

**ACCEPTANCE AS TRUSTEE AND APPOINTMENT OF CO-TRUSTEE**

WHEREAS, **ANTHONY C. MALARA** created a Revocable Living Trust known as the **ANTHONY C. MALARA REVOCABLE TRUST**, dated April 11, 2002, and amended and restated on March 21, 2005 with **ANTHONY C. MALARA** and **MARY D. MALARA**, as Co-Trustees; and

WHEREAS, **ANTHONY C. MALARA** passed away on August 24, 2006; and

WHEREAS, pursuant to Article VII Section 7.2 of said Trust, upon the death of **ANTHONY C. MALARA** then **MARY D. MALARA** shall serve as sole Trustee; and

WHEREAS, pursuant to Article VII Section 7.4, of said Trust, the successor Trustee may appoint an individual or corporate Co-Trustee to act with the individual Trustee; and

WHEREAS, **MARY D. MALARA**, hereby appoints **ANTHONY J. MALARA** (a/k/a A. J. Malara) to act with her as Co-Trustee of the **ANTHONY C. MALARA REVOCABLE TRUST**, dated April 11, 2002, as amended and restated on March 21, 2005; and

NOW, THEREFORE, the undersigned, **MARY D. MALARA**, hereby accepts the appointment as Trustee of the **ANTHONY C. MALARA REVOCABLE TRUST**, dated April 11, 2002, amended and restated on March 21, 2005, and agrees to serve as Trustee upon the terms and conditions therein set forth.

DATED: Sept. 17, 2006.

WITNESSES:

Linda Hartman  
Print Name: Linda Hartman

Bill Dealing  
Print Name: Bill Dealing

Mary D. Malara  
**MARY D. MALARA**, Trustee of the **ANTHONY C. MALARA REVOCABLE TRUST**, dated April 11, 2002, amended and restated on March 21, 2005

STATE OF NEW YORK  
COUNTY OF Jefferson

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared **MARY D. MALARA**, who is (Notary choose one) ☐ personally known to me, or ☒ who have produced Domestic as identification, and who executed the foregoing Acceptance and acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 17 day of Sept, 2006.

ELLEN PECK  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01PE4660758  
QUALIFIED IN JEFFERSON COUNTY  
MY COMMISSION EXPIRES MAY 31, 2010

JAM:jpp/6410-5/Acceptance of Suc Trustee

Ellen J. Peck  
Signature of Notary Public  
Printed Name: Ellen J. Peck  
My Commission expires:

**ACCEPTANCE OF CO-TRUSTEE**

WHEREAS, **ANTHONY C. MALARA** created a Revocable Living Trust known as the **ANTHONY C. MALARA REVOCABLE TRUST** dated the 11th day of April, 2002, as amended and restated on March 21, 2005 with **ANTHONY C. MALARA** and **MARY D. MALARA**, as Co-Trustees; and

WHEREAS, **ANTHONY C. MALARA** passed away on August 24, 2006; and

WHEREAS, pursuant to Article VII Section 7.2 of said Trust, upon the death of **ANTHONY C. MALARA** then **MARY D. MALARA** shall serve as sole Trustee.

WHEREAS, pursuant to Article VII Section 7.4, of said Trust, the successor Trustee may appoint an individual or corporate Co-Trustee to act with the individual Trustee.

WHEREAS, **MARY D. MALARA**, as Trustee, retains the right to appoint an individual or corporate Co-Trustee to act with her as Co-Trustee; and

WHEREAS, pursuant to such power, **MARY D. MALARA**, has appointed her son, **ANTHONY J. MALARA** (a/k/a A. J. MALARA), to serve as Co-Trustee of the said **ANTHONY C. MALARA REVOCABLE TRUST**; and

NOW, THEREFORE, the undersigned, **ANTHONY J. MALARA**, hereby accepts the appointment as Co-Trustee of the **ANTHONY C. MALARA REVOCABLE TRUST**, dated April 11, 2002, amended and restated on March 21, 2005, and agrees to serve as Co-Trustee with **MARY D. MALARA**, upon the terms and conditions therein set forth.

DATED: Sept. 13, 2006.

WITNESSES:

Kristi E. Bailey  
Print Name Kristi E. Bailey

Anthony J. Malara  
**ANTHONY J. MALARA**  
(a/k/a A. J. MALARA)

Print Name \_\_\_\_\_

STATE OF VIRGINIA  
COUNTY OF Alexandria  
city

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared **ANTHONY J. MALARA**, who is (Notary choose one) ☒ personally known to me, or ☐ who have produced \_\_\_\_\_ as identification, and who executed the foregoing Acceptance and acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 13 day of Sept., 2006.

