

# HARMONIA TRUST

---

**PREPARED BY  
VENABLE LLP**

# HARMONIA TRUST

## TABLE OF CONTENTS

	<b>Page</b>
<b>Article 1 Background Information</b>	<b>1</b>
1.01 Trust Name	
1	
1.02 Beneficiaries	
1	
1.03 Irrevocability	
1	
1.04 Legal Situs	
1	
1.05 Silent Trust Provisions	
1	
1.06 Subsequent Contributions	
1	
<b>Article 2 Trust Dispositive Provisions</b>	<b>2</b>
2.01 Payments Until the Division Date	
2	
2.02 Disposition on Division Date	
2	
<b>Article 3 Provision After the Division Date</b>	<b>2</b>
3.01 Trusts Named for Persons	
2	
3.02 Default	
3	
3.03 Retention	
3	
<b>Article 4 Other Dispositive Provisions</b>	<b>3</b>
4.01 Perpetuities Provisions	
3	
4.02 Payment Considerations	
4	
4.03 Use of Residential Property	
4	
4.04 Loans to Current Beneficiary	
5	
4.05 Trust Termination by <del>Distribution Adviser</del> <a href="#">Independent Trustee</a>	
5	
4.06 Trust Amendment	
5	
4.07 <del>Overriding Powers of Appointment</del>	
<del>6</del>	
<del>4.08</del> Trustee's Support Obligation	
6	

**HARMONIA TRUST**  
**TABLE OF CONTENTS**  
(continued)

Page

[4.08 Powers of Appointment](#)

[6](#)

~~4.09 Powers of Appointment~~

~~6~~

~~4.10 S Corporation Provisions~~

~~7~~

**Article 5 Trustees and Other Officeholders**

**8**

5.01 Trustees

8

5.02 Independent Trustee

8

5.03 ~~Distribution Adviser~~

~~9~~ [Protector](#)

~~8~~

5.04 ~~Investment Adviser~~ [Appointers](#)

9

~~5.10~~ 5.05

~~Investment Adviser Powers~~

~~9~~

~~5.06 Protector~~

~~11~~

~~5.07 Protector Power to Appoint and Remove Trustee~~

~~11~~

~~5.08 Adviser or Protector Vacancies~~

~~12~~

~~5.09 Appointers~~

~~13~~

Removers

~~13~~ [9](#)

~~5.11~~ [5.06](#)

Controlling Vote

~~14~~ [10](#)

~~5.12~~ [5.07](#)

Co-Officeholder Provisions

~~14~~ [10](#)

~~5.13~~ [5.08](#)

Declination and Resignation; Competency; Vacancy

~~15~~ [11](#)

~~5.14~~ [5.09](#)

Successor Designation

**HARMONIA TRUST**  
**TABLE OF CONTENTS**  
(continued)

**Page**

	<del>15</del> <u>11</u>
	<del>5.15</del> <u>5.10</u>
General Fiduciary Provisions	
	<del>15</del> <u>12</u>
5.14 Prohibition on Donor Holding Office	
	<del>17</del> <u>13</u>
<b>Article 6 Special Investment Provisions</b>	<b><del>17</del><u>14</u></b>
6.01 Waiver of Prudent Investment Rules	
	<del>17</del> <u>14</u>
6.02 Special Investments	
	<del>18</del> <u>14</u>
6.03 Conflicts of Interest	
	<del>18</del> <u>14</u>
<b>Article 7 General Administrative Provisions</b>	<b><del>19</del><u>15</u></b>
7.01 Facility of Payment	
	<del>19</del> <u>15</u>
7.02 Income Payments	
	<del>19</del> <u>15</u>
7.03 Protection from Creditors	
	<del>19</del> <u>15</u>
7.04 Trustee Powers	
	<del>19</del> <u>16</u>
7.05 Insurance Policies and Death Benefit Plans.	
	<del>23</del> <u>19</u>
7.06 Third Party Relationships	
	<del>24</del> <u>20</u>
7.07 Accountings	
	<del>24</del> <u>20</u>
7.08 Court Supervision	
	<del>24</del> <u>20</u>
7.09 Releases	
	<del>25</del> <u>21</u>
7.10 Reliance on Counsel	
	<del>25</del> <u>21</u>
<b>Article 8 General Tax Provisions</b>	<b><del>25</del><u>21</u></b>
8.01 Funding	
	<del>25</del> <u>21</u>
8.02 Reliance	
	<del>25</del> <u>21</u>
8.03 Tax Elections	

iii ..... Workshare Professional comparison of  
interwovenSite://LAWS1/FirmDocs/20672739/1 and  
interwovenSite://LAWS1/FirmDocs/20773126/1. Performed on 6/25/2018.

**HARMONIA TRUST**  
**TABLE OF CONTENTS**  
(continued)

**Page**

8.04 Tax References [2521](#)  
[2622](#)

**Article 9 Interpretive Provisions and Definitions** [2622](#)

9.01 Governing Law [2622](#)  
9.02 Certification of Incompetency [2622](#)  
9.03 Beneficiary Survival [2723](#)  
9.04 Descent and Adoption [2723](#)  
9.05 Trust Creation [2824](#)  
9.06 Articles, Paragraphs and Subparagraphs [2825](#)  
9.07 Titles [2925](#)  
9.08 Gender and Number [2925](#)  
9.09 Definitions [2925](#)

Acting person .....	<a href="#">2622</a>
<del>AD Advisers LLC</del> .....	<del>9</del>
Advanced reproductive technology .....	<a href="#">2925</a>
Alexandra .....	1
Alki .....	1
Andrew .....	1
Articles, paragraphs and subparagraphs .....	<a href="#">2825</a>
Charitable organization .....	<a href="#">2925</a>
Child .....	<a href="#">2723</a>
Code .....	<a href="#">2622</a>
Current beneficiaries .....	<a href="#">2925</a>
Default date .....	3
Descendant .....	<a href="#">2723</a>
Designated representative .....	<a href="#">2925</a>
Division date .....	1

Donor	<del>29</del> <u>26</u>
Education	4
ESBT	<del>8</del> <u>7</u>
Executor	<del>29</del> <u>26</u>
GST tax	<del>30</del> <u>26</u>
Independent trustee	8
Konstantinos	1
Manager	<del>22</del> <u>18</u>
Marriage	<del>30</del> <u>26</u>
Married	<del>30</del> <u>26</u>
New state	<del>26</del> <u>22</u>
Nikola	1
Officeholder	<del>30</del> <u>26</u>
Per stirpes	<del>30</del> <u>26</u>
Primary beneficiary	<del>30</del> <u>26</u>
QSST	<del>8</del> <u>7</u>
Recipient trust	<del>28</del> <u>24</u>
S corporation	7
Special investments	<del>18</del> <u>14</u>
Spouse	<del>30</del> <u>26</u>
Subordinate party	<del>30</del> <u>26</u>
Support	4
Trust company	<del>30</del> <u>27</u>
Trust property	1
Vacancy	<del>15</del> <u>11</u>
Value	<del>30</del> <u>27</u>
Will	<del>31</del> <u>27</u>



# HARMONIA TRUST

BRIDGEFORD TRUST COMPANY LLC (“Bridgeford Trust”) hereby declares itself trustee of any property received or receivable by the trustee from any source (the “trust property”) as follows:

## Article 1 Background Information

1.01 **Trust Name.** This instrument may be referred to as the HARMONIA TRUST.

1.02 **Beneficiaries.** It is intended that this trust serve as a Nominated Trust as that term is defined in that certain Addendum to the 2005 Agreement dated October 13, 2010, to receive assets from the SubTrust D Trust Agreement dated May 12, 1987, for the benefit of the descendants of Alkiviades David (“Alki”). This trust is for the primary benefit of Andrew George David (“Andrew”), Alexandra Gregory David (“Alexandra”), Nikola Alkiviades David (“Nikola”), and Konstantinos Alkiviades David (“Konstantinos”).

1.03 **Irrevocability.** Subject to the ~~distribution adviser~~<sup>protector</sup>'s power to amend ~~and the trustee's overriding power of appointment~~, this instrument is irrevocable and may not be amended.

1.04 **Legal Situs.** The legal situs of this trust and each trust created hereunder shall be South Dakota.

1.05 **Silent Trust Provisions.** Pursuant to South Dakota Codified Laws §55-2-13, until Alki's date of death (the “division date”), the trustee is relieved of any duty to (a) provide a copy of this trust instrument or any accountings to any beneficiary under this trust agreement, or (b) inform any beneficiary of his or her rights under this trust instrument.

1.06 **Subsequent Contributions.** All additions of property to the trust are subject to the approval of the then acting trustee.

