree otherwise. In no event shall the Trustee have the power to make any distribution in satisfaction of a legal obligation of support or otherwise of the Trustee or any beneficiary of this trust.

15.1.3 To pay assessments and other sums deemed necessary by the Trustee for the protection of the trust estate; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection therewith, to deposit securities with and transfer title to any protective or other committee or other fiduciary; to give proxy, general and special, with or without the power of substitution; to exercise or sell stock subscription or conversion rights; to accept and retain as an investment any securities or other property, whether or not authorized by law for the investment of trust funds, received through the exercise of any of the foregoing powers.

15.1.4 To purchase, hold, invest, and reinvest the trust estate in such bonds, mortgages, debentures, preferred and common stocks, options and other property, real or personal, including but not limited to shares or units of any common trust fund now or hereafter administered by the Trustee, assets of or undivided interests in the assets of other trust estates or as co-tenants with other trust estates, either public or private, whether administered by the

Trustee or not; to commingle the assets of the trust estate with other assets managed by the Trustee or by others for investment purposes, and limited or term interests in any of the above, all as it deems prudent, whether or not such investments are authorized by law for the investment of trust funds and without observing the principle of diversification of trust investments; to purchase or sell assets on margin for the benefit of the trust estate, and the Trustee is specifically authorized to execute such margin agreements as it shall determine reasonable and appropriate; to loan funds of the trust estate to any beneficiary of this trust, vested or contingent, at a rate of interest and upon such security as the Trustee determines adequate and prudent; to defer payment and distribution to the Trustee of any qualified retirement or deferred compensation plan proceeds of which this Trust or any fund or share of it is the beneficiary in order to extend the deferral of the recognition of income in respect of such plan proceeds for so long as the Trustee, in its discretion, determines that such deferral is in the best interests of this Trust and the beneficiaries of it even though the Trustee may not have direct control of the investment management of such plan; and to guarantee any loan made to any partnership, limited partnership, corporation, limited liability company, or other entity if an ownership interest in it is part of the trust estate. RCW 11.100.090 shall not apply to this trust.

15.1.5 To employ counsel, agents, attorneys-in-fact, investment advisors, representatives, trustees, or ancillary administrators, in this and in other jurisdictions, and delegate authorities and responsibilities to them, all within the discharge of its duties and to pay them a reasonable compensation out of either income or principal, in its discretion, and to rely on the advice of counsel and to suffer no liability resulting from any action taken or withheld pursuant to such advice.

15.1.6 For the convenience of administration or to facilitate transfers of securities, to cause any property at any time held in trust to be registered in the name of the Trustee, or of a nominee or nominees of the Trustee, without disclosure of the trust, or to hold any securities at any time held in trust in bearer form so that they will pass by delivery, but no such registration or holding by the Trustee shall relieve the Trustee from its responsibility for the safe custody and disposition of the trust estate in accordance with the terms and provisions of this instrument;

15.1.7 To merge all or any portion of this trust with or into another trust having the same or substantially similar provisions for the benefit of the same beneficiary or beneficiaries, if the Trustee determines such merger is in the best interest of such beneficiaries.

15.1.8 Except as otherwise herein provided, in the determination of principal and income, the Trustee is to be guided by the principles established by the Washington Principal and Income Act; and, insofar as such principles do not apply, the Trustee is authorized and empowered in its discretion to determine for any and all purposes of the trust what shall constitute income from principal of the trust estate; to determine the manner of apportionment of income and principal, and the apportionment between income and principal of all receipts and disbursements; to exercise any election relating to any tax that becomes payable by reason of the death of the Settlor, and any personal or fiduciary income taxes, federal or state, or the allocation or payment of them that the Trustee, in its discretion and also in consideration of the interests of beneficiaries receiving assets of the trust estate other than by the terms of this Agreement, determines reasonable and prudent. No equitable adjustments shall be made by the Trustee even

though the exercise or non-exercise of any election may have the effect of increasing or decreasing the net distributive share of any beneficiary of the trust estate. Notwithstanding the above, the Trustee is directed, in making distributions to or for an organization that is exempt from the taxation of income under Section 501(c)(3) of the Code, or to which contributions are deductible under Section 170 of the Code, to first allocate and distribute to such organizations all items of ordinary taxable income, income in respect of a decedent subject to income tax, qualified retirement plan distributions subject to income tax, and all items of capital gain in satisfaction of such distribution to the extent such items are realized by the trust estate in the tax year in which such distributions occur and are available for distribution.

15.1.9 To manage, sell, convey, exchange, encumber, option, assign, divide, subdivide, improve, and maintain the trust estate, or any part of it; to create restrictions, easements, and other servitudes; to carry insurance in such amount and against such hazards as the Trustee may deem advisable; to license, lease, and create such other rights, privileges, and interests as the Trustee may deem advisable with respect to the trust estate, for terms within or extending beyond the duration of the trusts created in this instrument; to disclaim, renounce, or otherwise avoid the receipt or ownership, either in whole or in part, of any asset, power, or interest in or to property, either tangible or intangible and either vested or contingent, that in the discretion of the Trustee would produce a demonstrably adverse tax-related consequence to this trust, to its beneficiaries, or to the transferor of such asset, power, or interest; to abandon any real or personal property that the Trustee determines to be worthless.

15.1.10 To withhold from sale or reinvestment any household furniture or furnishings, works of art, personal effects, animals, and other property for personal use as the Trustee, in its discretion, may deem advisable, and to distribute to the beneficiary of the trusts created in this instrument, irrespective of age and without the intervention of a guardian, any such property at such times and in such manner as the Trustee, in its absolute discretion, deems prudent.

15.1.11 To collect and demand payment of all income, receipts, monies, and other property due the trust estate; to realize, by suit or otherwise, upon any trust policy, any promissory note, or other chose in action of the trust estate, and in settlement of it; to compromise, discount, adjust, extend, or abandon the same; to commence, defend, and prosecute to such determination as the Trustee deems proper in such suits, actions, or other proceedings, including mortgage or other lien foreclosure suits, as the Trustee considers appropriate to protect, preserve, or recover the trust estate or any part of it; to require indemnity to its satisfaction before undertaking any action or refraining from any action that may subject it to loss.

15.1.12 To lend funds to the personal estate of the Settlor at prevailing rates of interest or to purchase from the estate of the Settlor, whether or not the Trustee would otherwise make such investment, and even though the Trustee may also be Executor of the Settlor's personal estate, any of the assets of it at the value shown by the inventory and appraisal of the Settlor's estate, or at such price as the Trustee deems reasonable, to enable the Executor of the Settlor's estate to convert such property into cash.

15.1.13 To advance the Trustee's own funds for the benefit of the trust estate, or for the payment of any distributive share or interest, with interest at the current rates, to be a first

lien upon the trust estate; to borrow money at prevailing rates of interest; to mortgage, pledge, and hypothecate assets of the trust estate for such purposes as the Trustee deems to be in the best interests of the trust estate and upon such terms and conditions as the Trustee deems proper.

15.1.14 To pay all taxes, charges, commissions, and other expenses of the trust estate, including a compensation for its own services, in accordance with the schedule of fees in use by corporate trustees generally in the community in which the trust is administered at the time such fees become payable, and to reimburse itself for all outlays and advances made by it and all costs and expenses incurred for the preservation, maintenance, and protection of the trust estate; provided, however, that the Trustee shall not be entitled to any fee determined with reference to the value of the trust estate upon any division, distribution, or termination of the trust estate or any portion of it, but shall be entitled to a fee only in such events determined with reference to the quantity and quality of the services rendered in that regard unless otherwise approved by a court having jurisdiction.

15.1.15 To do all acts in its judgment needful or desirable in the proper and advantageous management of the trust estate, to the same extent and with the same effect as might legally be done by an individual in absolute ownership and control of said property, including making any election permitted or required by the Code or any statute of this state, and including dividing or merging shares or funds for any appropriate tax planning or efficient administrative purpose. In the exercise of the powers granted the Trustee, it shall have full authority to determine and agree upon all terms and conditions pertaining to transactions of any nature entered into by the Trustee pursuant to the authority granted to it. The Trustee shall not be liable for any loss or depreciation in the value of the trust estate occurring by reason of error of judgment in making any sale or investment or reinvestment, or in continuing to hold in trust any property transferred to the Trustee or any investment or reinvestment made. All actions committed to the discretion of the Trustee by the terms of this Agreement shall be final and binding upon all persons affected unless the Trustee has failed to act in good faith or with reasonable care.

15.1.16 If at any time the Trustee deems it advisable, it shall be authorized to form an entity for the purpose of facilitating the ownership or management of any asset that may constitute a part of the trust estate, and in that regard, the Trustee may transfer, assign, and convey to such entity such part or parts of the trust estate as it shall judge expedient in exchange for interests of any such entity and continue to hold the same for such period as the Trustee may consider to be in the best interests of the trust estate; to enter into agreements with other entities or participants in such entity regarding the transfer of stock or other ownership interests and distribution policies; to serve as director on the board of any corporation; and to participate in reorganizations. With respect to any trust or trust share for which an election has been made to treat such trust or share as a Qualified Subchapter S Trust under Section 1361 of the Code, the Trustee is authorized to make distributions of income and principal to the then income beneficiaries of such trust or share for the purpose of paying or reimbursing the beneficiaries for any income tax liability that the beneficiary incurs on undistributed taxable income of the S corporation in which the trust has an interest, and to take all actions necessary or desirable on such equitable basis as the Trustee determines reasonable, including the segregation and division of the S corporation stock into separate shares, the amendment of this trust agreement, or the

distribution of the S corporation stock to preserve and maintain status as a qualified S corporation shareholder.

15.1.17 To purchase life insurance to insure the life of the Settlor or any beneficiary or other person in which this trust has an insurable interest, or to maintain an existing policy of life insurance insuring the Settlor, or any beneficiary, if the Trustee, in its discretion, determines that purchase or maintenance of such policy or policies is in the best interests of the trust estate and the trust's beneficiaries.

15.1.18 To make an election to treat the trust estate, or any share or fund of it, as qualified terminable interest property ("QTIP") for federal estate tax purposes or as property eligible for the marital deduction under any state estate or inheritance tax law or rule. If the Trustee determines that a partial QTIP or other marital deduction election will be appropriate for these purposes, it is authorized to divide the trust estate, share, or fund to which such election applies into two funds, one of which is equal to the amount necessary to produce the desired estate and inheritance tax result and the other being the balance of it, and to make the election as to only that portion set aside for this purpose. If the Trustee makes the division and election as described in this Paragraph 15.1.18, the two shares shall, in all other respects, be administered identically; provided, however, that if any discretionary distributions of principal are made by the Trustee, such distributions shall, to the extent permitted by applicable law, be first allocated to the fund for which the Trustee has made the QTIP or other marital deduction election until the whole is exhausted.