Kristi E. Bailey  
Signature of Notary Public  
Printed Name: Kristi E. Bailey  
My Commission expires:

AGREEMENT

Between

ANTHONY C. MALARA

Grantor

and

ANTHONY C. MALARA and MARY D. MALARA

Co-Trustees

ANTHONY C. MALARA REVOCABLE TRUST  
U/A DATED THE 11TH DAY OF APRIL, 2002

AMENDED AND RESTATED AS OF THE 21<sup>st</sup> DAY OF March, 2005

DUNLAP & MORAN, P.A.

Sarasota, Florida

AMENDED AND RESTATED  
REVOCABLE TRUST AGREEMENT

THIS AMENDED AND RESTATED REVOCABLE TRUST AGREEMENT is made and entered into this 21<sup>st</sup> day of March, 2005, by and between ANTHONY C. MALARA (hereinafter referred to as "Grantor") and ANTHONY C. MALARA and MARY D. MALARA (hereinafter sometimes collectively referred to as "Trustee").

RECITALS

WHEREAS, on the 11th day of April, 2002, ANTHONY C. MALARA, as Settlor, created the ANTHONY C. MALARA REVOCABLE TRUST; and

WHEREAS, ANTHONY C. MALARA is the current Trustee of the ANTHONY C. MALARA REVOCABLE TRUST; and

WHEREAS, pursuant to the powers reserved in Section 6 of Article II of the said Trust, the Settlor (hereinafter referred to as "the Grantor") reserved the right to amend said Trust at any time; and

WHEREAS, pursuant to such powers, the Grantor, ANTHONY C. MALARA, wishes to add his spouse, MARY D. MALARA, as Co-Trustee; and

WHEREAS, also pursuant to such powers, the Grantor, ANTHONY C. MALARA, desires to amend and restate the ANTHONY C. MALARA REVOCABLE TRUST, in its entirety, by substituting the following in its place and stead:

ARTICLE I: NAME

This Trust, for convenience, shall be known as the ANTHONY C. MALARA REVOCABLE TRUST under Agreement dated the 11th day of April, 2002, and it shall be sufficient if referred to as such in any instrument of transfer, deed, assignment, bequest or devise.

ARTICLE II: POWER TO REVOKE/AMEND

2.1 The Grantor reserves the right to revoke this Agreement at any time and without anyone's consent and without assigning any reason therefor. Revocation shall be by notice in writing to the Trustee, specifying the date of revocation, which shall not be less than ten (10) days from the date of receipt of the notice by the Trustee. The Grantor further reserves the right to alter or amend this Agreement at any time, and in any manner without anyone's consent, except that this Agreement shall not be amended to increase the duties or responsibilities of the Trustee without the Trustee's consent thereto.

2.2 The rights herein reserved to the Grantor to revoke and amend this Agreement are declared to be personal rights exercisable by the Grantor alone and not by any other person, including an attorney-in-fact or court-appointed guardian. Notwithstanding the foregoing, an attorney-in-fact may withdraw funds from the Trust for the purpose of making gifts on behalf of the Grantor to the Grantor's lineal descendants so long as the Trustee deems the gifts to be in the best interests of the Grantor and all such gifts fall within the annual gift tax exclusion amount available to the Grantor so as not to create taxable gifts for federal gift tax purposes.

#### ARTICLE III: TRUST ESTATE

3.1 The Grantor hereby transfers and delivers to the Trustee the property listed on Schedule "A" annexed hereto, to have and to hold the same, and any cash, securities or other real and personal property which the Trustee may, pursuant to the provisions hereof, at any time hereafter hold or acquire, all of such property being hereinafter referred to as the "Trust estate", for the uses and purposes and upon the terms and conditions herein set forth.

3.2 So long as this Agreement remains unrevoked, the Grantor, or any other person with the consent of the Trustee, may add additional property to the Trust estate by transferring such property to the Trustee hereunder by deed, assignment or other instrument of transfer, bequest or devise, and, if so added, such property shall be subject to the terms and conditions herein contained, the same as if originally included hereunder.

#### ARTICLE IV: TRUST DISPOSITION

4.1 During the lifetime of the Grantor, the Trustee shall pay to or apply for the use and benefit of the Grantor such sums from the net income, if any, or principal of the Trust estate as the Grantor shall request in writing, or, in the absence of such request, at such times and in such amounts as the Trustee, in its sole and absolute discretion, shall deem necessary or appropriate for the health, support and maintenance of the Grantor, taking into consideration, to the extent the Trustee deems advisable, any other income or resources of the Grantor.

Notwithstanding the foregoing, during any time when the Grantor is incapacitated or incompetent, the Trustee shall have full power, in the Trustee's sole discretion, to use the net income and principal of the Trust for the support, maintenance, education and medical care of the Grantor, ANTHONY C. MALARA, the Grantor's spouse, MARY D. MALARA, and the Grantor's lineal descendants, in such amounts as the Trustee determines, in the

Trustee's sole discretion. The Trustee may, in the Trustee's sole discretion, accumulate any net income not so distributed and add such income to the principal of the Trust at such times as the Trustee determines.