## Article 2 Trust Dispositive Provisions

2.01 **Payments Until the Division Date.** Until the division date, the trustee shall pay to or for the benefit of any one or more of Andrew, Alexandra, Nikola, and Konstantinos so much or all of the income and principal in such proportions as the ~~distribution adviser~~trustee from time to time decides and directs in the ~~distribution adviser~~trustee's sole discretion.

2.02 **Disposition on Division Date.** As of the division date, no further payments described in the preceding provisions of this Article may be made and the trustee shall divide the remaining trust property into as many equal separate parts as are necessary to provide as follows:

- (a) One part to be allocated to Andrew, or if he is not living on the division date, per stirpes among his then living descendants;
- (b) One part to be allocated to Alexander, or if he is not living on the division date, per stirpes among his then living descendants;
- (c) One part to be allocated to Nikola, or if he is not living on the division date, per stirpes among his then living descendants; and
- (d) One part to be allocated to Konstantinos, or if he is not living on the division date, per stirpes among his then living descendants;

and the trustee shall retain each person's share in a trust named for him or her.

## Article 3 Provision After the Division Date

3.01 **Trusts Named for Persons.** The trustee shall administer the trust property of each trust named for a person as follows:

- (a) **Income and Principal Payments.** During the life of the primary beneficiary, the trustee shall pay to or for the benefit of any one or more of the primary beneficiary and his or her descendants so much or all of the income and principal in such proportions as the ~~distribution adviser~~trustee from time to time determines is necessary for their respective support, health and education, giving priority to the primary beneficiary.
- (b) **Limited Power of Appointment by Will.** On the death of the primary beneficiary, the trustee shall distribute so much or all of the remaining trust property to or for the benefit of such one or more persons or organizations (other than the primary beneficiary, his or her estate, or the creditors of either) as the primary beneficiary appoints

in accordance with the Power of Appointment paragraph.

(c) **Primary Beneficiary's Death.** On the death of the primary beneficiary, the trustee shall allocate any trust property not disposed of by the preceding provisions of this paragraph (1) per stirpes among the then living descendants of the primary beneficiary, or if none, (2) per stirpes among the then living descendants of the primary beneficiary's nearest ancestor who was a descendant of Alki and who has a descendant then living, or if none, (3) per stirpes among Alki's then living descendants. The trustee shall retain each person's share in a trust named for him or her.

3.02 **Default.** Any trust property not otherwise disposed of by the preceding provisions of this instrument shall be distributed by the trustee as of the date such failure of disposition occurs (the "default date") to Alki's heirs, assuming that he died intestate and unmarried on the default date, domiciled in California. The laws of that state in effect on the default date shall determine Alki's heirs and their respective shares.

3.03 **Retention.** Despite the preceding provisions of this instrument, the trustee may retain property otherwise required to be distributed on the termination of any trust to an individual who has not reached age 21 as a vested trust named for that individual to be distributed to him or her when he or she has reached that age, or if he or she dies before the complete distribution of the vested trust, to his or her estate. The trustee shall pay to or use for the individual so much or all of the income and principal of the vested trust named for him or her as the ~~distribution adviser~~trustee from time to time decides is advisable for the individual's support, health, education, best interests and welfare.

#### **Article 4 Other Dispositive Provisions**

4.01 **Perpetuities Provisions.** Pursuant to South Dakota law, the rule against perpetuities will not apply to any trust administered under this instrument.

(a) **Property Distribution.** If despite the preceding provisions of this paragraph applicable law has a rule (a "perpetuities rule") that requires an interest created or administered under this instrument in property that is subject to that applicable law vest or be distributed within a maximum period of time, the trustee shall distribute any trust property subject to that perpetuities rule on the perpetuities date to the current

beneficiaries of the trust living on that perpetuities date in equal shares.

(b) **Perpetuities Date.** If the perpetuities rule under applicable law allows a maximum period of time in which an interest in property must vest or be distributed to be a fixed term of no more than 120 years after the measuring date, then the “perpetuities date” as to trust property subject to that perpetuities rule will be the last day of that fixed term. In all other cases, the “perpetuities date” as to trust property subject to that perpetuities rule will be the day that is 21 years after the death of the last to die of the descendants of His Late Britannic Majesty King George the V who are living on the date of this instrument.

4.02 **Payment Considerations.** Unless specifically provided elsewhere under this instrument, for purposes of this instrument:

(a) **No Advancements.** No payment to a beneficiary shall be considered an advancement.

(b) **Support.** “Support” means support in reasonable comfort and includes maintenance.

(c) **Education.** “Education” includes public, private, college, graduate, professional and vocational school education.

(d) **Other Resources.** The ~~distribution adviser~~trustee responsible for deciding whether to make a payment to a beneficiary may consider the beneficiary’s available resources, including the beneficiary’s ability for self-support, known to that ~~distribution adviser~~trustee and any tax effects of the use of those resources.

(e) **Multiple Trusts.** The ~~distribution adviser~~trustee responsible for deciding whether to make a payment to a beneficiary from more than one trust under this instrument may decide whether and to what extent each trust shall contribute to the payment. The ~~distribution adviser~~trustee shall consider the tax character of each trust in making the decision.

(f) **Minimizing GST Tax.** In administering trusts with substantially the same terms but different inclusion ratios for federal GST tax purposes, the trustee may aggregate the values of those trusts for purposes of determining a right of a beneficiary, such as a right to withdraw trust property or the right to receive an amount or other property, but may satisfy that right from those trusts as the trustee determines is likely to minimize total federal GST taxes as to all of those trusts.

4.03 **Use of Residential Property.** The trustee may retain indefinitely any interest in residential property regardless of lack of income, diversification or marketability. The ~~distribution adviser may direct the~~ trustee ~~to~~may allow any one or more of the current

beneficiaries to occupy part or all of any residential property on the terms (including rent-free, or without obligation to pay taxes, insurance premiums or expenses) the ~~distribution adviser~~trustee decides are consistent with the purposes for which income or principal are payable. The ~~distribution adviser~~trustee may ~~direct the trustee to~~ sell all or part of the residential property held in the trust to a beneficiary residing in that property at its then appraised value, and if the ~~distribution adviser~~trustee is also the beneficiary, without liability for self-dealing. Absent bad faith, ~~neither the distribution adviser nor~~ the trustee shall not be liable for the condition of the residential property during its occupancy by a beneficiary.

4.04 **Loans to Current Beneficiary.** The ~~distribution adviser may direct~~ the independent trustee ~~to, if any, may~~ (a) make secured or unsecured loans to a current beneficiary, on terms determined by ~~the distribution adviser that trustee~~, including with or without interest, (b) pledge trust property to secure any loans made by a third party lender to the current beneficiary, and (c) guarantee loans or advances made by a third party lender to or for the benefit of the current beneficiary, in each case only to the extent that the ~~distribution adviser~~independent trustee determines that such action is consistent with the purposes for which income or principal is payable. If no independent trustee is acting, the trustee may make secured loans to a current beneficiary only with appropriate interest.

4.05 **Trust Termination by ~~Distribution Adviser~~Independent Trustee.** If the ~~distribution adviser~~independent trustee decides that terminating a trust ~~created hereunder~~named for a person is advisable because of the small size of the trust, the circumstances of the beneficiaries, the anticipated distribution of the trust due to a rule against perpetuities, or changes in tax law, ~~the distribution adviser may direct~~ the trustee ~~to~~shall distribute the trust property to one or more of the current beneficiaries of the terminated trust in such proportions as the

~~distribution adviser~~independent trustee decides is advisable for their respective best interests and welfare. The ~~distribution adviser~~independent trustee shall not be liable to any person for any action taken or omitted in good faith under this paragraph.

#### 4.06 Trust Amendment.

(a) ~~By Distribution Adviser. The distribution adviser~~Prior to the Division Date. At any time prior to the division date, the protector by signed instrument delivered to the trustee may amend any provision of this instrument in any manner the ~~distribution adviser decides by signed instrument delivered to the trustee at least 30 days in advance of the effective date of such amendment, unless the trustee waives such notice period by signed instrument delivered to the distribution adviser and filed with the trust records.~~protector decides. Despite the preceding ~~provisions of this paragraph~~sentence, (1) the ~~distribution adviser~~protector may not add as a beneficiary ~~any individual of any trust under this instrument any person~~ who is not a descendant of Alki's, ~~and~~ (2) the ~~power~~power granted ~~to the protector~~ under this ~~paragraph~~subparagraph shall not be exercisable in a manner that (A) would cause the trustee or ~~a distribution adviser~~protector to possess a general power of appointment under Code Section 2041 or ~~2514, or~~2514 and (B) cause any entity in which any trust under this instrument has an interest to lose its S ~~corporation status~~Corporation status. The protector shall not be liable to any person for any action taken or omitted under this subparagraph.