15.1.19 To administer the trust estate in a manner designed to minimize any generation-skipping transfer ("GST") tax implications to the trust estate and the trust beneficiaries, and to make all elections, apply all exemptions and allocate and pay all GST taxes levied in respect of the trust estate in a manner designed to preserve, to the greatest extent possible, those portions of the trust estate that are exempt from GST taxes. If the trust estate, or any share or fund of it, exceeds the amount of any GST tax exemption available for allocation to the trust estate, or any share or fund of it, the Trustee shall divide the trust estate, share, or fund into two or more separate funds and to allocate the available GST tax exemption among such funds so that one or more of such funds shall then have an inclusion ratio of zero and the remaining funds shall have an inclusion ratio of one. If the Trustee makes the division and allocations as described in the preceding sentence, the segregated funds shall, in all other respects, be administered identically; provided, however, that if any distributions of income or principal are made by the Trustee to a non-skip person, such distributions shall be first allocated to the funds having an inclusion ratio of one until the whole is exhausted.

15.1.20 Notwithstanding any other provision in this Agreement to the contrary, the Trustee may (i) accelerate the distribution of a trust share to the share beneficiary if the Trustee, in its discretion, determines that such beneficiary is not in need of the asset management and protection provided by the trust; or (ii) postpone the distribution of a trust share to the beneficiary if the Trustee, in its discretion, determines that such beneficiary is in need of the asset management and protection provided by the trust. The Trustee may accelerate the distribution of a trust share in whole or in part, or postpone the distribution of a trust share for any term or in any manner it considers appropriate, including the indefinite extension of this trust. The Trustee's decision in this regard shall be final and binding.

## 15.2 Investment Direction.

15.2.1 During the lifetime of the Settlor, the administration of the trust estate shall be subject to the terms and conditions of this Paragraph 15.2 in addition to all other administrative provisions contained in this Agreement; provided, however, that the Settlor may waive all or any part of the terms and conditions of this Article by delivering to the Trustee an instrument in writing to that effect signed by the Settlor.

15.2.2 The Settlor may direct the Trustee to purchase property of any kind for the trust estate or to retain, sell, exchange, pledge, mortgage and otherwise deal with or dispose of any part of the trust estate, and the Trustee shall comply with any such direction without liability for the result.

15.2.3 The Trustee shall not make any purchase, sale, lease or exchange of property, or encumber the same, or vote any share of stock or any other form of voting interest included in the trust estate without first obtaining the approval of the Settlor.

15.2.3.1 The Trustee may submit investment recommendations to the Settlor, in hand, or by ordinary mail addressed to the Settlor's last known address on file with the Trustee, and the Settlor shall within 15 business days thereafter, approve or disapprove the proposed transaction.

15.2.3.2 If the Trustee does not receive the Settlor's instructions regarding the Trustee's recommendation within such period, the Trustee is authorized to complete the proposed transaction.

15.2.4 If the Settlor directs the Trustee regarding the purchase, sale, exchange or other disposition of any asset of the trust estate, the Trustee shall have no duty with respect to any such assets except for their safekeeping and the collection of income from it, and it shall be under no obligation to recommend sale, exchange, or other investment action.

15.2.5 It is contemplated that certain assets may be added to the trust estate from time to time with the possession and control retained by or redelivered to the Settlor. If the Settlor executes and delivers to the Trustee an instrument effectively transferring such assets to the Trustee together with any further documentation necessary to effect the record transfer, in the event of the Settlor's death or incapacity, the assets shall be deemed to be assets of the trust estate and held by the Settlor as the nominee of the Trustee. During the period such assets are in the possession of the Settlor they shall be subject to the following terms and conditions:

15.2.5.1 The Settlor may receive directly and devote to the Settlor's own use and benefit any dividends, interest, income or distributions from or upon such assets, and neither the Settlor nor the Trustee shall have any duty of accounting to the other or to any other person.

15.2.5.2 Any sale, exchange or other transfer of such assets by the Settlor shall constitute a withdrawal of such assets from the trust estate and the Trustee shall have no further interest in them or duties with regard to them. Though not a condition precedent to any such withdrawal, the Settlor agrees to notify the Trustee of all such withdrawals.

15.2.5.3 The Settlor shall be responsible for the reporting of the income from such assets to the appropriate taxing authorities, and the Trustee shall have no responsibility for including such income on any fiduciary returns prepared by it or for the preparation of any other income tax return unless the Settlor duly notifies the Trustee of such income items and a full and adequate accounting is made and presented to the Trustee.

15.2.5.4 The Settlor shall protect and indemnify the Trustee against all losses, liabilities and expenses which may result directly or indirectly from the Settlor's use, possession, management or control of such assets.

15.2.5.5 Upon the death or incapacity of the Settlor, the Trustee shall be entitled to the possession of such assets and thereafter shall have all the rights, powers and duties with respect to such assets which are otherwise granted to the Trustee. It is understood that the Trustee shall be responsible only for the assets which actually come into its possession and control. However, it is also understood that the Trustee shall use any reasonable and prudent means to secure possession of any trust assets of which it has knowledge. The Trustee shall have no duty, accountability or responsibility to the Settlor or to any other person with respect to any assets of which it has no knowledge or of which it is unable to obtain possession and control.

15.2.6 It is contemplated that the Settlor may establish a joint bank account or accounts with the Trustee and create powers of attorney in other persons. Deposits from time to time made by the Settlor or other authorized persons into such an account shall constitute transfers to the trust estate, and withdrawals from it, which may be made without the co-signature of the Trustee, shall constitute withdrawals from the trust estate. However, the capacity of the Settlor and other authorized persons with respect to any such account shall be that of nominee of the Trustee, not co-owner. At any given time, the trust estate shall include the then balance of any such account.

## **ARTICLE 16 Definitions**

16.1 **Incapacity.** The terms "incapacity" or "incapacitated" and other words of similar effect shall refer to a person who is (i) a minor, (ii) judicially determined to be incompetent, or (iii) reasonably determined to be a person whose ability to receive and evaluate information effectively or communicate decisions is impaired to such extent that he or she at that time lacks the capacity to meet the essential requirements for his or her physical health or safety or to manage his or her financial resources, as a result of mental or physical infirmity, advanced age, or other condition.

16.1.1 In the determination of the Settlor's capacity or incapacity, the Trustee may in good faith act upon such evidence as the Trustee deems appropriate and reliable, with or without the certification of a physician, psychiatrist, or other healthcare provider. The Settlor designates the Trustee and each successor Trustee as the Settlor's personal representative authorized to receive all individually identifiable health information and medical records that the person so designated may request. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d and 45 CFR 160-164 ("HIPAA"), and applies even if that person has not yet assumed the role of successor Trustee. Further, the Settlor authorizes physicians, psychiatrists, and other health care providers to

examine the Settlor at the request of the Trustee or successor Trustee to determine the Settlor's capacity and to disclose the Settlor's physical or mental condition to such designated person.

16.1.2 In the determination of the capacity or incapacity of a beneficiary other than the Settlor, the Trustee may in good faith act upon such evidence as the Trustee deems appropriate and reliable, with or without the certification of a physician, psychiatrist, or other healthcare provider, and the Trustee shall incur no liability for its determination.

16.2 Descendants. The term "descendants" means all lineal descendants born to or legally adopted by the person indicated. In addition, an individual who is the genetic child of a parent who was deceased at the time of such individual's conception shall be deemed to be a descendant of such parent only if (i) such individual was born within the two-year period after such parent's death, (ii) such parent gave permission for the use of his or her genetic material to the surviving parent in connection with the conception of such individual by such parents in an instrument that was signed personally by the deceased parent and not by the deceased parent's agent, guardian, or other legal representative, and (iii) such deceased parent would have had legal rights as a parent of such individual upon his or her birth under the laws of the state of Washington.

16.3 Representation. Any property that must be distributed "by representation" or words of similar effect will be distributed pursuant to RCW 11.02.005(3), as amended.

16.4 Code. All references to the "Code" refer to the Internal Revenue Code of 1986, as amended.

## **ARTICLE 17 Miscellaneous**

17.1 Accrued Income. Unless otherwise provided, income accrued or held undistributed upon the termination of any estate or interest under this Trust Agreement shall be distributed to the beneficiaries entitled to the next eventual interest in the proportions in which they take such interest.

17.2 Survivorship. If a beneficiary of this trust spouse does not survive the Settlor by more than 90 days, then notwithstanding any other provision of this Agreement or any law to the contrary, it shall be conclusively presumed that the Settlor survived such beneficiary, and all the terms and conditions contained in this Trust Agreement shall be based upon that presumption.

17.3 Choice of Law. Washington law shall govern the validity and construction of this Agreement and the duties and obligations of the Trustee in the administration of it.

17.4 Rule Against Perpetuities. Upon the expiration of the period described in RCW 11.98 during which no provision of a trust created under this Agreement is invalid under the rule against perpetuities, then

17.4.1 if any trust created under this Agreement still exists, it shall terminate on that date and be distributed to the then current income beneficiaries; and

17.4.2 if any trust created by exercise of a power of appointment granted under this Agreement still exists, it shall terminate on that date and be distributed among the persons then entitled to present or future interests in the appointed property in such proportions as the trustee of such trust shall determine to fairly and reasonably represent such interests on that date.

17.5 Gender; Number; Titles. Whenever in this Agreement the context requires, the masculine, feminine, and neuter genders shall be deemed to include the other or others; and the singular and plural numbers shall each be deemed to include the other. Article and paragraph titles are for ease of reference only and are not substantive provisions in this Agreement.

#### **ARTICLE 18 No Contest**

If any person, whether a beneficiary of this Trust or not, and whether acting on his or her own behalf or in a representative capacity, contests the validity of this Agreement or its distributions, or as amended, in any manner whatsoever (other than a bona fide request to a court for assistance with the interpretation of this document), the Trustee shall distribute to such person upon the conclusion of such contest \$1.00, free of trust, in lieu of all other provisions appearing in this Agreement or any amendment to it for the benefit of such person and any person on whose behalf such person is acting. It is the Settlor's intent that this Agreement and any amendment to it shall be preserved as stated, and that any person, directly or indirectly, contesting this Agreement or any amendment to it shall do so only in peril of losing any material benefits otherwise accruing to him or her under this Agreement.


IN WITNESS WHEREOF, the Settlor and the Trustee have signed this Agreement the date first written above.

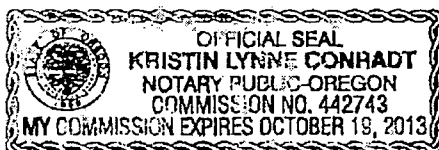
State of Oregon )  
 ) ss.  
County of Washington )

  
RITA SUE HENNINGSEN, Settlor/Trustee

  
MICHAEL E. HENNINGSEN SR., Trustee

ACKNOWLEDGED before me by RITA SUE HENNINGSEN this 11<sup>th</sup> day of July, 2012.