4.2 Upon the death of the Grantor, the Trustee shall receive, collect, hold, manage, administer, pay over and distribute the entire Trust estate as follows, however, the Trustee shall not be required to perform the duties and responsibilities hereinafter set forth in the numerical order stated, but at such times and in such order as the Trustee shall determine, in the Trustee's sole and absolute discretion, to be to the best advantage of the Trust.

A. The Trustee shall receive distribution of the assets from the Grantor's estate under the terms of the Grantor's Last Will and Testament, as well as any other property payable to or receivable by the Trustee from any source.

B. The Trustee may, in the Trustee's sole and absolute discretion, lend money, with or without interest or security, to the estate of the Grantor or to the Trustee of any Trust created by the Grantor during the Grantor's lifetime. The Trustee hereof may purchase assets from the estate of the Grantor or from any Trust created by the Grantor during the Grantor's lifetime. Any such loans or purchases as herein authorized shall be at such times and in such amounts, and upon such terms and conditions, as may be agreed upon between the Trustee herein named and the Personal Representative of the estate of the Grantor or the Trustee of any Trust created by the Grantor during the Grantor's lifetime.

C. To the extent that the cash and readily marketable assets in the principal of the residue of the Grantor's estate are insufficient, the Trustee shall make the following payments from the principal of the Trust estate. The Trustee shall pay the expenses of the Grantor's last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against the Grantor's estate (excluding debts secured by real property or life insurance), and pre-residuary devises under the Grantor's Will if such Will contains a residuary devise to this Trust. The Trustee shall also pay the estate and inheritance taxes assessed by reason of the Grantor's death, including such taxes on property passing outside this Agreement, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which the Grantor may have a qualifying income interest for life or over which the Grantor may have a power of appointment shall be paid by the person holding or receiving that property. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. The

Trustee may make payment directly or to the Personal Representative of the Grantor's estate, as the Trustee deems advisable. The Grantor hereby waives all rights of apportionment or reimbursement for any payments made pursuant to this Article.

Assets or funds otherwise excludable from the Grantor's gross estate for federal estate tax purposes shall not be used to make the foregoing payments. The Trustee's selection of assets to be sold for that purpose or to satisfy any pecuniary gifts, and the tax effects thereof, shall not be subject to question by any beneficiary.

The Trustee shall make such elections and allocations under the tax laws as the Trustee deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by the personal representative of the Grantor's estate or by the Trustee.

The balance of the Trust estate, which remains after the foregoing payments have been made or provided for, shall be held and disposed of as hereinafter provided.

4.3 If the Grantor's spouse survives the Grantor, the Trustee, as of the Grantor's death, shall set aside out of the Trust estate, as a separate Trust for her benefit (undiminished to the extent possible by any estate or inheritance taxes or other charges), a fraction of the Trust property of which (i) the numerator is the smallest amount which, if allowed as a federal estate tax marital deduction, would result in the least possible federal estate tax payable by reason of the Grantor's death, and (ii) the denominator is the federal estate tax value of the assets included in the Grantor's gross estate which became (or the proceeds, investments or reinvestments of which became) Trust property. In determining the amount of the numerator, the Trustee shall consider the credit for state death taxes only to the extent those taxes are not thereby incurred or increased and shall assume that none of the Family Trust hereinafter established qualifies for a federal estate tax deduction.

For purposes of the preceding paragraph, the Trust property is all property in the Trust estate, including any property added thereto by the Grantor's Will, which was not paid pursuant to the preceding articles of this agreement and which would qualify for the federal estate tax marital deduction if it were distributed outright to the Grantor's spouse. For purposes of this Agreement, the Grantor's spouse shall be deemed to have survived the Grantor if the order of their deaths cannot be proved.

The Grantor's spouse shall have the right, by written notice, to require the Trustee to convert unproductive property in the Trust to productive property within a reasonable time.

The Trust shall be designated the "Marital Trust" and shall be held and disposed of as follows:

A. Commencing with the Grantor's death, the Trustee shall pay the income from the Marital Trust in convenient installments, at least quarterly, to the Grantor's spouse during her lifetime.

The Trustee may also pay to the Grantor's spouse such sums from principal as the Trustee deems necessary or advisable from time to time for her health, maintenance in reasonable comfort, and best interests, considering her income from all sources known to the Trustee.

In addition, the Grantor's spouse may withdraw any part or all of the principal at any time or times. The Trustee shall make payment without question, upon her written request. The right of withdrawal shall be a privilege, which may be exercised only voluntarily and shall not include an involuntary exercise.

B. Upon the death of the Grantor's spouse, the principal and any accrued and undistributed income of the Marital Trust shall be held in trust hereunder or distributed to or in trust for such appointee or appointees (including the estate of the Grantor's spouse), with such powers and in such manner and proportions as she may appoint by her Will, making specific reference to this power of appointment. The Grantor intends that the Marital Trust shall qualify for the federal estate tax marital deduction in the Grantor's estate.