~~4.07—Overriding Powers of Appointment. Despite any other provisions of this instrument, the following overriding powers of appointment may be exercised over trust principal and accrued or unpaid income.~~

~~(a)—Exercise of Overriding Powers of Appointment. The trustee may appoint any part or all of the trust property to or for the benefit of any current beneficiary subject to such trusts, powers, and conditions as the distribution adviser in the distribution adviser's absolute discretion provides, by signed instrument delivered to the trustee at least 30 days in advance of the effective date of the exercise of power of appointment, unless the trustee waives such notice period by signed instrument delivered to the distribution adviser and filed with the trust records.~~

~~(b) Appointments in Further Trust. The overriding powers of appointment granted in this paragraph may be exercised by appointing trust property to the trustees of another trust, wherever those trustees are resident and whatever the governing law of that trust, notwithstanding that such a trust may contain powers of appointment exercisable by a beneficiary in favor of or for the benefit of persons, including charitable organizations, other than a current beneficiary.~~After the Division Date. Federal transfer tax or income tax laws may change or be interpreted differently, a trust hereunder may be considered

not to qualify for an intended tax benefit, or the personal or financial circumstances of one or more beneficiaries may change after the division date. Accordingly, after the division date the independent trustee, if any, may from time to time amend only those provisions of this instrument which the independent trustee reasonably determines to require amendment to carry out the Grantor's intent (also as reasonably determined by the independent trustee) in a practical, tax efficient manner under the federal tax laws then in existence. The independent trustee may amend (a) any power of appointment to include the power holder's estate as a possible appointee or (b) any power of appointment that includes as a possible appointee the power holder's estate or the creditors of the power holder's estate to exclude as potential appointees only the power holder, his or her estate and the creditors of either. No amendment shall (a) materially affect the substance of dispositive provisions of this instrument or (b) alter the terms of this instrument so as to adversely affect the status of any trust as GST exempt. Each amendment shall be by signed instrument filed with the trust records, with a copy delivered to each current beneficiary and to any co-trustee. The independent trustee shall not be liable to any person for any action taken or omitted in good faith under this subparagraph.

4.07 ~~4.08~~ **Trustee's Support Obligation.** Despite any other trust payment provision of this instrument, the ~~distribution adviser~~trustee shall not direct the trustee to make any payment to a beneficiary that would directly or indirectly discharge the legal obligation of any donor, ~~any distribution adviser~~, or any trustee under this instrument as an individual to support that beneficiary.

4.08 ~~4.09~~ **Powers of Appointment.** A person or entity may exercise a power of appointment in favor of permissible appointees in such proportions and subject to such trusts, powers (including powers exercisable in favor of individuals or organizations that would not have been permissible appointees of that person's power) and conditions as the person or entity provides; except that individuals who are permissible appointees must be living at the time the exercise becomes irrevocable or be born thereafter. A power of appointment may be exercised by will, by signed, acknowledged instrument delivered to the trustee prior to the power holder's death, or by signed instrument witnessed by at least two disinterested persons delivered to the trustee prior to the power holder's death. The trustee may rely on a will admitted to probate in any jurisdiction as the will of the person or may assume the person had no will if the trustee has

no actual knowledge of a will within 90 days after the person's death. If the power of appointment is exercised by signed instrument required to be delivered to the trustee, and the person exercising the power of appointment is also the trustee, then the person, in his or her capacity as trustee, must acknowledge in writing the receipt of the signed instrument. The trustee shall keep a copy of any signed instrument exercising a power of appointment that is delivered to the trustee with the trust records. Any failure to maintain a copy with the trust records shall not invalidate an otherwise valid exercise of a power of appointment. The exercise of any power of appointment (a) must be dated, (b) must refer specifically to the power being exercised and (c) unless the instrument exercising the power expressly states otherwise, shall be revocable prior to the effective date. The last dated instrument exercising a power of appointment shall be deemed to supersede all prior dated instruments signed by the same person, even if the prior dated instrument was a will that is later duly admitted to probate. The power to appoint includes the principal and its accrued or unpaid income.

4.09 ~~4.10~~ **S Corporation Provisions.** The following provisions shall apply to all trusts created hereunder that own shares of stock in an "S corporation" (as defined in Code Section 1361).

(a) **Maintenance of S Corporation Status.** If the ~~distribution adviser~~trustee determines that it is advisable to maintain the S corporation status for tax purposes of a corporation, the shares of which are owned by a trust, then it is intended that the trust be a "qualified subchapter S trust" (as defined in Code Section 1361(d)(3), and referred to herein as a "QSST") or an "electing small business trust" (as defined in Code Section 1361(e), and referred to herein as an "ESBT"). If stock in an S corporation is held (or to be held) in a trust administered under this instrument, then the trustee ~~and distribution adviser~~ shall take all action necessary in order to ensure qualification of that trust as a QSST or ESBT while the S corporation stock is held by the trust. In all events and despite any other provision of this instrument to the contrary, the trustee must distribute all of the income (within the meaning of Code Section 643(b)) of a QSST under this instrument to the primary beneficiary.

(b) **Qualification as Eligible Shareholders.** It is intended that the trusts held hereunder be eligible shareholders for purposes of the S corporation election under Code

Section 1361. The provisions of this instrument shall be liberally construed to effect this intent. No right, power or discretion granted by the terms of this instrument or by law shall be exercised in a manner as would cause the termination of the S corporation election; provided, however that this provision shall not be construed as restricting the trustee from intentionally electing not to qualify if such discretion is granted under applicable tax laws.

## Article 5 Trustees and Other Officeholders

### 5.01 Trustees.

(a) **Generally.** Bridgeford Trust Company LLC is the current trustee. If at least one trustee is acting no vacancy in the office of the trustee need be filled, except that at all times there must be at least one trustee who is a resident of South Dakota or a bank or trust company authorized by the laws of the State of South Dakota acting as the trustee of each trust administered under this instrument unless the situs of such a trust is moved from the State of South Dakota pursuant to the Governing Law paragraph. If no trustee would be acting after the application of the preceding provisions of this paragraph, the protector shall name a successor trustee to fill the vacancy.

(b) **Primary Beneficiaries Become Own Trustee.** Despite the preceding provisions of this paragraph, but subject to the following sentence, after the primary beneficiary reaches age 28, the primary beneficiary shall be sole trustee of the trust named for him or her at any time the primary beneficiary so elects by signed instrument delivered to the trustee of that trust. Despite the preceding sentence, the trustee (other than the primary beneficiary) may delay the age at which a primary beneficiary may become sole trustee of the trust named for him or her, up to and including the lifetime of the beneficiary, if the trustee, in the trustee's sole discretion, determines it is in the best interest of the beneficiary. Under no circumstances will the trustee have any liability for delaying the age at which a primary beneficiary may become co-trustee or sole trustee of a trust named for him or her, or for failure to delay that age, absent bad faith.

5.02 **Independent Trustee.** "Independent trustee" means a trustee that is (a) a trust company or (b) an individual other than Alki, a descendant of Alki, a parent of a descendant of Alki, or a spouse of a descendant of Alki. Only an independent trustee may exercise powers granted exclusively to the independent trustee. If no independent trustee is acting who could exercise an exclusive power, the appointer may fill the vacancy in the office of independent trustee by appointing an independent trustee.

~~5.03 **Distribution Adviser.** AD Advisers LLC, a South Dakota limited liability company ("AD Advisers LLC"), is the initial distribution adviser. With respect to the exercise of~~

~~any power to direct the trustee, the distribution adviser must act by signed instrument delivered to the trustee. The trustee must comply with the terms of that instrument and will not be liable to any person for complying, except for the trustee's own willful misconduct. An individual or entity acting or named to act as distribution adviser may name successor distribution advisers in accordance with the Successor Designation paragraph unless the instrument appointing the individual or entity provides otherwise. If at any time no distribution adviser is acting, the appointer shall name a successor distribution adviser to fill the vacancy. The following persons shall not serve as distribution adviser: (i) Alki; (ii) a descendant of Alki; (iii) a person at any time married to a descendant of Alki; (iv) a person who is a subordinate party as to Alki or as to a descendant of Alki; and (v) any person who is acting as trustee other than an independent trustee.~~

~~5.04—**Investment Adviser.** AD Advisers LLC is the initial investment adviser. With respect to the exercise of any power to direct the trustee, the investment adviser must act by signed instrument delivered to the trustee. The trustee must comply with the terms of that instrument and will not be liable to any person for complying, except for the trustee's own willful misconduct. An individual or entity acting or named to act as investment adviser may name successor investment advisers in accordance with the Successor Designation paragraph unless the instrument appointing the individual or entity provides otherwise. If at any time no investment adviser is acting, the appointer shall name a successor investment adviser to fill the vacancy.~~