  
Notary Public for Oregon  
My Commission Expires: October 19, 2013



**AMENDED AND RESTATED  
DECLARATION OF TRUST AGREEMENT  
BETWEEN  
MICHAEL E. HENNINGSSEN, SR., TRUSTOR  
AND  
MICHAEL E. HENNINGSSEN, SR., TRUSTEE**

Dated February 26, 1998  
Amended and Restated July 11, 2012

Prepared by:

AMELIA HEATH  
DAVIS WRIGHT TREMAINE  
1300 S.W. Fifth Avenue  
Suite 2300  
Portland, Oregon 97201  
Telephone: (503) 241-2300

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**AMENDED AND RESTATED DECLARATION OF TRUST AGREEMENT BETWEEN  
MICHAEL E. HENNINGSEN, SR., TRUSTOR, AND MICHAEL E. HENNINGSEN, SR.,  
TRUSTEE**

THIS AGREEMENT made this 11<sup>th</sup> day of July, 2012, between MICHAEL E. HENNINGSEN, SR. as the Settlor, and MICHAEL E. HENNINGSEN, SR. and RITA SUE HENNINGSEN, as Trustees (referred to as the "Trustee").

The parties previously entered into the DECLARATION OF TRUST AGREEMENT BETWEEN MICHAEL E. HENNINGSEN, SR., TRUSTOR, AND MICHAEL E. HENNINGSEN, SR., TRUSTEE, dated February 26, 1998 (the "Agreement") and amended the same on August 20, 2007 and February 23, 2012. The Settlor desires to exercise the Settlor's retained power to amend the Agreement by restating the same in its entirety as follows.

**ARTICLE 1 Trustee**

MICHAEL E. HENNINGSEN, SR. and RITA SUE HENNINGSEN serve as co-Trustees of the trust created by this document.

**ARTICLE 2 Family**

2.1 Settlor. The Trustor is MICHAEL E. HENNINGSEN, SR., referred to as the "Settlor" throughout this agreement. The Settlor is married to RITA SUE HENNINGSEN ("SUE").

2.2 Children. The Settlor is the parent of MICHAEL E. HENNINGSEN, JR. ("MIKE, Jr."), MARY SUE WALLACE ("MARY"), CHRISTOPHER R. HENNINGSEN ("CHRIS"), and JOSEPH ERIC HENNINGSEN ("ERIC"). All references to the "Settlor's children," or words of similar effect, are to the children named above.

**ARTICLE 3 Transfer to Trust**

3.1 Prior Transfers to Trust. The Settlor has transferred to the Trustee and its successors, in trust, various assets, and the Trustee will continue hold the same subject to the following trust purposes and conditions.

3.2 Transfers to Trust. The Settlor transfers to the Trustee and its successors, in trust, to hold the same subject to the following trust purposes and conditions, all of the Settlor's interest, now owned or hereafter acquired, in all real property and all tangible and intangible personal property, of whatever nature and wherever situated, and the Settlor's personal articles (including but not limited to jewelry, household furniture and furnishings, clothing, art objects, memorabilia, personal vehicles, recreational equipment, and other tangible property for personal and household use, including all unexpired insurance policies covering those items), frequent flyer miles (including flight coupons and other airline flight plan benefits or programs issued, sponsored or awarded by any airline), stocks, bonds, mutual funds, partnership interests, leases, promissory notes, savings accounts, checking accounts, and contents of safe deposit boxes.

3.2.1 This Paragraph 3.2 does not apply to life insurance policies and assets held in any qualified retirement plan or qualified retirement account.

3.2.2 Notwithstanding any other provision in this assignment, no interest of the Settlor shall be transferred to the Trustee pursuant to this Paragraph 3.2 if the transfer of such interest to the Trustee would cause such interest to become subject to any right, duty, or option to purchase, repurchase, liquidate, or terminate all or any portion of such interest, of any person or entity not a party to this assignment.

3.2.3 This Paragraph 3.2 shall become effective as to all assets not transferred because of Paragraph 3.2.2 upon waiver or release by the third party of the rights that precluded the transfer.

3.3 Subsequent Transfers. The Settlor or any other person may transfer or devise to the Trustee additional assets, real or personal, and may name the Trustee as the beneficiary of life insurance policies, and such assets and the proceeds of such insurance policies, upon delivery to and acceptance by the Trustee, shall be a part of the trust estate, subject to all the terms of this Agreement.

#### **ARTICLE 4 Amendment and Revocation**

4.1 Retained Rights. During the lifetime of the Settlor, the Settlor reserves the following rights.

4.1.1 Amendment. To amend this Agreement by an instrument in writing signed by the Settlor. Such amendment shall be effective when delivered to the Trustee; provided, however, that no such amendment shall have the effect of changing the trustee duties without the prior written approval of the Trustee.

4.1.2 Revocation. To revoke this Agreement by an instrument in writing signed by the Settlor and delivered to the Trustee.

4.1.3 Withdrawal of Assets. To withdraw any or all assets from the trust estate.

4.1.4 Investment Direction. To direct investments of trust assets as provided in Paragraph 15.2.

4.2 Exercise of Retained Rights. The powers retained in Paragraph 4.1 shall be exercised by the Settlor personally, and shall not be exercised by any agent, guardian, Executor, or other person acting for or on behalf of the Settlor; provided, however, that an agent acting under a power of attorney may exercise a power of revocation or amendment if such power is expressly granted in that power of attorney.

4.3 Suspension of Retained Rights. The personal rights retained pursuant to this Article 4 shall be suspended immediately if the Settlor becomes incapacitated, as defined in Paragraph 16.1; provided, however that an agent acting under a power of attorney may exercise a power of revocation or amendment if such power is expressly granted in that power of attorney.

#### **ARTICLE 5 Successor Trustee**

If a Co-Trustee resigns, becomes incapacitated, dies, or otherwise becomes unable or unwilling to serve, then the Settlor appoints the following, individually and in succession one to the next, to serve as successor co-Trustee with the remaining Trustee. If only one individual appointed is able and willing to serve as Trustee, then that individual shall serve as the sole Trustee.

- 5.1 MIKE, Jr.;
- 5.2 CHRIS;
- 5.3 ERIC; and
- 5.4 WELLS FARGO BANK, N.A.

#### **ARTICLE 6 Lifetime Distributions to The Settlor**

During the lifetime of the Settlor, the Trustee shall administer the Trust pursuant to this Article 6.

6.1 **Distributions.** The Trustee shall distribute to or for the benefit of the Settlor all or such part of the income and principal of the trust estate as the Settlor, from time to time, directs.

6.2 **Incapacity of the Settlor.** If the Settlor becomes incapacitated as defined in Paragraph 16.1, the Trustee shall pay to or for the benefit of the Settlor and the Settlor's spouse such sums from the income and principal of the trust estate, without regard to the character or source, as the Trustee, in its discretion, determines reasonable and necessary for their health, support, maintenance, and reasonable comforts. The Trustee is authorized to provide for reasonable support and health care for the Settlor and the Settlor's spouse, even if this leaves no assets of the Trust remaining for other beneficiaries.

6.3 **Provision for Descendants.** While the Settlor is incapacitated, the Trustee may exercise the following powers as attorney-in-fact on behalf of the Settlor, but the primary concern of the Trustee shall be for the welfare of the Settlor and the Settlor's spouse and secondarily for the welfare of the Settlor's descendants or any other beneficiary or for tax planning.

6.3.1 The Trustee may make distributions to the descendants of the Settlor, equally by family line, for the purpose of continuing any gift program initiated by the Settlor that the Trustee reasonably determines will achieve beneficial results for estate or income tax planning purposes.

6.3.2 The Trustee may initiate a gift program on behalf of the Settlor that the Trustee reasonably determines will achieve beneficial results for estate or income tax planning purposes by making distributions to the descendants of the Settlor, equally by family line, so long as such distributions qualify for and are limited to the then applicable annual exclusion for federal gift tax purposes.

6.3.3 If a descendant of the Settlor is a minor or is under the care of a guardian of the person, the Trustee may pay or reimburse the guardian for its out-of-pocket expenses, including any demonstrable economic losses sustained by reason of undertaking the guardianship.

6.3.4 During any incapacity of the Settlor, the Trustee shall be under no obligation to initiate, recommend or consider any tax planning objective or program for the Settlor, and any exercise of its discretion in this regard shall not subject it to liability to any person affected by it.

## **ARTICLE 7 Distributions Upon Death**

Upon the death of the Settlor, the Trustee shall make the following distributions.

7.1 **Payment of Taxes and Expenses.** The Trustee may pay or reimburse, from the assets of the trust estate, the expenses of last illness, the administration expenses of the Settlor's personal estate, and all unsecured debts of every kind for which the Settlor or the Settlor's personal estate is obligated.

7.1.1 All secured debts for which the Settlor or the Settlor's personal estate is obligated may be paid by the Trustee if the Trustee, in its discretion, determines that such payment is in the best interests of the Settlor's personal estate and the trust estate. If the Trustee elects not to pay any secured debt for which the trust estate is obligated, the property subject to such indebtedness shall be held and distributed by the Trustee subject to such indebtedness.

7.1.2 Except as otherwise specifically provided, the Trustee, in its discretion, shall determine whether to pay or not to pay any expense, debt, or claim presented to the Trustee later than four months after the death of the Settlor.

7.1.3 Nothing contained in this Agreement shall be construed, interpreted, or applied to constitute any creditor of the Settlor as a beneficiary under this Agreement.

7.1.4 For purposes of this Agreement, the term "personal estate" shall mean all assets included in the Settlor's gross estate for federal estate tax purposes other than the assets of this trust.

7.1.5 If the trust estate, its income, or any portion of either shall be included in the taxable estate, transfer, or income of the Settlor or any beneficiary of this trust for the purpose of determining any inheritance, estate, transfer, succession, income or generation-skipping transfer ("GST") taxes due as a result of the death of the Settlor, and a tax is levied or assessed in respect of such included amount, the Trustee shall pay or reimburse not less than that portion of such tax or taxes that the part of the trust estate or its income so included in such taxable amount and generating such tax bears to the entire taxable amount so taxed. For purposes of allocating and charging that portion of any tax paid by the Trustee pursuant to this Paragraph, the Trustee shall apportion such tax among the beneficiaries of this trust pursuant to RCW ch. 83.110A, and as the same is hereafter amended, unless otherwise provided by the Settlor. However, no portion of such tax shall be apportioned to the beneficiaries of the assets described in Paragraph 7.2. The Settlor acknowledges that the inheritance, estate, transfer,

succession, income, or GST tax burden on the distributive shares of the beneficiaries described in this instrument may reduce the net benefit received by them, but the Settlor knowingly makes this allocation and intends that no part of such taxes be allocated to the beneficiaries of distributions set forth in Paragraph 7.2. It is not the intention of the Settlor to waive any right of recoupment for the payment of any taxes as provided by Sections 2206, 2207, 2207A or 2207B of the Code.