C. Upon the death of the Grantor's spouse, any part of the principal and accrued and undistributed income of the Marital Trust not effectively appointed shall be added to or used to fund the Family Trust, except that, unless the Grantor's spouse directs otherwise by her Will or Revocable Trust, the Trustee shall first pay from the principal of the Marital Trust, directly or to the Personal Representative of the Grantor's spouse's estate as the Trustee deems advisable, the amount by which the estate and inheritance taxes assessed by reason of the death of the Grantor's spouse shall be increased as a result of the inclusion of the Marital Trust in her estate for such tax purposes. The Trustee's selection of assets to be sold to pay that amount, and the tax effects thereof, shall not be subject to question by any beneficiary.

4.4 The Trustee, as of the Grantor's death, shall set aside the balance of the Trust estate as a separate Trust. The Trust



shall be designated the "Family Trust" and shall be held and disposed of as follows:

A. If the Grantor's spouse survives the Grantor, then, commencing with the Grantor's death, the Trustee shall pay the income from the Family Trust in convenient installments, at least quarterly, to her during her lifetime.

The Trustee may also pay to the Grantor's spouse such sums from principal as the Trustee deems necessary or advisable from time to time for her health and maintenance in reasonable comfort, considering the income of the Grantor's spouse from all sources known to the Trustee, but shall make no invasion of the Family Trust for the Grantor's spouse so long as any readily marketable assets remain in the Marital Trust.

A disclaimer by the Grantor's spouse of any part or all of the Marital Trust shall not preclude her from receiving benefits from the disclaimed property in the Family Trust.

B. Upon the death of the Grantor's spouse, if she survives the Grantor, the Family Trust (excluding any amounts added thereto from the Marital Trust) shall be held in trust hereunder or distributed to or in trust for such one or more of the Grantor's descendants, with such powers and in such manner and proportions as the Grantor's spouse may appoint by her Will, making specific reference to this power of appointment.

Upon the death of the Grantor's spouse, any part of the Family Trust not effectively appointed, including any amounts added thereto from the Marital Trust (or, upon the Grantor's death if the Grantor's spouse does not survive the Grantor, the Family Trust) shall be divided into equal shares to create one share for each then-living child of the Grantor, to-wit: ELIZABETH HAMILTON, MARGARET WILMETH, and A. J. MALARA, and one share for the then-living descendants, collectively, of each deceased child of the Grantor.

Each share created for the descendants of a deceased child shall be distributed, per stirpes, to those descendants, subject to postponement of possession as hereinafter provided. Each share created for a living child shall be distributed to such child, outright and free of trust.

Each such share shall be held, managed, administered and distributed as a separate Trust share by the Trustee; however, the Trustee shall not be required to make a physical separation of the Trust estate but may, in its sole and absolute discretion, hold the same as an undivided fund for purposes of management and investment.

4.5 With respect to any Trust share to be distributed to a descendant who has not reached the age of thirty-five (35) years, such share shall immediately vest in such descendant, but the Trustee shall retain possession of the share as a separate Trust, pursuant to the following terms and conditions:

A. Until complete distribution of a Trust share to, or the prior death of, a descendant, the Trustee shall pay to or apply for the use and benefit of each descendant, all of the net income from their Trust share, in convenient installments, made not less often than quarter-annually; except that, while a descendant is under the age of twenty-one (21) years, the Trustee may pay to or apply for the use and benefit of the descendant, so much or all of the income from his or her share, as the Trustee deems necessary or advisable from time to time, for his or her health, support, maintenance in reasonable comfort, and education (including post-graduate), adding to principal any income not so paid.

B. In addition, until complete distribution of a Trust share to, or the prior death of, a descendant, the Trustee may distribute to or apply for the use and benefit of a descendant, so much of the principal of such descendant's Trust share, as the Trustee, in its sole and absolute discretion, may determine to be necessary or advisable from time to time, for such descendant's health, support, maintenance in reasonable comfort, and education (including post-graduate) after first considering the income available to the descendant from all sources known to the Trustee.

C. At such time as a descendant for whom a separate Trust share has been created hereunder shall attain the age of twenty-five (25) years, the Trustee shall evaluate the principal thereof, and shall distribute to such descendant, upon written request of said descendant, one-third (1/3) of the principal of such separate Trust share as then held.

D. At such time as a descendant for whom a separate Trust share has been created hereunder shall attain the age of thirty (30) years, the Trustee shall evaluate the principal thereof, and shall distribute to such descendant, upon written request of said descendant, one-half (1/2) of the principal of such separate Trust share as then held.

E. At such time as a descendant for whom a separate Trust share has been created hereunder shall attain the age of thirty-five (35) years, the Trustee shall distribute to such descendant, upon written request of said descendant, the remaining assets of said separate Trust share, outright and free of trust, or to the estate of the descendant if such descendant should die prior to attaining the age of thirty-five (35) years.