~~5.05—**Investment Adviser Powers.** Despite the general powers of the trustee, the following subparagraphs apply where the context admits:~~

~~(a)—**Full Responsibility.** The trustee shall purchase or sell trust assets only as the investment adviser directs in writing. The trustee shall have no duty to review from time to time the trust assets held by the trust. The investment adviser shall have full authority to direct the trustee to take any action with respect to the trust assets that the trustee is authorized to take under this instrument, including, but not limited to, those investment powers provided for in the Trustee Powers and the Insurance Policies and~~

~~Death Benefit Plans paragraphs.~~

~~(b) — **Borrowing.** The trustee shall borrow from any source and mortgage or pledge trust assets only as the investment adviser directs in writing. The trustee shall have no duty to review from time to time the loans or other debt instruments incurred by the trust.~~

~~(c) — **Business Actions.** With respect to securities constituting trust assets, the trustee shall take the following actions as the investment adviser directs in writing: (1) vote or issue proxies to vote; (2) act as to the organization, financial structure or buy sell or voting agreements; and (3) exercise other management rights.~~

~~(d) — **Real Estate.** The trustee shall entrust to the investment adviser full control of real estate and its associated tangible personal property comprising trust property, including collection of rents and payment of taxes, maintenance and other expenses. The investment adviser may act as property manager or may employ property managers. The trustee need not inquire into the condition, management or operation of the real estate while the investment adviser acts. No one dealing with the investment adviser need see to the application of rents paid to the investment adviser, inquire into the appropriateness of the investment adviser's acts or otherwise determine whether the investment adviser has complied with the terms of this instrument.~~

~~(e) — **Preparation of Tax Returns.** The trustee shall hire accountants or other advisers to prepare annual income tax returns only as directed by the investment adviser.~~

~~(f) — **Valuation of Special Investments.** The trustee shall value special investments (as defined below) and any other assets not actively traded on a public exchange only as directed by the investment adviser.~~

~~(g) — **Waiver and Delegation.** An investment adviser may from time to time waive or delegate any or all of the investment adviser's powers and discretions. The waiver or delegation shall be made by signed instrument delivered to each remaining investment adviser and the trustee. A copy of the delegation shall also be delivered to the individual or entity to which the delegation is made. The waiver or delegation may be for any period of time specified in the signed instrument.~~

~~(h) — **Exoneration.** No trustee shall have any liability for following the instructions of the investment adviser or for failing to review investments that the investment adviser directs the trustee to retain, including without limitation, any loss resulting directly or indirectly from following the instructions of the investment adviser. The trustee shall have no duty (1) to monitor the conduct of the investment adviser, (2) to provide advice or consult with the investment adviser or (3) to communicate, warn or apprise any beneficiary of any action taken by the investment adviser.~~

~~(i) — **Limitations.** Despite the preceding provisions of this paragraph, a power granted to the investment adviser under this subparagraph shall not be exercisable by the investment adviser over any trust property if the exercise of such power would cause the~~

~~inclusion of that trust property in the gross estate of the investment adviser for federal estate tax purposes under Code section 2036(b) if the investment adviser died at that time.~~

~~(j) — **Application of Trustee Provisions.** Except as specifically limited in this instrument, the provisions of this instrument relating to the powers, discretions, duties and immunities of the trustee with respect to investments, and any limitations or restrictions thereon, shall apply to each investment adviser.~~

5.03 ~~5.06~~ **Protector.** Ryan Rudolph is the initial protector. Jason P. Trenton shall be the successor protector. An individual or entity acting or named to act as protector may name successor protectors in accordance with the Successor Designation paragraph unless the instrument appointing the individual or entity provides otherwise. No further vacancy in the office of protector need be filled. The protector is not a fiduciary and may act or refrain from acting without regard to the interests of any beneficiary. The protector will not be liable to any person for any action or inaction. The protector must act by signed instrument delivered to the trustee. The trustee must comply with the terms of that instrument and will not be liable to any person for complying. A majority of the protectors may exercise the powers of the protector. None of Alki, a descendant of Alki, person at any time married to a descendant of Alki, or person who is a subordinate party as to Alki or as to a descendant of Alki may act as the protector, nor may any person who is acting as trustee act as protector, ~~nor may any entity in which any of the aforementioned persons serve as a member of the discretionary committee, investment committee, or protector committee serve as protector.~~

~~5.07 — **Protector Power to Appoint and Remove Trustee.** The protector shall have the power to appoint or remove any trustee by signed instrument delivered to the individual or trust company being appointed or removed, as appropriate under the circumstances. The removal of a trustee shall be effective immediately upon receipt by the trustee being removed of such signed instrument and any action by the trustee thereafter will be ineffective unless ratified by the successor trustee, provided, however, that any instrument removing a trustee shall be ineffective~~

~~unless an individual or trust company who is not a subordinate party as to the protector is appointed to fill the resulting vacancy.~~

~~5.08 **Adviser or Protector Vacancies.** Except as otherwise provided in this instrument or in an instrument naming successor officeholders, whenever a vacancy in the office of distribution adviser, investment adviser or protector occurs, the appointer may, but need not, appoint any individual, entity or trust company to act in that office by signed instrument delivered to the individual, entity or trust company so appointed and to the trustee at any time after the vacancy occurs and any appointment by the appointer to fill that vacancy shall take precedence over the persons, entity or trust company appointed to fill that vacancy under this instrument so long as (a) the appointer does not appoint his or her spouse to fill the vacancy and (b) the person, entity or trust company appointed is qualified to act in that office. An instrument of appointment may provide that a distribution adviser, investment adviser or protector may act for a limited period of time or only for a limited purpose. In the event that no successor distribution adviser, investment adviser or protector of any trust or trust share is appointed within thirty (30) days after the removal or resignation of the last serving type of officeholder, any party (including, without limitation, a beneficiary of such trust or trust share and the removed or resigning officeholder) may make application to the Court having primary jurisdiction over the trust (which such Court shall be located in South Dakota so long as South Dakota remains the situs of the trust) to appoint a successor officeholder in place thereof. The costs and expenses of any application to a court under this paragraph shall be payable solely by the trust.~~

5.04 ~~5.09~~ **Appointers.** ~~Whenever the identity of the appointer is to be determined,~~  
~~the~~The initial appointer shall be ~~Alki, or if he fails to act,~~ Andrew and Alexander, or if one of  
Andrew and Alexander fails to act, the other of them, or if both Andrew and Alexander fail to  
act, those current beneficiaries who then are at least age 21. Despite the immediately preceding  
sentence, upon attaining age 21, a primary beneficiary shall be the appointer of a trust named for  
him or her. A person named as appointer shall not be deemed to have failed to act unless (a) the  
vacancy in ~~the offices of distribution adviser, investment adviser or protector~~any office is  
required to be filled and that person has not appointed a successor within 30 days after that  
person has been notified of the vacancy, or (b) that person declines to act as appointer to fill that  
vacancy or any vacancy by signed instrument delivered to the individuals or entities named to act  
as appointer if that person fails to act and to the trustee.

5.05 ~~5.10~~ **Removers.** At any time or times the remover may remove any ~~distribution  
adviser, investment adviser~~trustee or protector by signed instrument delivered to that  
~~adviser~~trustee or protector. ~~Alki is the initial remover. Whenever a vacancy occurs in the office  
of remover, the remover shall be~~ Andrew and Alexander, are the initial removers or if one of  
Andrew and Alexander fails to act, the other of them, or if both Andrew and Alexander fail to  
act, those current beneficiaries who then are at least age 21. Despite the immediately preceding  
sentence, upon attaining age 21, a primary beneficiary shall be remover of a trust named for him  
or her.

(a) **Additional Removers.** An individual acting or named to act as remover  
may name successor removers in accordance with the Successor Designation paragraph  
unless the instrument appointing the individual provides otherwise. No further vacancy  
in the office of remover need be filled.

(b) **Limitations on Removal.** Despite the first sentence of this paragraph, if a  
~~distribution adviser, investment adviser~~an independent trustee or protector is removed  
and if the remover also may participate in filling the resulting vacancy, the removal shall

be ineffective unless another ~~distribution adviser, investment adviser~~trustee or protector who is not a subordinate party as to any such remover is appointed to fill the resulting vacancy.

(c) **Exculpation of Remover.** The remover need not review from time to time the records or performance of the ~~distribution adviser, investment adviser or protector~~trustee and shall not be liable to any person for any act or omission under this paragraph.