**7.2 Personal Property.** If SUE survives the Settlor, the Trustee shall distribute to SUE all interest then held in this trust in furniture and furnishings, clothing, jewelry, art objects, memorabilia, personal effects, personal vehicles, recreational equipment, and all other tangible personal property customarily intended for personal or household use, including all unexpired insurance covering the same, and all frequent flyer miles (including flight coupons and other airline flight plan benefits or programs issued, sponsored or awarded by any airline). If SUE does not survive the Settlor, the Trustee shall distribute such property to the Settlor's surviving children in substantially equal shares as they agree or, if they are unable to agree within six months of the Settlor's death, as the Trustee conclusively determines.

**7.3 Spouse Survives.** If SUE survives the Settlor, the Trustee shall administer the residue of trust estate pursuant to Article 8.

**7.4 Spouse Does Not Survive.** If SUE does not survive the Settlor, the Trustee shall administer the residue of trust estate pursuant to Article 9.

## **ARTICLE 8 Trusts for the Benefit of SUE**

**8.1 Division of Trust Estate.** After the payment of the distributions and obligations described in Article 7, the Trustee shall divide the residue of the trust estate into two parts, referred to as the "Marital Trust" and the "Exemption Trust."

**8.1.1 Transfers to Marital Trust.** The Marital Trust shall consist of the fractional share of the residue needed to qualify for the federal estate tax marital deduction to result in the least possible federal estate tax payable in respect of the Settlor's estate ("the Fraction") calculated as follows:

**8.1.1.1** The numerator of the Fraction shall be the smallest amount that, if allowed as a federal estate tax marital deduction, would eliminate or reduce to the lowest possible sum the federal estate tax liability of the Settlor. This amount shall be calculated by taking into account the Settlor's applicable exclusion amount, all amounts passing to or for the benefit of SUE other than by the terms of this paragraph that also qualify for the federal estate tax marital deduction and all other credits or deductions but only to the extent that state death taxes are not thereby increased.

**8.1.1.2** The denominator of the Fraction shall be the value of the trust estate.

**8.1.2 Transfers to Exemption Trust.** The Exemption Trust shall consist of that portion of the residue not included in the Marital Trust.

8.1.3 Valuation of Assets. For purposes of the division of the residue pursuant to this Paragraph 8.1, values of all assets shall be those finally determined for federal estate tax purposes.

8.1.4 Asset Allocation. The Trustee shall apply the Fraction as determined in this Paragraph above to available assets within the residue, revalued at date of division between the Marital and Exemption Trusts, to determine a dollar value for each trust. The Trustee shall then allocate and distribute assets to the Marital Trust and the Exemption Trust, using such date of distribution values of the selected assets for each trust until the full dollar value of each trust has been satisfied; provided, however, that

8.1.4.1 the Trustee shall first allocate to the Exemption Trust any asset with respect to which a marital deduction for federal estate tax purposes is not allowable due to its character or restrictions associated with it;

8.1.4.2 the Trustee may allocate in whole or in part of each remaining asset, non pro rata, to either or both the Marital Trust and the Exemption Trust;

8.1.4.3 the Trustee shall apply the Fraction to the available residue to determine the dollar amount of the Marital Trust for each successive partial distribution of assets for funding the Marital Trust; and

8.1.4.4 the Trustee shall use the fair market value of assets in successive distributions as of the date of distribution.

8.1.5 Possibility of Disclaimer. If SUE (or SUE's legal representative) makes a qualified disclaimer of any portion of SUE's interest in all or any portion of the trust estate, the disclaimed interest or portion will be held as a separate trust (the "Disclaimer Trust") under the same terms as the Exemption Trust; provided, however, that, notwithstanding any other provisions in this trust agreement, SUE shall not have a power of appointment over any assets held in the Disclaimer Trust.

8.2 Marital Trust. The Marital Trust shall be applied as follows.

8.2.1 Income Distributions. During the lifetime of SUE and through the date of SUE's death, the Trustee shall pay to or for the benefit of SUE the entire net income of the Marital Trust not less often than quarterly.

8.2.2 Principal Distributions. The Trustee may pay to or for the benefit of SUE, during SUE's lifetime, such sums from the principal of the Marital Trust as the Trustee, in its discretion, determines to be reasonable and necessary for SUE's health, education, support, maintenance, and reasonable comforts, including for tax and financial planning purposes.

8.2.3 Residence and Vacation Property. If any residential real estate used by the Settlor as the Settlor's principal residence or for recreational or vacation purposes, or any interest in such properties or replacement of them, is included in the Marital Trust, then SUE shall be entitled to use and occupy such properties for the balance of SUE's lifetime without the payment of rent. In all other regards the Trustee shall treat such properties as assets of the

Marital Trust and shall be fully responsible for their repair, maintenance, and care and shall discharge all financial responsibilities associated with them.

8.2.4 Productive Property. SUE may at any time require the Trustee to make any asset of the Marital Trust productive.

8.2.5 Qualification for Marital Deduction. It is the intention of the Settlor that the Marital Trust, upon election, shall qualify for the federal estate tax marital deduction under section 2056 of the Code, and all provisions of this Agreement, and the powers and authorities of the Trustee, shall be interpreted and applied consistently with that intent.

8.2.6 Termination of Marital Trust. Upon SUE's death, the balance of the Marital Trust shall be applied as provided in Article 9, but subject to the provisions of Paragraph 8.4.

### 8.3 Exemption Trust.

8.3.1 Income Distributions. The Trustee may pay to or for the benefit of SUE such amounts of income of the Exemption Trust as the Trustee, in its discretion, determines to be reasonable and necessary for SUE's health, education, support, maintenance, and reasonable comforts, including for tax and financial planning purposes.

8.3.2 Principal Distributions. The Trustee may pay to or for the benefit of SUE such sums from the principal of the Exemption Trust as the Trustee, in its discretion, determines to be reasonable and necessary for SUE's health, education, support, maintenance, and reasonable comforts, including for tax and financial planning purposes. To the extent practicable, no payments of principal will be made to or for the benefit of SUE from the Exemption Trust until the principal of the Marital Trust has been consumed; however, because the assets of the three trusts will be affected by changing conditions, the Trustee will have sole discretion regarding the source of payments.

8.3.3 Residence and Vacation Property. If any residential real estate used by the Settlor as the Settlor's principal residence or for recreational or vacation purposes, or any interest in such properties or replacement of them, is included in the Exemption Trust, then SUE shall be entitled to use and occupy such properties for the balance of SUE's lifetime without the payment of rent. In all other regards the Trustee shall treat such properties as assets of the Exemption Trust and shall be fully responsible for their repair, maintenance, and care and shall discharge all financial responsibilities associated with them.

8.3.4 Productive Property. SUE may at any time require the Trustee to make any asset of the Exemption Trust productive.

8.3.5 Division of Exemption Trust. The Trustee may, but need not, make an election to qualify all or any part of the Exemption Trust for a marital deduction for Washington or other state estate or inheritance tax purposes if then allowed by Washington or other applicable law. If the Trustee makes such election as to only a portion of the Exemption Trust, the Trustee shall hold the elected amount and the nonelected amount as separate trusts. If the Trustee makes any discretionary distributions of principal, such distributions shall, to the extent

permitted by applicable law, be first allocated to the fund for which the Trustee has made a marital deduction election until the whole is exhausted.

8.3.6 Qualification for State Marital Deduction Election. It is the Settlor's intent that the provisions of this Paragraph 8.3 will cause the elected portion of the Exemption Trust to qualify for a Washington or other state estate or inheritance tax marital deduction under Washington law or any state statute or administrative rule then applicable and in effect, and all provisions in this Paragraph 8.3 shall be interpreted consistently with such intent.

8.3.7 Termination of Exemption Trust. Upon SUE's death, the balance of the Exemption Trust shall be applied as provided in Article 9, but subject to the provisions of Paragraph 8.4.

8.4 Limited Power of Appointment. The Settlor grants to SUE, during her lifetime after the death of the Settlor, a limited power of appointment to alter the division and distribution of the Marital Trust and the Exemption Trust provided in this Article 8.

8.4.1 Permissible Appointees. SUE may change the beneficiaries of the shares so described by adding or deleting any descendant of the Settlor, the spouse of any descendant of the Settlor, the widow or widower of any deceased descendant of the Settlor, or any organization described in Section 501(c)(3) of the Code, contributions to which are deductible under Sections 170, 2055 and 2522 of the Code, and may alter the division of the trust estate among the beneficiaries, as presently identified or as altered, in such manner as SUE shall designate, including the extension or reduction of the term of this Trust as it pertains to any trust share and the creation of other trusts.

8.4.2 Exercise of Power of Appointment. SUE shall exercise such limited power of appointment in a Last Will or in a written instrument that (i) specifically refers to this power, (ii) is acknowledged before a notary public or other person authorized to administer oaths, (iii) is filed with the Trustee during the lifetime of SUE, and (iv) remains unrevoked at the time of her death. SUE is not limited to one exercise of this limited power of appointment, and any exercise of this power may be revoked or modified by a subsequent written instrument as described above.

## **ARTICLE 9 Final Distributions**

The Trustee shall apply any assets subject to this Article (the "trust estate") pursuant to the following terms and conditions.

9.1 Creation of GST Descendants Trust. The Trustee shall retain all shares of the trust estate for which the generation-skipping transfer tax inclusion ratio is zero and shall hold and administer such assets pursuant to Article 10. If the generation-skipping transfer tax is not then applicable, the Trustee shall retain the residue of the trust estate pursuant to this paragraph and shall hold and administer the trust estate pursuant to Article 10.

9.2 Residue. After making the distribution described in Paragraph 9.1, the Trustee shall distribute the residue of the trust estate, if any, to the Settlor's descendants by representation, subject to Paragraph 10.2.

## **ARTICLE 10 Descendants Trust**

The Trustee shall divide all assets made subject to this Article (the “trust estate”) into shares for the Settlor’s then living descendants by representation and shall hold such shares as separate trusts pursuant to this Article.

10.1 **Separate Trust for a Child.** The Trustee shall administer each separate share held for the benefit of a child of the Settlor (a “Beneficiary”) as a separate trust as follows.

10.1.1 The Trustee shall distribute to or for the benefit of the Beneficiary such amounts of income of the separate trust as the Trustee determines to be reasonable and necessary for that Beneficiary’s health, education, maintenance, and support.

10.1.2 The Trustee shall distribute to or for the benefit of the Beneficiary such amounts of principal of the separate trust as the Trustee determines to be reasonable and necessary for that Beneficiary’s health, maintenance, and support.

10.1.3 **Limited powers of appointment.**

10.1.3.1 During a Beneficiary’s lifetime and upon the death of a Beneficiary, the Trustee shall distribute the remaining balance of the separate trust, or any part of it, to such person or persons, in such amounts and at such times, including in further trust, as the Beneficiary appoints with specific reference to this limited power of appointment, but the Beneficiary may not appoint such property to the Beneficiary, the Beneficiary’s estate, the Beneficiary’s creditors, or the creditors of the Beneficiary’s estate.