4.6 Notwithstanding anything stated herein to the contrary, if the Grantor's spouse files an elective share against the estate of the Grantor, then, in that event, the Grantor's spouse shall be deemed to have predeceased the Grantor, for all purposes under the terms of this Trust Agreement.

4.7 In the event that upon the death of the last beneficiary of the Trust created hereunder there are no then-living beneficiaries to whom the Trust estate is then distributable, then, in that event, the entire remaining principal then held in trust, together with any accrued and undistributed income in respect thereof, shall be paid over, conveyed and distributed as follows: one-half (1/2) to the then-living heirs at law of the Grantor, ANTHONY C. MALARA, under the intestacy laws of the State of Florida in force on the date of such beneficiary's death, and one-half (1/2) to the then-living heirs at law of the Grantor's spouse, MARY D. MALARA, under the intestacy laws of the State of Florida in force on the date of such beneficiary's death.

#### ARTICLE V: ADMINISTRATIVE PROVISIONS

The following provisions shall apply to the Trust estate and to each Trust under this Agreement:

5.1 If income or discretionary amounts of principal become payable to a minor or to a person under legal disability or to a person not adjudicated incapacitated but who, by reason of illness or mental or physical disability, is in the opinion of the Trustee unable properly to manage his or her affairs, then that income or principal shall be paid or expended only in such of the following ways as the Trustee deems best: (a) directly to the beneficiary or his or her attorney in fact; (b) to the legally appointed guardian of the beneficiary; (c) to a custodian for the beneficiary under a Uniform Transfers or Gifts to Minors Act; (d) by the Trustee directly for the benefit of the beneficiary; (e) to an adult relative or friend in reimbursement for amounts properly advanced for the benefit of the beneficiary.

5.2 The interests of beneficiaries in principal or income shall not be subject to the claims of any creditor, any spouse for alimony or support, or others, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered. This provision shall not limit the exercise of any power of appointment.

The rights of beneficiaries to withdraw Trust property are personal and may not be exercised by a guardian, attorney in fact or others.

5.3 Income received after the last income payment date and

undistributed at the termination of any estate or interest shall, together with any accrued income, be paid by the Trustee as income to the persons entitled to the next successive interest in the proportions in which they take that interest, except that upon the Grantor's death the undistributed income shall be added to principal.

5.4 For convenience of administration or investment, the Trustee may hold separate Trusts as a common fund, dividing the income proportionately among them, assign undivided interests to the separate Trusts, and make joint investments of the funds belonging to them. The Trustee may consolidate any separate Trust with any other Trust with similar provisions for the same beneficiary or beneficiaries.

5.5 The Trustee shall hold, manage, care for and protect the Trust property and shall have the following powers and, except to the extent inconsistent herewith, those now or hereafter conferred by law:

A. To retain any property (including stock of any corporate Trustee hereunder or a parent or affiliate company) originally constituting the Trust or subsequently added thereto, and to invest and reinvest the Trust property in bonds, stocks, mortgages, notes, bank deposits, options, futures, limited partnership interests, shares of registered investment companies and real estate investment trusts, or other property of any kind, real or personal, domestic or foreign; the Trustee may retain or make any investment without liability, even though it is not of a type, quality, marketability or diversification considered proper for Trust investments;

B. To cause any property, real or personal, belonging to the Trust to be held or registered in the Trustee's name or in the name of a nominee or in such other form as the Trustee deems best without disclosing the Trust relationship;

C. To vote in person or by general or limited proxy, or refrain from voting, any corporate securities for any purpose, except that any security as to which the Trustee's possession of voting discretion would subject the issuing company or the Trustee to any law, rule or regulation adversely affecting either the company or the Trustee's ability to retain or vote company securities, shall be voted as directed by the Grantor, if living, otherwise by the beneficiaries then entitled to receive or have the benefit of the income from the Trust; to exercise or sell any subscription or conversion rights; to consent to and join in or oppose any voting trusts, reorganizations, consolidations, mergers, foreclosures and liquidations and in connection therewith to deposit securities and accept and hold other property received therefor;

D. To lease Trust property for any period of time though commencing in the future or extending beyond the term of the Trust;

E. To borrow money from any lender, extend or renew any existing indebtedness and mortgage or pledge any property in the Trust;

F. To sell at public or private sale, contract to sell, convey, exchange, transfer and otherwise deal with the Trust property and any reinvestments thereof, and to sell covered call options, from time to time for such price and upon such terms as the Trustee sees fit;

G. To employ agents, attorneys and proxies and to delegate to them such powers as the Trustee considers desirable;

H. To compromise, contest, prosecute or abandon claims in favor of or against the Trust;

I. To distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets, and no adjustment shall be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes; to value the Trust property and to sell any part or all thereof in order to make allocation or distribution; no action taken by the Trustee pursuant to this paragraph shall be subject to question by any beneficiary;