5.06 ~~5.11~~ **Controlling Vote.** Unless a designation naming concurrent successor officeholders provides otherwise, (a) any action or decision of the majority of the officeholders of that office shall be as effective as if taken or made by all such officeholders, and (b) if two officeholders are acting with respect to any matter as to which they have joint powers, they must act jointly in order to take any action or effect any decision.

5.07 ~~5.12~~ **Co-Officeholder Provisions.** Whenever more than one officeholder is acting in the same office (for example, co-~~investment advisers~~trustees), the following provisions apply where the context admits:

(a) **Custody.** A co-officeholder shall not be liable for leaving the trust property in the custody or control of the other co-officeholder.

(b) **Delegation.** An officeholder from time to time by writing may delegate to any other officeholder of the same office, with the consent of the latter, any or all of the delegating officeholder's rights, powers, duties and discretions; except that powers granted exclusively to an independent trustee may be delegated only to an independent trustee. Any officeholder may exercise a ministerial power, including signing a document, without a written delegation from any other officeholder of the same office.

(c) **Accounts.** The trustees may establish checking or other accounts and may authorize that checks or drafts be drawn on or withdrawals made from any such accounts on the individual signature of any trustee.

(d) **Presumption of Approval or Disapproval.** A co-officeholder shall be presumed to have approved a proposed act or decision to refrain from acting if such co-officeholder fails to indicate approval or disapproval thereof within 15 days after a written request to do so. A co-officeholder shall not be required to continue to make a proposal which has been disapproved on at least two occasions if such co-officeholder has informed the disapproving co-officeholder that continuing disapproval will be assumed until notice to the contrary has been received.

(e) **Execution.** The co-officeholders may execute documents by signing one document or several counterparts of the same document which, together, shall be taken as one and the same document.

5.08 ~~5.13~~ **Declination and Resignation; Competency; Vacancy.** An individual, entity or trust company may decline or resign any office at any time by signed instrument delivered to each other holder of the same office, to each trustee and to each successor named to fill the vacancy, or if none, to each appointer. While an individual is not legally competent, that individual shall be treated as deceased for purposes of determining who is an officeholder. Except as otherwise provided in this instrument or in an instrument naming successor trustees, a “vacancy” in any office other than appointer results when an acting officeholder ceases to act for any reason.

5.09 ~~5.14~~ **Successor Designation.** The following provisions apply when an individual may name successor officeholders in accordance with this paragraph:

(a) **Method.** The individual shall file the designation with the trust records and may amend or revoke the designation until a successor acts pursuant to the designation. Unless this instrument or the instrument appointing the individual to an office provides otherwise, the individual may name one or more individuals or qualified entities as successors to act immediately, prospectively, one at a time or concurrently, including concurrently with the individual without the individual having to fail or cease to act. Despite the preceding sentence, an individual acting or named to act concurrently with another officeholder may name successors to that office to act only one at a time and may not name concurrent officeholders. The designation may: (1) specify the time during which each successor acts; (2) limit or deny the ability to name successors; (3) specify the manner for resolving conflicts among concurrent successors; (4) limit the authority of a successor officeholder or divide the powers and discretions of the office among two or more concurrent officeholders; (5) provide that a vacancy need not be filled; and (6) name successors specifically, by class or by any other method.

(b) **Priority.** The designation by any individual shall be effective only when no other person able to fill the vacancy (1) has been named in this instrument or (2) has been designated by a person acting or named to act before that individual. If more than one designation is filed with the trust records by the same officeholder, then the last designation so filed shall be deemed to supersede all prior designations so filed by that person.

5.10 ~~5.15~~ **General Fiduciary Provisions.**

(a) **Fiduciary Officeholders.** Each trustee, ~~investment adviser and distribution adviser~~ is a fiduciary. No other officeholder is a fiduciary. An officeholder who is not a fiduciary need not consider the interests of the beneficiaries in exercising the powers of the office.

(b) **Exoneration.** Except where otherwise provided, no individual fiduciary shall have any liability for any act or omission unless it shall be determined in a court of law to have been gross negligence, willful misconduct or a criminal act. No officeholder who is not a fiduciary shall have any liability for any act or omission, except if it acts capriciously, maliciously or fraudulently. No successor officeholder shall have any liability for any act or omission of a predecessor. A nonconcurring officeholder shall have no liability for any act or omission of a co-officeholder.

(c) **Environmental Liability.**

(1) **Exoneration.** In addition to the liability exoneration afforded by the Exoneration subparagraph of this General Fiduciary Provisions paragraph, the trustee shall not be personally liable to any beneficiary or other party interested in the trust, or to any third parties, for any claim against the trust for the diminution in value of trust property resulting from matters involving hazardous substances, including any reporting of or response to (A) the contamination of trust property by hazardous substances, or (B) violations of any environmental laws related to the trust; provided that the trustee shall not be excused from liability for its own gross negligence in administration of the trust property or wrongful or willful acts.

(2) **Indemnification.** Despite any provision of this instrument to the contrary, the trustee may withhold a distribution to a current beneficiary from a trust hereunder until receiving from the current beneficiary an indemnification agreement in which the current beneficiary agrees to indemnify the trustee against any claims filed against the trustee as an “owner” or “operator” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as from time to time may be amended, or any regulation thereunder, or any other environmental law.

(d) **Duty to Defend.** The trustee shall have no duty to defend or continue to defend the trust or its assets in any action in which the claimant seeks, through exercise of judicial process or otherwise, to reach the assets of the trust in satisfaction of a claim against the trust, a beneficiary or the settlor of a trust created pursuant to this agreement unless (1) the trustee is reasonably satisfied that the readily marketable assets of the trust are then and will be sufficient to fully indemnify the trustee for all the liabilities and expenses (including professional fees and expenses of counsel, accountants, and expert witnesses) the trustee may incur in so defending the trust or its assets, or (2) the current beneficiaries have provided the trustee with indemnity, supported with such security as may be satisfactory to the trustee in its sole discretion, as is then and will be sufficient to fully indemnify the trustee. For purposes of this subparagraph, the phrase “defend or continue to defend” shall include, without limitation, instituting, participating in, intervening in or defending a lawsuit, action in equity or administrative, arbitration or

mediation proceeding (collectively, a “proceeding”) or taking any other action to resist such claim. If the trustee fails to defend or continue to defend the trust or its assets because the conditions set forth in this subparagraph have not been fulfilled, the trustee shall not be liable for any such failure even if the failure, including, without limitation, a withdrawal from a proceeding, may result in the granting or awarding of relief against the trustee or the trust (including without limitation a distribution of trust assets in satisfaction of a claim).

(e) **Compensation.** Each fiduciary shall be entitled to reasonable compensation, and each officeholder shall be entitled to reimbursement for reasonable expenses. Bridgeford Trust shall be entitled to receive compensation for its services as trustee of any trust hereunder in accordance with its schedule of rates, including the applicable minimum fee, as published from time to time, even though such rates may exceed the commissions customarily allowed in the jurisdiction in which the appointment of Bridgeford Trust as trustee is made or as specified in a separate letter agreement. In addition to such fees, Bridgeford Trust, or its affiliates shall also be entitled to receive any payments under Rule 12 b-1 of the Investment Company Act of 1940 from any registered investment company.

(f) **Powers of Successor Officeholders.** Except as otherwise provided in the instrument naming a successor officeholder, the successor officeholder shall have all the powers and discretions of the preceding officeholder.

(g) **Separate Officeholders for Separate Trusts.** Except as otherwise provided, (1) provisions of this instrument apply separately to each trust, (2) officeholders may differ from trust to trust and (3) any reference to an officeholder refers to the officeholder then acting with respect to the applicable trust.

5.14 **Prohibition on Donor Holding Office.** Neither Alki, nor any ~~person~~individual who funds this trust or any trust created hereunder shall hold any office (other than appointer or remover) or be a designated representative under this instrument. If an individual who holds office (other than appointer or remover) under this instrument becomes a donor to any trust, he or she immediately will cease to hold any office (other than appointer or remover) with respect to that trust.

## Article 6 Special Investment Provisions

6.01 **Waiver of Prudent Investment Rules.** ~~Absent contrary written instructions from the distribution adviser, the~~The South Dakota Uniform Prudent Investment Act, Section 55-5-6, *et seq.*, of the South Dakota Codified Laws, or any similar law of any other jurisdiction, shall not

apply to the ~~investment adviser or~~ trustee of any trust administered under this instrument. ~~Absent contrary written instructions from the distribution adviser, the investment adviser may direct the trustee with respect to~~ The trustee may direct the investment of trust property in any manner the ~~investment adviser~~ trustee in good faith determines to be advisable, whether or not an investment or investment strategy would be considered prudent or reasonable and without regard to diversification or level of risk, and ~~neither the investment adviser nor~~ the trustee will not have any liability for loss resulting from lack of diversification or for any other reason due to the acquisition or retention of an investment if the ~~investment adviser~~ trustee exercises good faith in the ~~investment adviser's~~ decision to ~~direct the trustee to~~ acquire or retain that investment.