10.1.3.2 The Beneficiary shall exercise this limited power of appointment in a Last Will or in a written instrument that (i) specifically refers to this power, (ii) is acknowledged before a notary public or other person authorized to administer oaths, (iii) is filed with the Trustee during the lifetime of the Beneficiary, and (iv) remains unrevoked at the time of the Beneficiary’s death. The Beneficiary is not limited to one exercise of this limited power of appointment, and any exercise of this power may be revoked or modified by a subsequent written instrument as described above.

10.1.4 Upon the death of a Beneficiary who leaves at least one surviving descendant, if such Beneficiary fails to completely and effectively exercise the power of appointment granted above, the remaining assets of the separate trust not appointed by the Beneficiary shall be divided into separate shares for the benefit of the Beneficiary’s descendants by representation and held and administered pursuant to Paragraph 10.2.

10.1.5 Upon the death of a Beneficiary who leaves no surviving descendant, if such Beneficiary fails to completely and effectively exercise the power of appointment granted above, the remaining assets of the separate trust not appointed by the Beneficiary shall be divided into separate shares for the benefit of the Settlor’s descendants by representation. Any share created for the benefit of a child of the Settlor shall be held and administered pursuant to this Paragraph 10.1. Any share created for the benefit of a grandchild or more remote descendant of the Settlor shall be held and administered pursuant to Paragraph 10.2.

10.2 Separate Trust for a Grandchild or More Remote Descendant. The Trustee shall distribute each separate share held for the benefit of a grandchild or more remote descendant of the Settlor who has then reached age 30 to the descendant outright and free of trust. Any separate share created for the benefit of a grandchild or more remote descendant of the Settlor who has not then reached age 30 (a "Beneficiary") shall be retained as a separate trust as administered as follows.

10.2.1 The Trustee may pay to or for the benefit of the Beneficiary such sums from the income and principal of the separate trust as the Trustee, in its discretion, determines to be reasonable and necessary for the Beneficiary's health, education, support, and maintenance.

10.2.2 When the Beneficiary attains the age of 30 years, the Trustee shall distribute the entire remaining balance of the separate trust to the Beneficiary, free of trust.

10.2.3 If the Beneficiary dies prior to receiving full and final distribution of the separate trust, the Trustee shall distribute the remaining balance of the separate trust to such person or persons, in such amounts and at such times, including in further trust, as the Beneficiary appoints in the Beneficiary's Last Will with specific reference to this limited power of appointment, but the Beneficiary may not appoint such property to the Beneficiary, the Beneficiary's estate, the Beneficiary's creditors, or the creditors of the Beneficiary's estate.

10.2.4 If the Beneficiary dies prior to receiving full and final distribution of the separate trust and fails to completely and effectively exercise the power of appointment granted in above, the Trustee shall distribute the remaining balance of the separate trust by representation to the Beneficiary's descendants or, if none, by representation to the Settlor's descendants, but if any distributee entitled to receive a share or part of the separate trust has not then attained the age of 30 years, the share or part otherwise distributable to such individual shall be retained in further trust for the exclusive benefit of such individual pursuant to this Paragraph 10.2.

#### **ARTICLE 11 Contingent Beneficiaries**

If the last beneficiary of a trust share dies before its full and final distribution and there are no other alternate provisions directing the disposition of such share, then such share shall be distributed as follows:

11.1 One-half to Paul Gard Henningsen, if he is then living. If he is not then living, then this share shall be distributed to his then living descendants by representation. The Trustee shall, if practicable, allocate to this share any interest that the Trustee then holds in Henningsen Cold Storage Co., its affiliates, and successors.

11.2 One-half in equal shares to each of the following who is then living or by representation to the then living descendants of any of the following who is then deceased:

11.2.1 Lester Leo Bergeron,

11.2.2 James Joseph Bergeron,

11.2.3 Robert Neil Bergeron, and

11.2.4 Mary Rae Gardner.

## **ARTICLE 12 Protection of Trust Interests**

The interest of any beneficiary in the principal or income of the trust estate or any share of it shall not be subject to the claims of his or her creditors or others, or to legal process, and may not be voluntarily or involuntarily anticipated, alienated, or encumbered in any manner whatsoever. Any attempt to anticipate, alienate, or encumber such interest shall be void and of no effect, and the Trustee shall suffer no liability by reason thereof.

## **ARTICLE 13 Retirement Plans**

If any employee benefit or retirement plan or account subject to the minimum distribution rules of Code section 401(a)(9) or any comparable provision of law ("Retirement Plan") is payable at the death of any individual (the "Owner") to the trustee of a trust established under this Trust Agreement, the following provisions apply to the extent specified below.

13.1 **Restrictions on Use for Payment of Taxes and Expenses.** Notwithstanding any other provision of this trust agreement or any apportionment, abatement, or other provision of state law, to the extent any Retirement Plan is payable by beneficiary designation to the Trustee, no assets held in such Retirement Plan and no proceeds receivable from or assets traceable to it shall be distributed in payment of debts, claims, funeral expenses, costs of administering the Owner's estate, or the Owner's estate and inheritance taxes.

13.2 **Conduit Trust for Spouse, Child, or Other Descendants.** Notwithstanding any other provision of this trust agreement, during any calendar year in which a beneficiary of any trust for the benefit of the Settlor, a child, or a more remote descendant of the Settlor is treated as the designated beneficiary whose life expectancy is being used to determine minimum distributions under Code section 401(a)(9)(B) from any such Retirement Plan of the Owner:

13.2.1 The Trustee shall elect to receive or shall withdraw from any such Retirement Plan the minimum required distribution for such plan for such year that is necessary to satisfy the requirements of Code section 401(a)(9) (the "MRD"), or such greater amount (if any) as the Trustee is required to withdraw under the laws and all regulations then applicable to this trust to avoid penalty; provided, however, that the minimum required distribution for the year of the Owner's death shall mean (a) the amount that the Owner was required to take with respect to such Retirement Plan during such year, minus (b) amounts actually distributed to the Owner with respect to such Retirement Plan during such year.

13.2.2 In addition, the Trustee may elect to receive or withdraw, and then shall distribute pursuant to Paragraph 13.2.3, such additional amount or amounts from such Retirement Plan as the Trustee in its discretion determines under the guidelines set forth in such trust, following the guidelines for distribution of net trust income to the extent such distribution will be composed of net trust income, and the guidelines for distribution of principal, to the extent such distribution will be composed of principal.

13.2.3 All amounts withdrawn or received by the Trustee from any such Retirement Plan (net of expenses chargeable to such amounts) under Paragraphs 13.2.1 and 13.2.2 shall, upon receipt by the Trustee, be distributed directly to the current trust beneficiary (or, if more than one current beneficiary, in such Trustee's discretion to one or more of such current beneficiaries).

13.2.4 No exercise of a special or general power of appointment over such trust shall be effective with respect to such Retirement Plan, or any assets received from such a plan, until the termination of such trust.

13.3 Exclusion of Certain Descendants as Trust Beneficiaries. Notwithstanding any other provision of this Trust Agreement or state law, if any trust created under this trust agreement is the beneficiary of any Retirement Plan payable upon the Owner's death and such trust benefits the Owner's children or descendants, the term "child," "children," or "descendants," for purposes of such trust, shall not include any individual adopted after the Owner's death, if such individual is older than the oldest beneficiary of such trust who was living at the Settlor's death.

#### **ARTICLE 14 Office of Trustee**

14.1 Removal. Following the death of the Settlor, a majority of the then income beneficiaries of all trusts created pursuant to this trust agreement may remove and replace any acting corporate Trustee at any time by written instrument delivered to the then acting corporate Trustee. Any individuals then incapacitated shall be represented by their legal or natural guardians. Written evidence of such removal and appointment shall be delivered to the Trustee and such removal shall be effective at such time specified by the written notice; provided, however, that such removal shall not become effective until the newly appointed Trustee has accepted appointment as Trustee.

#### **14.2 Limited Liability.**

14.2.1 No successor Trustee shall be liable or responsible in any way for the acts or defaults of any predecessor Trustee, or for any loss or expense caused by anything done or neglected to be done by any predecessor Trustee, and such successor Trustee shall be liable only for its own acts and defaults with respect to the trust estate actually received by it as Trustee.

14.2.2 No Trustee shall be liable or responsible in any way for the acts or defaults of any Special Trustee or any Business Trustee.

14.3 Co-Trustees. During the period any trust is administered by Co-Trustees, the following is applicable:

14.3.1 In the event of the death or incapacity of a Co-Trustee, the remaining Trustee(s) shall continue the trusteeship of the trust estate.

14.3.2 The Co-Trustees may take action by majority vote; provided, however, that if two Co-Trustees are serving, the Co-Trustees must take action unanimously.

14.3.3 The Co-Trustees may, at their option, appoint one of their number from time to time as the "Managing Co-Trustee," who shall be responsible for the day-to-day management of the trust estate, pay and receive all monies due to or from the trust estate, undertake the preparation and preservation of all the books, records and reports (including tax returns) of the trust, and may act as the attorney-in-fact for the remaining Trustee upon the execution of appropriate instruments reflecting the same. Once appointed, the Managing Co-Trustee shall serve at the pleasure of any remaining Co-Trustee.

14.3.4 The signature of any one Co-Trustee shall bind upon the trust as to third parties who act in reliance upon such signature.

14.3.5 If the Co-Trustees are unable to reach agreement as to any proposed action or inaction, any Trustee may present an informal, written statement of the relevant facts and circumstances to the then presiding judge of the Circuit Court in Washington in the county where venue is proper, together with a request for the appointment of a mediator to review and decide the matter presented pursuant to RCW 11.96A.300, or an arbitrator pursuant to RCW 11.96A.310. Upon appointment by the Court, the mediator or arbitrator shall review the matter, determine the procedures of the mediation or arbitration, and receive any additional evidence or information it may request. An arbitrator shall render its written decision, including the award of attorney fees and costs, if any, which decision shall be final and binding for all purposes.

14.4 Resignation. A Trustee may resign by delivering its written resignation to the Settlor, or, if the Settlor is incapacitated or deceased, to the next successor trustee named or provided for, if any, otherwise to the then income beneficiaries of all trusts created under this agreement. Any income beneficiaries then incapacitated will be represented by a natural or legal guardian. A resignation shall become effective 30 days after written notice is delivered personally to the person or persons entitled to notice or mailed by registered or certified United States mail to such person or persons entitled to notice, addressed to the address last of such person on file with the Trustee. If the Trustee resigns, such resignation shall have the same effect as if such Trustee died.

14.5 Vacancy. If a Trustee resigns, becomes incapacitated, dies, or otherwise becomes unable or unwilling to serve and no succession of trustees is otherwise provided, the Settlor, or if the Settlor is incapacitated or deceased, a majority of the then income beneficiaries may, by written instrument filed with the Trustee and accepted in writing by the appointed successor trustee, designate a corporate successor Trustee. Any person then incapacitated shall be represented by his or her natural or legal guardian.