J. To deal with, purchase assets from, or make loans to, the fiduciary of the Grantor's estate or any other estate or trust in which any beneficiary under this Agreement has an interest, though a Trustee hereunder is the fiduciary, and to retain any assets or loans so acquired, although not of a type, quality, marketability or diversification considered proper for Trust investments; to deal with a corporate Trustee hereunder individually or a parent or affiliate company;

K. To determine in cases not covered by statute the allocation of receipts and disbursements between income and principal, except that (i) if the Trust is beneficiary or owner of an individual account in any employee benefit plan or individual retirement plan, income earned after death in the account shall be income of the Trust, and if the Trustee is required to pay all Trust income to a beneficiary, the Trustee shall collect and pay the income of the account to the beneficiary at least quarterly (and to the extent that all income cannot be collected from the account, the deficiency shall be paid from the principal of the Trust), and (ii) reserves for

depreciation shall be established out of income only to the extent that the Trustee determines that readily marketable assets in the principal of the Trust will be insufficient for any renovation, major repair, improvement or replacement of Trust property which the Trustee deems advisable;

L. To elect, pursuant to the terms of any employee benefit plan, individual retirement plan or insurance contract, the mode of distribution of the proceeds thereof, and no adjustment shall be made in the interests of the beneficiaries to compensate for the effect of the election;

M. To inspect and monitor businesses and real property (whether held directly or through a partnership, corporation, trust or other entity) for environmental conditions or possible violations of environmental laws; to remediate environmentally-damaged property or to take steps to prevent environmental damage in the future, even if no action by public or private parties is currently pending or threatened; to abandon or refuse to accept property which may have environmental damage; the Trustee may expend Trust property to do the foregoing, and no action or failure to act by the Trustee pursuant to this paragraph shall be subject to question by any beneficiary; and

N. To perform other acts necessary or appropriate for the proper administration of the Trust, execute and deliver necessary instruments and give full receipts and discharges.

5.6 Notwithstanding the foregoing, while the Grantor is living and not unable to manage his affairs:

A. No sale or investment shall be made without the Grantor's written approval, unless the Grantor fails to indicate his approval or disapproval of any proposed sale or investment within ten (10) days after being requested to do so in writing.

B. The Grantor shall have the power to direct the retention or sale of any Trust assets and the purchase of property with any principal cash in the Trust. If the Grantor directs the retention or purchase of an asset, the Trustee shall have investment, voting, and management responsibility for that asset unless the Grantor directs otherwise.

The Grantor may at any time or times, with or without right of revocation, by a writing delivered to the Trustee delegate to any other person or to the Trustee or relinquish any or all of the powers reserved to the Grantor hereunder.

The statement of the Trustee that it is acting according to this section shall fully protect all persons dealing with the Trustee. The Trustee shall have no responsibility for any loss

that may result from acting in accordance with this section.

5.7 A Trustee (other than the Grantor) shall render an account of Trust receipts and disbursements and a statement of assets at least annually to each adult beneficiary then entitled to receive or have the benefit of the income from the Trust. The Trustee shall be reimbursed for all reasonable expenses incurred in the management and protection of the Trust, and any corporate Trustee shall receive compensation for its services in accordance with its schedule of fees in effect from time to time. A Trustee's regular compensation shall be charged against income during the Grantor's lifetime and thereafter half against income and half against principal, except that the Trustee shall have full discretion at any time or times to charge a larger portion or all against income.

5.8 A corporate Trustee in its discretion may terminate and distribute any Trust hereunder if the corporate Trustee determines that the costs of continuance thereof will substantially impair accomplishment of the purposes of the Trust. The Trustee shall terminate and forthwith distribute any Trust created hereby, or by exercise of a power of appointment hereunder, and still held twenty-one (21) years after the death of the last to die of the Grantor and the beneficiaries in being at the Grantor's death. Distribution under this section shall be made to the persons then entitled to receive or have the benefit of the income from the Trust in the proportions in which they are entitled thereto, or if their interests are indefinite, then in equal shares.

5.9 In disposing of any Trust property subject to a power to appoint by will, the Trustee may rely upon an instrument admitted to probate in any jurisdiction as the will of the donee or may assume that the power was not exercised if, within three (3) months after the death of the donee, the Trustee has no actual notice of a will which exercises the power. The Trustee may rely on any document or other evidence in making payment under this Agreement and shall not be liable for any payment made in good faith before it receives actual notice of a changed situation.

5.10 With respect to any policy of life insurance under which the death benefits are made payable to the Trustee:

A. The owner or owners thereof reserve all available benefits, privileges, payments, dividends, surrender values, options and elections, including the right at any time or times to change the beneficiary, to pledge or assign the policy or its proceeds as collateral security for any loan which the owner or owners may obtain from any lender, including a Trustee hereunder individually or a parent or affiliate company, and to withdraw

the policy if deposited with the Trustee, without any duty on the Trustee to see to its return.