6.02 **Special Investments.** Except as otherwise provided, the trustee is expressly authorized to invest or retain indefinitely any part or all of the trust property in special investments, regardless of any resulting risk or lack of diversification, and even though special investments may not be marketable, may involve a high degree of business risk, may not be income-producing and may constitute a substantial part or all of the trust property. “Special investments” means (a) interests in real estate and (b) interests in or indebtedness of any corporation, partnership, limited liability company or other entity formed for business or investment purposes, at least 10% of the equity interests (by vote, income or capital) in which are owned directly or indirectly by Alki, Alki’s descendants, and the spouses of Alki’s descendants.

6.03 **Conflicts of Interest.** It may be necessary or advisable in the administration of the trusts hereunder for the trustee to make sales to or purchases from or otherwise deal with (a) the trustee, ~~the distribution adviser or the investment adviser in such fiduciary’s individual capacity,~~ (b) a corporation, partnership, limited liability company or other legal entity in which the trustee, ~~the distribution adviser or the investment adviser~~ may be interested or associated as

director, stockholder, officer, employee, creditor, partner, member, manager or in any other capacity or (c) a trust or estate of which the trustee, ~~the distribution adviser or the investment adviser is a beneficiary or is a~~ fiduciary. The trustee may take any such action without obtaining the approval or confirmation of any court, and the trustee's actions in good faith in these respects shall be as binding and conclusive as though no such relationship or possible conflict of interest existed. The trustee will not be required to account for any direct or indirect personal benefit such fiduciary receives and shall not be liable for any loss that results, in either case absent bad faith.

### **Article 7 General Administrative Provisions**

7.01 **Facility of Payment.** Whenever the trustee considers that a person entitled to income or principal payments is incapacitated in any way so as to be unable to manage his or her financial affairs, such payments may be made directly to such person, to a duly appointed guardian or conservator of such person or to a custodian for such person under a Uniform Gifts or Transfers to Minors Act of any jurisdiction or otherwise expended for such person's benefit as the trustee considers advisable.

7.02 **Income Payments.** The trustee shall periodically add to principal any income not required to be paid to a current beneficiary. Except as otherwise provided, income accrued or unpaid at the termination of any beneficial interest shall be treated as if it had accrued immediately after such termination.

7.03 **Protection from Creditors.** The interests of the beneficiaries in principal or income shall not be subject to the claims of their creditors or others, including claims for alimony, support, maintenance or other similar claims, and may not be transferred or encumbered. The preceding sentence shall not be construed as restricting in any way the

voluntary exercise of any power of appointment granted by this instrument.

7.04 **Trustee Powers.** The trustee shall have the following powers and discretions and all others granted by applicable law, to be exercised in a fiduciary capacity:

(a) **General Investment.** To retain indefinitely any property received by the trustee; to sell any trust property and to invest and reinvest trust property in any property, real or personal, foreign or domestic, including stocks, bonds, mortgages, notes, commodities, partnerships, limited liability companies, joint ventures, land trusts or other title-holding trusts, investment companies, investment trusts, common trust funds or other organizations as a limited or general partner, shareholder, member, manager, creditor, owner, beneficiary or otherwise, and successive interests, such as life estates, terms of years, remainders (contingent and vested), executory interests, reversions and reverters, without being limited by any statute or rule of law concerning trust investments and without any duty to diversify trust investments.

(b) **Contracts.** To execute, acknowledge and deliver contracts and other agreements and instruments in connection with any action that the trustee is authorized to take under this instrument, and containing such terms as the trustee decides are advisable, including granting warranties and indemnifications.

(c) **Margin Investments and Financial Products.** To purchase and sell by way of short sales, puts, calls, straddles and sales against the box, on margin or otherwise, and to maintain and operate margin accounts or otherwise secure loans or advances made in conjunction with transactions permitted under this subparagraph, and to purchase, sell or otherwise enter into futures, options, derivatives, forwards, swaps, caps, floors, collars and all other financial, equity or commodity related products, however classified and wherever traded.

(d) **Artwork.** To retain or invest any part of the trust property in non-income-producing or non-earning property, including paintings, prints, pictures and other works of art, gold, silver and other precious metals, antiques, foreign currencies, coins, jewels, postage stamps, rare books and any other type of collectible, to pay any storage charges, insurance premiums and costs of maintenance and preservation in connection therewith and to lend such works of art or other objects or collectibles to any current beneficiary or any charitable organization or exhibit them on such terms as the trustee deems consistent with the provisions for which income or principal is payable.

(e) **Leasing and Development.** To lend, lease or sublease for any term, even though extending beyond the term of the trust, any trust property; to subdivide, resubdivide, partition, abandon, dedicate, raze, alter, repair and improve any real or personal trust property; to grant easements; and to make any other contract relating to any real or personal trust property.

(f) **Underwriting Agreements.** To sell at public or private sale, contract to sell by underwriting agreements, registration or in other ways, any security as defined by

federal and state securities laws; to indemnify, by insurance or in other ways, the underwriters, issuers or purchasers of such securities and any persons controlling them against any claim arising under the Securities Act of 1933, as amended.

(g) **Farm and Ranch.** To operate farm (including dairy, breeding, feeding and poultry operations), ranch, tree, timber or other agricultural properties, including related improvements, equipment and supplies, to market its production, to participate in government programs and to take such actions alone or jointly with others (including cooperatives, tenants, managers, consultants and agents).

(h) **Organizations.** To vote, give proxies to vote and otherwise exercise management rights, enter into or oppose voting, buy-sell and other agreements and to create, acquire, reorganize or continue any organization for business, investment or other purposes under the laws of any jurisdiction, alone or with others, through one or more corporations, limited or general partnerships, limited liability companies, joint ventures, real estate investment trusts, land trusts or other business, investment or property management organizations and, with respect to any such organization, to deal with such organization without individual liability; to retain employees, agents, advisers and independent contractors; and, in general, to operate any such organization with the same powers as an individual owner would have.

(i) **Natural Resources.** To maintain, improve, operate, drill, mine, develop, unitize, lease or sublease, alone or with others, oil, gas or other mineral property or interest therein, real or personal, in any jurisdiction within or without the United States of America, or any other property or interest therein relating directly or indirectly to the exploration, drilling, mining, developing, producing, processing, treatment, storage, transportation or marketing of such oil, gas or other mineral property, including all products and constituents thereof; and, in general, to deal with any such property in like manner and with the same full power, authority and discretion, alone or with others, as an individual owner would possess with respect to such property.

(j) **Borrowing.** To borrow from any source, including the trustee individually, to issue notes or other instruments of indebtedness, to guarantee borrowings by any trust or entity in which the trust or a beneficiary directly or indirectly holds an interest, and to mortgage or pledge trust property for the foregoing purposes.

(k) **Compromise.** To contest, pursue, settle or abandon claims or demands.

(l) **Title.** To retain and maintain trust property in any jurisdiction in or outside the United States of America in a land trust or other title-holding trust, in the name of any person or organization as the trustee's nominee, or in any other way without disclosing the trust or agency relationship, and to distinguish between two or more trusts with the same name by any further designation.

(m) **Delegation.** To employ agents and counsel (including investment counsel and property managers) and delegate to them without notice to any beneficiary any powers, discretions or duties of the trustee other than distribution discretions, even

though the delegated function is not ministerial in nature, including the delegation to investment managers of investment review and selection, provided that the trustee may not delegate to any person prohibited from exercising such powers, duties and discretions by the provisions of this instrument. Where qualification for, or preservation of, a federal tax benefit attributable to a trust asset depends on the material participation or other management by one or more individuals, the trustee without liability may designate each such individual as “Manager” and may delegate to that individual for that purpose those fiduciary powers selected by the trustee.

(n) **Fiduciary Accounting.** To decide how and in what proportions to credit, charge or apportion any receipts or disbursements between principal and income in accordance with applicable law.

(o) **Division.** To distribute, divide or allocate trust property in undivided or disproportionate interests, wholly or partly in kind, at its value, without adjustment for disproportionate allocation of unrealized gain for federal income tax purposes.

(p) **Additions and Segregation.** To receive additional property from any source and to segregate property otherwise directed to be added to or consolidated with the trust property of any trust as a separate trust for any tax or other reason; except that the trustee must segregate to a separate trust any addition that may change the inclusion ratio of the trust for federal GST tax purposes.

(q) **Severance.** To sever or allocate any existing trust on a fractional basis into two or more separate trusts, or by allocation to a separate account or trust a specific amount from a portion of, or specific assets included in, the trust property of any trust to reflect a partial disclaimer or for any tax or other reason.