14.6 Court Appointment. Upon the resignation, death, incapacity, or other inability or unwillingness of the Trustee to serve, if no succession of trustees is otherwise provided and if the person or persons entitled to appoint a successor trustee as provided in Paragraph 14.4 fail to make such appointment, a court of competent jurisdiction shall appoint a successor Trustee in accordance with applicable law.

14.7 Succession to Trustee Powers. Each successor Trustee designated or appointed pursuant to this Agreement shall succeed to all property, rights, powers, duties, and discretions

vested in or imposed upon the present Trustee. Each reference to the Trustee also refers, without distinction, to each successor Trustee.

14.8 Corporate Trustee Succession. Any successor Trustee to any corporate Trustee, whether by consolidation, merger, transfer of trust business, or otherwise, shall succeed as trustee with all the powers and discretion conferred upon and the privileges granted to its predecessor.

14.9 Environmental Provisions. The following rules govern administration of the Trust with respect to assets that could cause the Trustee to incur liability for environmental contamination or hazardous wastes.

14.9.1 Title to the following types of assets will not vest in any Trustee (including a successor Trustee when it begins to serve) until the Trustee executes a written instrument accepting title to those assets:

14.9.1.1 Real property or any interest of any nature in real property (including mortgages secured by real property), and

14.9.1.2 Any interest in a partnership, limited liability company, or closely held corporation that owns real property or an interest in real property and in which the Trustee would have the ability to vote or otherwise participate in the management and control of the entity's operations.

If the Trustee refuses to accept title to an asset that has never been part of this Trust, title to that asset will revert to the transferor or pass to such other persons (other than the Trustee) as may be provided by applicable law. If a successor Trustee refuses to accept title to such an asset accepted by the prior Trustee, the prior Trustee (or his or her Executor) will continue to hold title to and administer that asset until it is distributed, sold, or otherwise disposed of, or until other relief is granted by a court having jurisdiction over the Trust. Until it accepts title to such an asset, the Trustee will have no fiduciary duty with respect to that asset.

14.9.2 The Trustee may require environmental audits acceptable to it to be made at any time at the expense of the Trust.

14.9.3 The Trustee will not be liable to any beneficiary for any claims against or losses incurred by the Trust because of compliance with laws regulating environmental contamination or hazardous wastes, including reporting or abating contamination, cleaning up property, incurring expenses in connection with administrative or judicial proceedings, and establishing reserves for such payments, even if amounts expended exceed the value of the property. As a condition to accepting trusteeship over contaminated or potentially contaminated assets, the Trustee may require indemnities or other arrangements satisfactory to it that will protect and hold it harmless from liability that might be incurred for environmental contamination or hazardous substances.

14.9.4 These provisions are in addition to other remedial powers and rights given to fiduciaries under applicable law.

14.10 Payment to Beneficiaries. All payments of income or principal shall be made in such of the following ways as the Trustee determines appropriate:

14.10.1 To each respective beneficiary in person, upon his or her personal receipt;

14.10.2 Deposited in any financial institution to the credit of such beneficiary in any account carried in his or her name, or jointly with another;

14.10.3 To the parent or legal representative of the beneficiary;

14.10.4 To a Custodian selected by the Trustee under the Washington Uniform Transfers to Minors Act or a substantially similar Act of another state if jurisdiction over the matter is more appropriate in such other state, and for the maximum period of time allowed under applicable law or a lesser period that the Trustee deems appropriate;

14.10.5 To some near relative, friend, or institution having primary responsibility for the care and custody of the beneficiary;

14.10.6 By the Trustee using such payment directly for the benefit of such beneficiary; or

14.10.7 To the trustee of any revocable trust of which the beneficiary is a settlor.

14.11 Beneficiaries' Other Funds. In making payments committed to its discretion to or for the benefit of any beneficiary, the Trustee shall take into consideration any other income or support received or property possessed by such beneficiary and known to the Trustee, including the beneficiary's ability to obtain gainful employment and the obligation of others to support the beneficiary. Discretionary distributions from the Trust shall be supplemental to such other sources, but the extent to which such income, support, or property must first be liquidated or consumed by such beneficiary shall be determined in the absolute discretion of the Trustee.

14.12 Notice of Birth and Death. Until the Trustee receives written notice of any birth, incapacity, death, or other event upon which the rights to payments from the trust estate may depend, the Trustee shall incur no liability to persons whose interests may be affected by such birth, incapacity, death, or other event for disbursements or distributions made by it in good faith.

14.13 Special Trustee. Notwithstanding any other provision of this document, the following shall be applicable:

14.13.1 If the Trustee is a "Special Trustee" as defined in Paragraph 14.12.5 below, then the Trustee shall have the authority to exercise the powers set forth in the balance of this Paragraph 14.12. If the Trustee is not a Special Trustee as defined in Paragraph 14.12.5 below, then the Trustee may appoint such a Special Trustee who shall have the sole and exclusive authority to exercise the powers set forth in the balance of this Paragraph 14.12.

14.13.1.1 Any Special Trustee appointed by the Trustee shall serve in that capacity for a period of six months from the date of acceptance of the appointment or until it resigns, whichever first occurs.

14.13.1.2 The Special Trustee, when acting in the scope of its fiduciary duty, shall have no liability for actions taken or not taken during the term of its service.

14.13.2 The Special Trustee shall review and evaluate the purposes and objectives of this Agreement, the circumstances of the beneficiaries, and the nature and condition of the trust estate.

14.13.3 If the Special Trustee, in its discretion, determines that (i) the purposes or objectives of this Agreement are not reasonably attainable or have been or likely will be frustrated through external circumstances beyond the Trustee's control without reasonable possibility of correction, or (ii) the circumstances of the beneficiaries, or any of them, is or will be materially and adversely affected by the continuation of the trust or any trust share of it, or (iii) the nature of the trust estate or trust share is not conducive to trust management, or (iv) the condition of the trust estate or trust share will be materially and adversely affected by the continuation of the trust or trust share, then the Special Trustee is granted a limited power of appointment to terminate this trust or any share of it, either in whole or in part, and distribute the trust estate or share, or that portion of it then being terminated, to the beneficiaries of it.

14.13.4 If the Special Trustee, in its discretion, determines that the terms and conditions of this Agreement, as presently stated or as hereafter amended, cannot be reasonably interpreted or applied to (i) comply with the tax laws relating to this trust, (ii) assure, permit, or facilitate the proper administration of the trust estate within the purposes described in it, (iii) accomplish the Settlor's original purposes and intent in light of a change in the law or changed or unforeseen circumstances, or (iv) achieve the best or most appropriate results in the best interests of the beneficiaries, then the Special Trustee is granted a limited power to amend this Agreement for the purpose of correcting, improving, or facilitating any such condition. Such limited power to amend includes the power to change the situs of this trust and to change the jurisdiction of the law that governs it. Any amendment adopted by the Special Trustee shall be in writing and shall specifically refer to the authority granted to it. A copy of any amendment shall be delivered to then income beneficiaries. An incapacitated beneficiary shall be represented by his or her natural or legal guardian. The Trustee shall be held harmless and indemnified from any liability for any of its actions or omissions made in reliance on the Special Trustee's actions or instructions under this Paragraph 14.12.4.

14.13.5 For purposes of this Paragraph 14.12, a Special Trustee is an "independent trustee" to the beneficiaries within the meaning of Section 674(c) of the Code.

## **ARTICLE 15 Trustee Powers**

15.1 **Trustee Powers.** Subject to the provisions of Paragraph 15.2, the Trustee shall have all the powers granted to trustees generally by applicable law and in addition and not by way of limitation, shall have the following rights, powers, and immunities and shall exercise the

same independently without posting bond and without the intervention of any court in any jurisdiction.

15.1.1 To purchase and hold as an asset of the trust estate interests in any corporation, partnership, limited liability company, or other entity created by the Settlor, including but not limited to Henningsen Cold Storage Co. or any successor to or subsidiary of it, irrespective of the percentage limitations of RCW 11.100.023, as amended, and irrespective of RCW 11.100.047, as amended, or any other applicable law. The Trustee is authorized to continue to operate such business or business interest. However, the Trustee may sell or otherwise dispose of such business or business interest, or any part of the trust estate, if, in its absolute discretion, it deems such action to be to the best interests of the trust estate and its beneficiaries, at such time, at such prices, upon such terms and conditions, to such purchasers and at public or private sale, as it shall deem appropriate.

15.1.2 Upon any division or distribution of the trust estate, either income or principal, to partition, allot, and distribute the trust estate in undivided interests or in kind at valuations determined by the Trustee, or partly in kind or partly in cash, pro rata and non-pro rata, and to sell such property as Trustee deems appropriate in making such division or distribution. The judgment of the Trustee concerning the values for the purpose of any such division or distribution of the trust estate and the choice of any asset to be divided or distributed in fulfillment of it shall be made and determined in its absolute discretion; provided, however, upon any division of the trust estate, each share shall be fairly representative of the appreciation or depreciation in value to the date or dates of division of all assets available for distribution, unless otherwise provided elsewhere in this Agreement or the beneficiaries who are not incapacitated agree otherwise. In no event shall the Trustee have the power to make any distribution in satisfaction of a legal obligation of support or otherwise of the Trustee or any beneficiary of this trust.

15.1.3 To pay assessments and other sums deemed necessary by the Trustee for the protection of the trust estate; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection therewith, to deposit securities with and transfer title to any protective or other committee or other fiduciary; to give proxy, general and special, with or without the power of substitution; to exercise or sell stock subscription or conversion rights; to accept and retain as an investment any securities or other property, whether or not authorized by law for the investment of trust funds, received through the exercise of any of the foregoing powers.

15.1.4 To purchase, hold, invest, and reinvest the trust estate in such bonds, mortgages, debentures, preferred and common stocks, options and other property, real or personal, including but not limited to shares or units of any common trust fund now or hereafter administered by the Trustee, assets of or undivided interests in the assets of other trust estates or as co-tenants with other trust estates, either public or private, whether administered by the Trustee or not; to commingle the assets of the trust estate with other assets managed by the Trustee or by others for investment purposes, and limited or term interests in any of the above, all as it deems prudent, whether or not such investments are authorized by law for the investment of trust funds and without observing the principle of diversification of trust investments; to purchase or sell assets on margin for the benefit of the trust estate, and the Trustee is specifically

authorized to execute such margin agreements as it shall determine reasonable and appropriate; to loan funds of the trust estate to any beneficiary of this trust, vested or contingent, at a rate of interest and upon such security as the Trustee determines adequate and prudent; to defer payment and distribution to the Trustee of any qualified retirement or deferred compensation plan proceeds of which this Trust or any fund or share of it is the beneficiary in order to extend the deferral of the recognition of income in respect of such plan proceeds for so long as the Trustee, in its discretion, determines that such deferral is in the best interests of this Trust and the beneficiaries of it even though the Trustee may not have direct control of the investment management of such plan; and to guarantee any loan made to any partnership, limited partnership, corporation, limited liability company, or other entity if an ownership interest in it is part of the trust estate. RCW 11.100.090 shall not apply to this trust.