B. The Trustee need not pay or see to the payment of premiums or assessments on the policy.

C. Upon the death of the insured thereunder the Trustee shall take such action as the Trustee deems best to collect the policy proceeds, paying the expense thereof from the Trust estate, but the Trustee need not enter into or maintain any litigation to enforce payment on the policy until indemnified to the Trustee's satisfaction against all expenses and liabilities to which the Trustee might thereby be subjected. The Trustee may release the insurance company from its liability under the policy and make any compromise, which the Trustee deems proper.

D. The insurance company shall not take notice of the provisions of this Agreement or see to the application of the policy proceeds, and the Trustee's receipt to the insurance company shall be a complete release for any payment made and shall bind every beneficiary under this Agreement.

E. The Trust shall be operative with respect to the proceeds of the policy at the death of the insured thereunder, after deducting all charges by way of advances, loans or otherwise in favor of the owner or owners or any other person, for which the Trustee shall not seek reimbursement.

5.11 If, for any reason, the Trustee is unwilling or unable to act as to any property, such person or qualified corporation as the Trustee shall from time to time designate in writing shall act as special trustee as to that property. Any person or corporation acting as special trustee may resign at any time by written notice to the Trustee. Each special trustee shall have the powers granted to the Trustee by this Agreement, to be exercised only with the approval of the Trustee, to which the net income and the proceeds from sale of any part or all of the property shall be remitted to be administered under this Agreement.

5.12 To enable Trusts to be either completely exempt or nonexempt from generation-skipping tax, or for any other reason, the Trustee may divide a Trust into two or more separate Trusts and may hold an addition to a Trust as a separate Trust. The rights of beneficiaries shall be determined as if the Trusts were aggregated, but the Trustee may pay principal to beneficiaries and taxing authorities disproportionately from the Trusts. The Trustee shall not be liable for deciding in its discretion to exercise or not exercise these powers.

Upon division or distribution of an exempt Trust and a



nonexempt Trust held hereunder, the Trustee in its discretion may allocate property from the exempt Trust first to a share from which a generation-skipping transfer is more likely to occur.

If the Trustee considers that any distribution from a Trust hereunder other than pursuant to a power to withdraw or appoint is a taxable distribution subject to a generation-skipping tax payable by the distributee, the Trustee shall augment the distribution by an amount which the Trustee estimates to be sufficient to pay the tax and shall charge the same against the Trust to which the tax relates.

If the Trustee considers that any termination of an interest in Trust property hereunder is a taxable termination subject to a generation-skipping tax, the Trustee shall pay the tax from the portion of the Trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

Notwithstanding anything stated herein to the contrary, if any portion of any Trust established hereunder would otherwise incur a federal generation-skipping tax, due to the absence of any testamentary power of appointment granted under this instrument, then, in addition to any other power of appointment, which is granted to any beneficiary of any Trust under this instrument, said beneficiary may appoint that portion to the creditors of their estate.

If any beneficiary is required to survive the Grantor or another person to receive a distribution, and if the beneficiary does not survive the Grantor or that other person by ninety (90) days, the beneficiary will be treated as if he or she died before the Grantor or that other person.

5.13 With respect to any IRA or other retirement plan payable to the Trust, the Trustee shall withdraw from such plan, in each year, and distribute to the Grantor's spouse, the greater of the income of such plan for such year, or the minimum required distribution for such plan for such year, under Section 401(a)(9) [computed based on the life expectancy of the Grantor's spouse].

5.14 The laws of Florida shall govern the validity and interpretation of the provisions of this Agreement.

#### ARTICLE VI: ENVIRONMENTAL LIABILITY

6.1 With respect to real property held in the Trust hereunder, the Grantor reserves exclusively unto the Trust hereunder and to the Grantor all liability for any costs, fees, penalties, judgments or other payments or awards of any kind because of environmental contamination or pollution that may have arisen or arise due to uses of the property prior to acceptance of

the property by the Trustee.

6.2 With respect to environmental contamination or pollution of real properties held in the Trust, the Trustee shall have the power to obtain, when necessary and prudent, the services of environmental engineers or other appropriate contractors or specialists for purposes of assessment and compliance with any and all laws or court orders regulating environmental conditions and to remedy or ameliorate any such conditions which adversely affect the Trust. The Trustee shall also have the power to use and expend either or both principal and income to pay all costs or fees necessary to procure such services and/or accomplish remediation, including any liabilities, fines or penalties incurred by the Trustee personally, but not any such charges which are attributable to its own gross negligence or willful misconduct, and to apportion all of such charges among bequests and interests of beneficiaries in such manner as the Trustee deems prudent and equitable.