(r) **Separate Trust Terms.** To administer any trust or account created by segregation or severance as follows:

(1) Income earned on a segregated amount, portion or specific assets after the segregation is effective shall pass to the recipient of such amount, portion or specific trust property. In administering the trust property of any separate account or trust and in making applicable tax elections, the trustee shall consider the differences in federal tax attributes and all other factors the trustee believes pertinent consistent with applicable rules and regulations.

(2) A separate trust or account created by severance or segregation shall be treated as a separate trust for all purposes from and after the date designated by the trustee as the effective date of the severance or segregation. Such trust shall be held on terms and conditions substantially equivalent to the terms of the trust from which it was severed or segregated, so that the aggregate interests of each beneficiary in the several trusts are substantially equivalent to the beneficiary’s interests in the trust before severance or segregation. Despite the preceding, if a change to a provision of the trust before severance or segregation would adversely affect qualification of the trust for any federal tax deduction,

exclusion, election, exemption or other special federal tax status, that provision shall remain unchanged in each of the separate trusts.

(s) **Joint Investment; Consolidation and Merger.** To hold separate trusts under this or other instruments as a common fund in which the trusts have proportionate interests; and to consolidate and merge any trust with any other trust under this or another instrument having the same beneficiaries and substantially the same terms even if segregation is directed elsewhere under this instrument. If a trust has substantially the same terms as any other trust under this or another instrument, but different perpetuities periods, the independent trustee may consolidate the trusts so that the shorter perpetuities period would apply to all assets held in the combined trust.

(t) **Expenses and Compensation.** To pay taxes and reasonable expenses, including compensation to the trustee and the trustee's agents and investment and other counsel.

(u) **Dealing with Fiduciaries.** To deal in any way with the fiduciary of the estate of any beneficiary or any trust or estate in which any beneficiary has an interest, although the trustee is such fiduciary.

(v) **Special Trustee.** To appoint or remove by signed instrument any person or trust company, wherever located, as special trustee as to part or all of the trust property, including property as to which the trustee does not act; and the special trustee, except as specifically limited in this or the appointing instrument, shall have all of the rights, titles, powers, duties, discretions and immunities of the trustee who appointed the special trustee, without liability for any action directed to be taken or omitted under this or the appointing instrument.

(w) **Environmental.** To inspect for compliance with environmental laws real and personal property held directly or through any entity; to alleviate or eliminate environmental damage to or caused by trust property; to prevent or remedy environmental damage; to expend trust property for these purposes and for the protection of a beneficiary or fiduciary from personal liability; and to abandon or refuse to accept property which has or may have environmental damage or liability.

(x) **General.** To give receipts and discharges; to execute and deliver necessary instruments; and to perform other acts appropriate for proper trust administration.

#### 7.05 **Insurance Policies and Death Benefit Plans.**

(a) **Life Insurance and Annuity Products.** The trustee may invest in (alone or jointly with others) or exchange life insurance, annuity or endowment policies, or policies incorporating combined life, annuity or endowment features, in such form, on such life or lives and on such terms as the trustee decides. The trustee rather than the insured shall have all rights and elections under any policy owned by the trustee, including the right to change the beneficiary, borrow, apply dividends or other amounts

available under such policy, surrender the policy and have an individual policy issued when a group term policy terminates. The trustee need not monitor the financial rating or ability of an insurance company to meet its responsibilities under any insurance policy and, except as otherwise provided, the trustee may retain indefinitely any insurance policy, regardless of any resulting risk, or lack of income, diversification or marketability.

(b) **Premiums.** The trustee may pay premiums, assessments and other charges on any policy owned by the trustee from trust principal, but the trustee need not pay or see to the payment of premiums, assessments or other charges on any other policy.

(c) **Collection.** The trustee shall collect the death benefits under any policy or plan payable to the trustee as the trustee considers advisable, but the trustee need not incur expense or institute legal proceedings unless indemnified.

(d) **Releases.** The trustee's receipt shall fully discharge an obligor of the obligor's liability under any policy or plan payable to the trustee.

(e) **Limitations.** If the insured under any policy on his or her life owned by the trustee is acting as a fiduciary, the insured as fiduciary shall not exercise or direct the exercise of any incidents of ownership in the policy, but rather the trustee other than the insured shall so act. If the insured is the only trustee, the appointer (treating the insured as deceased for purposes of determining the appointer) shall appoint a special trustee to exercise those incidents of ownership.

7.06 **Third Party Relationships.** No one need see to the application of money paid or property delivered to the trustee. The trustee's certificate that the trustee is acting according to this instrument shall fully protect all persons dealing with the trustee.

7.07 **Accountings.** Except as provided in the Silent Trust Provisions paragraph, on the request of any current beneficiary, the trustee shall furnish to such beneficiary a current account showing receipts, disbursements and an inventory of trust assets. To the extent permitted by applicable state law, the trustee's requirement to furnish an account to any other person is hereby waived. However, any trustee at any time may file an account in court or with any person, including by virtual representation pursuant to the provisions of applicable state law, as may be necessary to bind the beneficiaries or to obtain an approval or release for its actions or inactions. A successor trustee shall not be liable for the actions or inactions of a predecessor trustee.

7.08 **Court Supervision.** To the extent such requirements can be waived, the trustee

shall not be required (a) to file any inventory of trust property or accounts or reports of the administration of the trusts, or to register the trusts, in any court, (b) to furnish any bond or other security for the proper performance of the trustee's duties or (c) to obtain authority from a court for the exercise of any power conferred on the trustee by this instrument.

7.09 **Releases.** Except as otherwise provided, an officeholder authorized to act under this instrument may release or waive for any period of time any power or right granted the officeholder under this instrument or by law. Any such release or waiver shall bind any successor acting in the same capacity unless otherwise specified.

7.10 **Reliance on Counsel.** In case of doubt as to a fiduciary's rights, powers, duties and responsibilities under this instrument, that fiduciary may select counsel and act or refrain from acting on the opinion or advice of such counsel and shall not be liable absent bad faith for any loss resulting from any such action taken or omitted to be taken in accordance with any such opinion or advice.

### **Article 8 General Tax Provisions**

8.01 **Funding.** Whenever the trustee distributes or allocates an asset to fund a pecuniary amount, or a fractional share with disproportionate interests, the trustee shall value that asset as of its date of distribution or allocation for purposes of satisfying the pecuniary amount or the value of the fractional share.

8.02 **Reliance.** The trustee may rely on, without liability, (a) the accuracy of an item reported on a tax return, (b) a copy of a tax return provided by the taxpayer filing the return or the tax return preparer or (c) the representation of another fiduciary who filed a tax return as to the amount of any item reported on that return.

8.03 **Tax Elections.** The trustee may make elections or allocations authorized under

tax laws in any manner that appears advisable even though such actions may favor one beneficiary over another. The trustee shall have no liability for acting in good faith in selecting assets to be sold to make payments under this article or in making allocations and elections authorized under

tax laws. The trustee shall not adjust income and principal or the interests of beneficiaries to compensate for the effect of any such allocations or elections.

8.04 **Tax References.** If the context requires, terms in this instrument shall have the meanings ascribed to them under the Internal Revenue Code of 1986, as amended (the “Code”) and its regulations, and corresponding provisions of future federal tax laws, as from time to time in effect.

### **Article 9 Interpretive Provisions and Definitions**

9.01 **Governing Law.** Except as otherwise provided, the internal laws of the State of South Dakota govern the interpretation and validity of the provisions of this instrument and all questions relating to the management, administration, investment, distribution and duration of the trusts under this instrument; except that the trustee from time to time, by signed instrument delivered to each trustee and to each current beneficiary, may elect to have the laws of another state (the “new state”) govern issues other than interpretation, validity and duration if, at the time of electing, at least one of the following conditions exists: (a) a trustee resides or has its principal place of business in the new state; (b) a current beneficiary resides in the new state; (c) all or a significant portion of the trust property is located in the new state; or (d) an agent for management of all or a significant portion of the trust property is located in the new state.

9.02 **Certification of Incompetency.** Any person acting or named to act as an

officeholder or required to be legally competent to act (the “acting person”) shall be considered to have ceased or failed to act or to be legally incompetent to act (a) when a physician whom the acting person has consulted within the prior three years has certified as to that consultation and also as to the lack of the physical or mental capacity of the acting person to manage his or her financial affairs, or (b) when (1) the remover (treating the acting person as then deceased for purposes of determining the identity of the remover) certifies in a signed instrument delivered to the trustee and the acting person that the remover knows of no physician described in (a) above who has been authorized to disclose information regarding the physical or mental capacity of the acting person, (2) the acting person has not provided the remover with authority to receive such information within 10 days of the remover’s certification under (1) above, and (3) the remover further certifies in good faith after that 10 day period as to the lack of the physical or mental capacity of the acting person to manage his or her financial affairs, based on whatever evidence the remover then has regarding the acting person’s capacity.