15.1.5 To employ counsel, agents, attorneys-in-fact, investment advisors, representatives, trustees, or ancillary administrators, in this and in other jurisdictions, and delegate authorities and responsibilities to them, all within the discharge of its duties and to pay them a reasonable compensation out of either income or principal, in its discretion, and to rely on the advice of counsel and to suffer no liability resulting from any action taken or withheld pursuant to such advice.

15.1.6 For the convenience of administration or to facilitate transfers of securities, to cause any property at any time held in trust to be registered in the name of the Trustee, or of a nominee or nominees of the Trustee, without disclosure of the trust, or to hold any securities at any time held in trust in bearer form so that they will pass by delivery, but no such registration or holding by the Trustee shall relieve the Trustee from its responsibility for the safe custody and disposition of the trust estate in accordance with the terms and provisions of this instrument;

15.1.7 To merge all or any portion of this trust with or into another trust having the same or substantially similar provisions for the benefit of the same beneficiary or beneficiaries, if the Trustee determines such merger is in the best interest of such beneficiaries.

15.1.8 Except as otherwise herein provided, in the determination of principal and income, the Trustee is to be guided by the principles established by the Washington Principal and Income Act; and, insofar as such principles do not apply, the Trustee is authorized and empowered in its discretion to determine for any and all purposes of the trust what shall constitute income from principal of the trust estate; to determine the manner of apportionment of income and principal, and the apportionment between income and principal of all receipts and disbursements; to exercise any election relating to any tax that becomes payable by reason of the death of the Settlor, and any personal or fiduciary income taxes, federal or state, or the allocation or payment of them that the Trustee, in its discretion and also in consideration of the interests of beneficiaries receiving assets of the trust estate other than by the terms of this Agreement, determines reasonable and prudent. No equitable adjustments shall be made by the Trustee even though the exercise or non-exercise of any election may have the effect of increasing or decreasing the net distributive share of any beneficiary of the trust estate. Notwithstanding the above, the Trustee is directed, in making distributions to or for an organization that is exempt from the taxation of income under Section 501(c)(3) of the Code, or to which contributions are deductible under Section 170 of the Code, to first allocate and distribute to such organizations all

items of ordinary taxable income, income in respect of a decedent subject to income tax, qualified retirement plan distributions subject to income tax, and all items of capital gain in satisfaction of such distribution to the extent such items are realized by the trust estate in the tax year in which such distributions occur and are available for distribution.

15.1.9 To manage, sell, convey, exchange, encumber, option, assign, divide, subdivide, improve, and maintain the trust estate, or any part of it; to create restrictions, easements, and other servitudes; to carry insurance in such amount and against such hazards as the Trustee may deem advisable; to license, lease, and create such other rights, privileges, and interests as the Trustee may deem advisable with respect to the trust estate, for terms within or extending beyond the duration of the trusts created in this instrument; to disclaim, renounce, or otherwise avoid the receipt or ownership, either in whole or in part, of any asset, power, or interest in or to property, either tangible or intangible and either vested or contingent, that in the discretion of the Trustee would produce a demonstrably adverse tax-related consequence to this trust, to its beneficiaries, or to the transferor of such asset, power, or interest; to abandon any real or personal property that the Trustee determines to be worthless.

15.1.10 To withhold from sale or reinvestment any household furniture or furnishings, works of art, personal effects, animals, and other property for personal use as the Trustee, in its discretion, may deem advisable, and to distribute to the beneficiary of the trusts created in this instrument, irrespective of age and without the intervention of a guardian, any such property at such times and in such manner as the Trustee, in its absolute discretion, deems prudent.

15.1.11 To collect and demand payment of all income, receipts, monies, and other property due the trust estate; to realize, by suit or otherwise, upon any trust policy, any promissory note, or other chose in action of the trust estate, and in settlement of it; to compromise, discount, adjust, extend, or abandon the same; to commence, defend, and prosecute to such determination as the Trustee deems proper in such suits, actions, or other proceedings, including mortgage or other lien foreclosure suits, as the Trustee considers appropriate to protect, preserve, or recover the trust estate or any part of it; to require indemnity to its satisfaction before undertaking any action or refraining from any action that may subject it to loss.

15.1.12 To lend funds to the personal estate of the Settlor at prevailing rates of interest or to purchase from the estate of the Settlor, whether or not the Trustee would otherwise make such investment, and even though the Trustee may also be Executor of the Settlor's personal estate, any of the assets of it at the value shown by the inventory and appraisal of the Settlor's estate, or at such price as the Trustee deems reasonable, to enable the Executor of the Settlor's estate to convert such property into cash.

15.1.13 To advance the Trustee's own funds for the benefit of the trust estate, or for the payment of any distributive share or interest, with interest at the current rates, to be a first lien upon the trust estate; to borrow money at prevailing rates of interest; to mortgage, pledge, and hypothecate assets of the trust estate for such purposes as the Trustee deems to be in the best interests of the trust estate and upon such terms and conditions as the Trustee deems proper.

15.1.14 To pay all taxes, charges, commissions, and other expenses of the trust estate, including a compensation for its own services, in accordance with the schedule of fees in use by corporate trustees generally in the community in which the trust is administered at the time such fees become payable, and to reimburse itself for all outlays and advances made by it and all costs and expenses incurred for the preservation, maintenance, and protection of the trust estate; provided, however, that the Trustee shall not be entitled to any fee determined with reference to the value of the trust estate upon any division, distribution, or termination of the trust estate or any portion of it, but shall be entitled to a fee only in such events determined with reference to the quantity and quality of the services rendered in that regard unless otherwise approved by a court having jurisdiction.

15.1.15 To do all acts in its judgment needful or desirable in the proper and advantageous management of the trust estate, to the same extent and with the same effect as might legally be done by an individual in absolute ownership and control of said property, including making any election permitted or required by the Code or any statute of this state, and including dividing or merging shares or funds for any appropriate tax planning or efficient administrative purpose. In the exercise of the powers granted the Trustee, it shall have full authority to determine and agree upon all terms and conditions pertaining to transactions of any nature entered into by the Trustee pursuant to the authority granted to it. The Trustee shall not be liable for any loss or depreciation in the value of the trust estate occurring by reason of error of judgment in making any sale or investment or reinvestment, or in continuing to hold in trust any property transferred to the Trustee or any investment or reinvestment made. All actions committed to the discretion of the Trustee by the terms of this Agreement shall be final and binding upon all persons affected unless the Trustee has failed to act in good faith or with reasonable care.

15.1.16 If at any time the Trustee deems it advisable, it shall be authorized to form an entity for the purpose of facilitating the ownership or management of any asset that may constitute a part of the trust estate, and in that regard, the Trustee may transfer, assign, and convey to such entity such part or parts of the trust estate as it shall judge expedient in exchange for interests of any such entity and continue to hold the same for such period as the Trustee may consider to be in the best interests of the trust estate; to enter into agreements with other entities or participants in such entity regarding the transfer of stock or other ownership interests and distribution policies; to serve as director on the board of any corporation; and to participate in reorganizations. With respect to any trust or trust share for which an election has been made to treat such trust or share as a Qualified Subchapter S Trust under Section 1361 of the Code, the Trustee is authorized to make distributions of income and principal to the then income beneficiaries of such trust or share for the purpose of paying or reimbursing the beneficiaries for any income tax liability that the beneficiary incurs on undistributed taxable income of the S corporation in which the trust has an interest, and to take all actions necessary or desirable on such equitable basis as the Trustee determines reasonable, including the segregation and division of the S corporation stock into separate shares, or the distribution of the S corporation stock, or the amendment of this trust agreement, to preserve and maintain status as a qualified S corporation shareholder.

15.1.17 To purchase life insurance to insure the life of the Settlor or any beneficiary or other person in which this trust has an insurable interest, or to maintain an existing

policy of life insurance insuring the Settlor, or any beneficiary, if the Trustee, in its discretion, determines that purchase or maintenance of such policy or policies is in the best interests of the trust estate and the trust's beneficiaries.

15.1.18 To make an election to treat the trust estate, or any share or fund of it, as qualified terminable interest property ("QTIP") for federal estate tax purposes or as property eligible for the marital deduction under any state estate or inheritance tax law or rule. If the Trustee determines that a partial QTIP or other marital deduction election will be appropriate for these purposes, it is authorized to divide the trust estate, share, or fund to which such election applies into two funds, one of which is equal to the amount necessary to produce the desired estate and inheritance tax result and the other being the balance of it, and to make the election as to only that portion set aside for this purpose. If the Trustee makes the division and election as described in this Paragraph 15.1.18, the two shares shall, in all other respects, be administered identically; provided, however, that if any discretionary distributions of principal are made by the Trustee, such distributions shall, to the extent permitted by applicable law, be first allocated to the fund for which the Trustee has made the QTIP or other marital deduction election until the whole is exhausted.

15.1.19 To administer the trust estate in a manner designed to minimize any generation-skipping transfer ("GST") tax implications to the trust estate and the trust beneficiaries, and to make all elections, apply all exemptions and allocate and pay all GST taxes levied in respect of the trust estate in a manner designed to preserve, to the greatest extent possible, those portions of the trust estate that are exempt from GST taxes. If the trust estate, or any share or fund of it, exceeds the amount of any GST tax exemption available for allocation to the trust estate, or any share or fund of it, the Trustee shall divide the trust estate, share, or fund into two or more separate funds and to allocate the available GST tax exemption among such funds so that one or more of such funds shall then have an inclusion ratio of zero and the remaining funds shall have an inclusion ratio of one. If the Trustee makes the division and allocations as described in the preceding sentence, the segregated funds shall, in all other respects, be administered identically; provided, however, that if any distributions of income or principal are made by the Trustee to a non-skip person, such distributions shall be first allocated to the funds having an inclusion ratio of one until the whole is exhausted.

15.1.20 Notwithstanding any other provision in this Agreement to the contrary, the Trustee may (i) accelerate the distribution of a trust share to the share beneficiary if the Trustee, in its discretion, determines that such beneficiary is not in need of the asset management and protection provided by the trust; or (ii) postpone the distribution of a trust share to the beneficiary if the Trustee, in its discretion, determines that such beneficiary is in need of the asset management and protection provided by the trust. The Trustee may accelerate the distribution of a trust share in whole or in part, or postpone the distribution of a trust share for any term or in any manner it considers appropriate, including the indefinite extension of this trust. The Trustee's decision in this regard shall be final and binding.

## 15.2 Investment Direction.

15.2.1 During the lifetime of the Settlor, the administration of the trust estate shall be subject to the terms and conditions of this Paragraph 15.2 in addition to all other

administrative provisions contained in this Agreement; provided, however, that the Settlor may waive all or any part of the terms and conditions of this Article by delivering to the Trustee an instrument in writing to that effect signed by the Settlor.

15.2.2 The Settlor may direct the Trustee to purchase property of any kind for the trust estate or to retain, sell, exchange, pledge, mortgage and otherwise deal with or dispose of any part of the trust estate, and the Trustee shall comply with any such direction without liability for the result.

15.2.3 The Trustee shall not make any purchase, sale, lease or exchange of property, or encumber the same, or vote any share of stock or any other form of voting interest included in the trust estate without first obtaining the approval of the Settlor.

15.2.3.1 The Trustee may submit investment recommendations to the Settlor, in hand, or by ordinary mail addressed to the Settlor's last known address on file with the Trustee, and the Settlor shall within 15 business days thereafter, approve or disapprove the proposed transaction.

15.2.3.2 If the Trustee does not receive the Settlor's instructions regarding the Trustee's recommendation within such period, the Trustee is authorized to complete the proposed transaction.

15.2.4 If the Settlor directs the Trustee regarding the purchase, sale, exchange or other disposition of any asset of the trust estate, the Trustee shall have no duty with respect to any such assets except for their safekeeping and the collection of income from it, and it shall be under no obligation to recommend sale, exchange, or other investment action.

15.2.5 It is contemplated that certain assets may be added to the trust estate from time to time with the possession and control retained by or redelivered to the Settlor. If the Settlor executes and delivers to the Trustee an instrument effectively transferring such assets to the Trustee together with any further documentation necessary to effect the record transfer, in the event of the Settlor's death or incapacity, the assets shall be deemed to be assets of the trust estate and held by the Settlor as the nominee of the Trustee. During the period such assets are in the possession of the Settlor they shall be subject to the following terms and conditions:

15.2.5.1 The Settlor may receive directly and devote to the Settlor's own use and benefit any dividends, interest, income or distributions from or upon such assets, and neither the Settlor nor the Trustee shall have any duty of accounting to the other or to any other person.

15.2.5.2 Any sale, exchange or other transfer of such assets by the Settlor shall constitute a withdrawal of such assets from the trust estate and the Trustee shall have no further interest in them or duties with regard to them. Though not a condition precedent to any such withdrawal, the Settlor agrees to notify the Trustee of all such withdrawals.

15.2.5.3 The Settlor shall be responsible for the reporting of the income from such assets to the appropriate taxing authorities, and the Trustee shall have no responsibility for including such income on any fiduciary returns prepared by it or for the

preparation of any other income tax return unless the Settlor duly notifies the Trustee of such income items and a full and adequate accounting is made and presented to the Trustee.

15.2.5.4 The Settlor shall protect and indemnify the Trustee against all losses, liabilities and expenses which may result directly or indirectly from the Settlor's use, possession, management or control of such assets.

15.2.5.5 Upon the death or incapacity of the Settlor, the Trustee shall be entitled to the possession of such assets and thereafter shall have all the rights, powers and duties with respect to such assets which are otherwise granted to the Trustee. It is understood that the Trustee shall be responsible only for the assets which actually come into its possession and control. However, it is also understood that the Trustee shall use any reasonable and prudent means to secure possession of any trust assets of which it has knowledge. The Trustee shall have no duty, accountability or responsibility to the Settlor or to any other person with respect to any assets of which it has no knowledge or of which it is unable to obtain possession and control.

15.2.6 It is contemplated that the Settlor may establish a joint bank account or accounts with the Trustee and create powers of attorney in other persons. Deposits from time to time made by the Settlor or other authorized persons into such an account shall constitute transfers to the trust estate, and withdrawals from it, which may be made without the co-signature of the Trustee, shall constitute withdrawals from the trust estate. However, the capacity of the Settlor and other authorized persons with respect to any such account shall be that of nominee of the Trustee, not co-owner. At any given time, the trust estate shall include the then balance of any such account.

## **ARTICLE 16 Definitions**

16.1 Incapacity. The terms "incapacity" or "incapacitated" and other words of similar effect shall refer to a person who is (i) a minor, (ii) judicially determined to be incompetent, or (iii) reasonably determined to be a person whose ability to receive and evaluate information effectively or communicate decisions is impaired to such extent that he or she at that time lacks the capacity to meet the essential requirements for his or her physical health or safety or to manage his or her financial resources, as a result of mental or physical infirmity, advanced age, or other condition.

16.1.1 In the determination of the Settlor's capacity or incapacity, the Trustee may in good faith act upon such evidence as the Trustee deems appropriate and reliable, with or without the certification of a physician, psychiatrist, or other healthcare provider. The Settlor designates the Trustee and each successor Trustee as the Settlor's personal representative authorized to receive all individually identifiable health information and medical records that the person so designated may request. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d and 45 CFR 160-164 ("HIPAA"), and applies even if that person has not yet assumed the role of successor Trustee. Further, the Settlor authorizes physicians, psychiatrists, and other health care providers to examine the Settlor at the request of the Trustee or successor Trustee to determine the Settlor's capacity and to disclose the Settlor's physical or mental condition to such designated person.

16.1.2 In the determination of the capacity or incapacity of a beneficiary other than the Settlor, the Trustee may in good faith act upon such evidence as the Trustee deems appropriate and reliable, with or without the certification of a physician, psychiatrist, or other healthcare provider, and the Trustee shall incur no liability for its determination.

16.2 Descendants. The term “descendants” means all lineal descendants born to or legally adopted by the person indicated. In addition, an individual who is the genetic child of a parent who was deceased at the time of such individual’s conception shall be deemed to be a descendant of such parent only if (i) such individual was born within the two-year period after such parent’s death, (ii) such parent gave permission for the use of his or her genetic material to the surviving parent in connection with the conception of such individual by such parents in an instrument that was signed personally by the deceased parent and not by the deceased parent’s agent, guardian, or other legal representative, and (iii) such deceased parent would have had legal rights as a parent of such individual upon his or her birth under the laws of the state of Washington.

16.3 Representation. Any property that must be distributed “by representation” or words of similar effect will be distributed pursuant to RCW 11.02.005(3), as amended.

16.4 Code. All references to the “Code” refer to the Internal Revenue Code of 1986, as amended.

#### ARTICLE 17 Miscellaneous

17.1 Accrued Income. Unless otherwise provided, income accrued or held undistributed upon the termination of any estate or interest under this Trust Agreement shall be distributed to the beneficiaries entitled to the next eventual interest in the proportions in which they take such interest.

17.2 Survivorship. If a beneficiary of this trust other than the Settlor’s spouse does not survive the Settlor by more than 90 days, then notwithstanding any other provision of this Agreement or any law to the contrary, it shall be conclusively presumed that the Settlor survived such beneficiary, and all the terms and conditions contained in this Trust Agreement shall be based upon that presumption. If the Settlor’s spouse does not survive the Settlor by more than 90 days, then notwithstanding any other provision of this Agreement or any law to the contrary, it shall be conclusively presumed that the Settlor predeceased the Settlor’s spouse, and all the terms and conditions contained in this Trust Agreement shall be based upon that presumption.

17.3 Choice of Law. Washington law shall govern the validity and construction of this Agreement and the duties and obligations of the Trustee in the administration of it.

17.4 Rule Against Perpetuities. Upon the expiration of the period described in RCW 11.98 during which no provision of a trust created under this Agreement is invalid under the rule against perpetuities, then

17.4.1 if any trust created under this Agreement still exists, it shall terminate on that date and be distributed to the then current income beneficiaries; and

17.4.2 if any trust created by exercise of a power of appointment granted under this Agreement still exists, it shall terminate on that date and be distributed among the persons then entitled to present or future interests in the appointed property in such proportions as the trustee of such trust shall determine to fairly and reasonably represent such interests on that date.


17.5 Gender; Number; Titles. Whenever in this Agreement the context requires, the masculine, feminine, and neuter genders shall be deemed to include the other or others; and the singular and plural numbers shall each be deemed to include the other. Article and paragraph titles are for ease of reference only and are not substantive provisions in this Agreement.

# **ARTICLE 18 No Contest**

If any person, whether a beneficiary of this Trust or not, and whether acting on his or her own behalf or in a representative capacity, contests the validity of this Agreement or its distributions, or as amended, in any manner whatsoever (other than a bona fide request to a court for assistance with the interpretation of this document), the Trustee shall distribute to such person upon the conclusion of such contest \$1.00, free of trust, in lieu of all other provisions appearing in this Agreement or any amendment to it for the benefit of such person and any person on whose behalf such person is acting. It is the Settlor's intent that this Agreement and any amendment to it shall be preserved as stated, and that any person, directly or indirectly, contesting this Agreement or any amendment to it shall do so only in peril of losing any material benefits otherwise accruing to him or her under this Agreement.

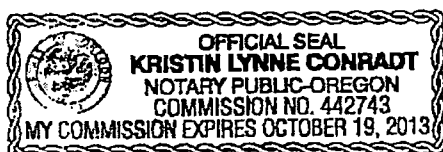
IN WITNESS WHEREOF, the Settlor and the Trustee have signed this Agreement the date first written above.

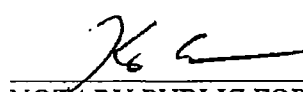
  
MICHAEL E. HENNINGSEN, SR., Settlor/Trustee

  
RITA SUE HENNINGSEN, Trustee

STATE OF OREGON                    )  
  ) ss.  
County of Washington )

ACKNOWLEDGED before me by MICHAEL E. HENNINGSEN, SR. this 11<sup>th</sup> day of July, 2012.



  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: October 19, 2013

### CERTIFICATION OF TRUST

We, Rita Sue Henningsen and Michael E. Henningsen, Jr., declare that, as of the date hereof:

1. We are the qualified and acting co-trustees of the Declaration of Trust Agreement between Michael E. Henningsen, Sr., Trustor, and Michael E. Henningsen, Sr., Trustee, dated February 26, 1998 (the "Trust") and amended the same on August 20, 2007 and February 23, 2012. Michael E. Henningsen, Sr. died on January 3, 2013. Pursuant to the terms of the Trust, upon the death of Michael E. Henningsen, Sr., the Michael E. Henningsen, Sr. Exemption Trust was created (the "Exemption Trust"). We are the qualified and acting co-Trustees (the "Trustee") of the Exemption Trust;

2. The Exemption Trust is in full force and effect and has not been revoked, modified, or amended in any manner that would cause the representations contained in this Certification to be incorrect;

3. Michael E. Henningsen, Sr. was the Settlor of the Trust;

4. The Exemption Trust is irrevocable and may not be amended or modified;

5. The Trustee's mailing address is:

4623 NW Brassie Place  
Portland, OR 97229;

6. The powers of the Trustee include at least all of those powers contained in the Oregon Uniform Trust Code set forth in ORS chapter 130;

7. Any one co-Trustee may sign to exercise any trust power;

8. For tax purposes, all income, gain and loss in respect of the Exemption Trust assets are reported on the Exemption Trust's income tax return under the following tax identification number: 46-7402071;

10. Any asset to be owned or included in the trust estate should be registered in the following form:

Rita Sue Henningsen and Michael E. Henningsen, Jr., co-Trustees of the Michael E. Henningsen, Sr. Exemption Trust u/a/d February 26, 1998;

11. The Exemption Trust was established in Oregon under the laws of the state of Oregon; and