9.03 **Beneficiary Survival.** In determining whether a person is living for purposes of exercising a power of appointment or being paid income or principal, or being allocated trust property on the division date, any person who survives the division date for less than 90 days shall be treated as dying before the division date. A person shall be deemed to be living at a designated point in time if such person then is *in utero* and is born alive.

9.04 **Descent and Adoption.** The words “child,” “children,” “descendant,” “descendants” and other terms indicative of descent with respect to an individual shall be interpreted in accordance with the following provisions of this paragraph:

(a) **Adoptions.** A person legally adopted before age 18 shall be considered a child of his or her adopting parent or parents. A person adopted after age 18 shall not be considered a child of his or her adopting parent or parents.

(b) **Assumptions Based on Marriage.** Except as otherwise provided in this Descent and Adoption paragraph:

(1) **Children Born During Marriage.** A person born to parents who were married to each other at any time during the child's gestation shall be considered the child of both parents unless a parent (A) proves that he or she did not contribute to that child's DNA and (B) states in his or her will or in a signed instrument delivered to the trustee that the child shall not be treated as his or her child.

(2) **Children Born Outside Marriage.** A person born to parents who were not married to each other at any time during the child's gestation shall be considered the child of (A) the woman who gave birth to the child, and (B) the man from whom the child inherited a portion of his or her DNA, but only if the man (i) marries the woman who gave birth to the child, (ii) states in his will or in a signed instrument delivered to the trustee that the child shall be treated as his child or (iii) functioned as a parent of the child. A man's payment of support for a child, without more, shall not be sufficient to consider him the child's parent pursuant to this subparagraph.

(c) **Advanced Reproductive Technology.** A person who is born as a result of advanced reproductive technology shall be considered the child of the parent or parents who requested the advanced reproductive technology with the intent of conceiving a child to raise as his or her own, whether or not the child inherited DNA from the requesting parent or parents.

(d) **Posthumous Gestation.** A person who inherits the DNA of a parent who was deceased before such person's gestation shall be considered the child of the deceased parent if (1) the deceased parent evidenced his or her intention in writing to permit his or her spouse to use such parent's genetic material to produce a child to raise as such spouse's own, and (2) that person is born within two years after the death of the deceased parent or within three years after the birth of another person who is considered the child of the deceased parent for purposes of this instrument.

(e) **Rules Regarding Ancestors.** An individual who is considered a child of his or her parent for purposes of this instrument also shall be a descendant of all ancestors of such parent.

(f) **Rules Regarding Termination of Rights.** Despite any other provision of this instrument, a child whose parent consented to the termination of his or her rights as a parent shall not be considered such parent's child, unless and until such rights are reinstated.

9.05 **Trust Creation.** A trust shall be considered as created as of the event causing the trust to become entitled to property rather than any later funding date. The trustee of a trust

under this instrument may distribute property that otherwise would pass to a different trust or to an estate (the “recipient trust”) directly to a beneficiary of the recipient trust to the extent so directed by the fiduciary of the recipient trust.

9.06 **Articles, Paragraphs and Subparagraphs.** This instrument consists of text divided into articles that are identified by number (for example Article 2), paragraphs that are identified by the article number followed by a period and the paragraph number expressed in two digits (for example 2.01) and subparagraphs that are identified by a letter or number in parentheses (for example (a) or (1)). A reference to a division of this instrument includes all of its subdivisions (for example a reference to a paragraph includes the paragraph and all of its subparagraphs).

9.07 **Titles.** Articles and paragraphs may be referred to by their titles, but the titles shall have no other legal effect.

9.08 **Gender and Number.** Where appropriate, words indicating gender are deemed to include the masculine, feminine and neuter, and words indicating number are deemed to include the singular and plural.

9.09 **Definitions.** Unless otherwise provided in this instrument:

(a) **Advanced Reproductive Technology.** “Advanced reproductive technology” means a medical procedure in which the fertilization of a human egg is assisted through artificial means using sperm and/or egg(s) from an identified or anonymous donor and includes, but is not limited to, intrauterine insemination, in vitro fertilization and surrogacy.

(b) **Charitable Organization.** “Charitable organization” means only an organization which at the time contemplated for an actual distribution to it is described in all of Code Sections 170(c), 2055(a) and 2522(a).

(c) **Current Beneficiaries.** “Current beneficiaries” of a trust means the person or persons to whom the income or principal of that trust may be paid at the time their identity is to be determined.

(d) **Designated Representative.** “Designated representative” of an individual

means the court-appointed guardian of the individual, or if none, the parent of the individual who is a descendant of Alki, if legally competent, or if none, any legally competent person designated in writing by the trustee, or if none, the trustee. A trustee acting as the designated representative of an individual shall consider only that individual's interests when exercising the powers of the designated representative.

(e) **Donor.** "Donor" means with respect to a trust under this instrument a person who at any time has transferred property by gift for federal gift tax purposes to that trust; except that a person's consent to treat a spouse's gift as made one-half by him or her shall not make that person a donor.

(f) **Executor.** "Executor" of an individual's probate estate means the executor, administrator, administrator with the will annexed, personal representative or other court appointed fiduciary of that individual's domiciliary probate estate (or if none, that individual's ancillary probate estate) from time to time acting.

(g) **GST Definitions.** "GST tax" means generation-skipping transfer tax. A trust is "GST exempt" if the trust will have an inclusion ratio of zero for federal GST tax purposes as of the date property is transferred to the trust with respect to the transferor of that property.

(h) **Marriage.** Two people have entered into a "marriage" and are "married" if they are living together, ignoring any absences for reasons other than marital discord, and (1) they are legally married in any jurisdiction or (2) the relationship is registered as a domestic partnership or has similar legal status under the laws of any jurisdiction, regardless of whether such marriage or registration would be recognized by other jurisdictions or by the United States government; provided, however, that an individual shall not be treated as married if such individual or his or her spouse has filed an action seeking as its relief a legal separation, an annulment, or a dissolution or termination of the marriage, domestic partnership or other similar relationship.

(i) **Officeholder.** "Officeholder" means any person who acts under this instrument as trustee, appointer, remover, ~~distribution adviser, investment adviser,~~ protector or in some other office.

(j) **Per Stirpes.** Whenever the trustee is directed to distribute trust property or to divide and allocate trust property "per stirpes" to or among the descendants of a person living at a particular time, the trust property to be distributed or allocated shall be divided into as many equal shares as are necessary to distribute or allocate (1) one share to each then living child of such person and, (2) to provide one share collectively for the then living descendants of each child of such person who then is deceased leaving one or more descendants then living. Each share so provided for the descendants of a deceased child of such person shall be distributed or divided and allocated in the same manner among such descendants.

(k) **Primary Beneficiary.** The person for whom a trust held under this instrument is named is the "primary beneficiary" of that trust.

(l) **Spouse.** “Spouse” of a person means the individual to whom the person is married at the time the individual’s identity is to be determined, or if that person is deceased at that time, the individual to whom such person was married at the person’s death, whether or not that individual has entered into another marriage.

(m) **Subordinate Party.** “Subordinate party” as to a person means any individual or entity that would be a related or subordinate party within the meaning of Code Section 672(c) assuming that the grantor for purposes of that section was that person.

(n) **Trust Company.** “Trust company” means a corporate trustee or other business organization authorized by law to act as trustee.

(o) **Value.** “Value” without further qualification means fair market value.

(p) **Will.** The “will” of an individual includes any codicils to that will.

\* \* \*

The undersigned has signed this instrument and created the above trusts by declaration and has accepted trusteeship, effective as of \_\_\_\_\_.

BRIDGEFORD TRUST COMPANY LLC

\_\_\_\_\_  
By:

Its:

This instrument was prepared by:  
Jonathan C. Lurie  
of the law firm of  
Venable LLP  
2049 Century Park East, Suite 2300  
Los Angeles, CA 90067-3125



## **SCHEDULE A**

Cash in the amount of \$100

Document comparison by Workshare Professional on Monday, June 25, 2018  
10:29:13 AM

Input:	
Document 1 ID	interwovenSite://LAWS1/FirmDocs/20672739/1
Description	#20672739v1<FirmDocs> - IRREVOC -The Harmonia Trust (SD) (Pot Trust) (SPE)
Document 2 ID	interwovenSite://LAWS1/FirmDocs/20773126/1
Description	#20773126v1<FirmDocs> - REVISED - Harmonia Trust
Rendering set	Venable

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	132
Deletions	196
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	328