#### ARTICLE VII: THE TRUSTEE

7.1 Any Trustee may resign at any time as Trustee of the Trust created hereunder, without cause, upon delivery of written notice specifying the effective date of such resignation to a majority in interest of the then-current income beneficiaries of the Trust.

7.2 In the event that either the Grantor, ANTHONY C. MALARA, or the Grantor's spouse, MARY D. MALARA, shall be unwilling or unable to serve or continue to serve as Trustee, then, in that event, the other shall serve alone as sole Trustee. In the event that both the Grantor, ANTHONY C. MALARA, and the Grantor's spouse, MARY D. MALARA, shall be unwilling or unable to serve or continue to serve as Trustee, then, in that event, the first alternate Successor Trustee shall be the Grantor's son, A. J. MALARA. In the event said A. J. MALARA shall be unwilling or unable to serve or continue to serve as first alternate Successor Trustee, then, in that event, the second alternate Successor Trustee shall be the Grantor's daughter, MARGARET WILMETH. In the event said MARGARET WILMETH shall be unwilling or unable to serve or continue to serve as second alternate Successor Trustee, then, in that event, the third alternate Successor Trustee shall be the Grantor's daughter, ELIZABETH HAMILTON.

Notwithstanding anything stated herein to the contrary, if a Trust is created under the terms of this Agreement for the benefit of a descendant of the Grantor, then, in that event, the Trustee of that particular Trust shall be such descendant's parent, who is also a lineal descendant of the Grantor. In the event said parent (who is also a lineal descendant of the Grantor) is not then

living or is unwilling or unable to serve or continue to serve as such Trustee, then, in that event, the alternate Trustee of such descendant's Trust shall be A. J. MALARA. In the event said A. J. MALARA shall be unwilling or unable to serve or continue to serve as such Trustee, then, in that event, the second alternate Trustee of such descendant's Trust shall be MARGARET WILMETH. In the event said MARGARET WILMETH shall be unwilling or unable to serve or continue to serve as such alternate Trustee, then, in that event, the third alternate Trustee of such descendant's Trust shall be ELIZABETH HAMILTON.

7.3 If, after application of Section 7.2, an alternate Trustee needs to be appointed, such alternate Trustee may be nominated and appointed by a majority in interest of the then-current income beneficiaries of the Trust, provided no beneficiary may serve as a Trustee hereunder.

7.4 Any individual Trustee or Trustees serving may, at any time, appoint an individual or corporate Co-Trustee to act with the individual Trustee or Trustees, and the Trustee or Trustees may remove any Co-Trustee so appointed. Except as otherwise provided in Section 7.2 above, any such appointed Trustee shall continue to serve as a Trustee until the earlier of: (1) the removal of such appointed Trustee by the Trustee who made the appointment, (2) the resignation by any appointed Trustee, or (3) the date on which the Trustee who made the appointment ceases to serve as Trustee of this Trust.

7.5 The beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the trust shall have the right to require the resignation of any corporate Trustee, without incurring any distribution, revocation, termination or other similar fee (excluding actual costs incurred), upon delivering to the terminated corporate Trustee: (1) A written request for such resignation from the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the trust; and (2) A written acceptance from a new corporate Trustee. This removal power may be exercised without cause, and the removed Trustee shall not be entitled to question the removal. However, the corporate Trustee cannot be changed pursuant to this paragraph until the beneficiary provides the corporate Trustee with an opinion of counsel that the power to remove and replace the corporate Trustee does not constitute a taxable power under Chapter 11 of the Internal Revenue Code of 1986 as it presently exists or is subsequently amended.

7.6 Every Successor Trustee shall have the title, power and discretion given the Trustee without any act of conveyance or transfer. Whenever there are Co-Trustees serving hereunder, either Co-Trustee acting alone can exercise any power given to the

Trustee, except during any time where the Grantor's spouse, MARY D. MALARA, and at least one other person or entity are serving as Co-Trustees of the Family Trust. Notwithstanding anything stated herein to the contrary, in the event that there is more than one Trustee serving as Trustee of the Family Trust and one of the Co-Trustees is MARY D. MALARA, then said MARY D. MALARA shall not have any power, authority or discretion to invade the principal of such Trust; but, rather, such decision shall remain with the other Co-Trustee(s), in its sole and absolute discretion.

7.7 In establishing the incapacity of an individual Trustee to serve or continue to serve hereunder, the Order by a Court of competent jurisdiction declaring such individual to be disabled, incapacitated, or incompetent, or the sworn written affidavit signed by such individual's primary physician, stating that such physician has examined the individual and that in such physician's opinion, such individual is unable to manage this Trust, shall be sufficient to establish such incapacity, and third parties are thereby protected in relying upon same without any further act or notice. The Trustee shall not be considered to be on notice of any such disability, incapacity or incompetency unless and until the Trustee has received a copy of such Court Order or written affidavit.

7.8 The guardian or conservator of the estate of a beneficiary under legal disability, or the parents or surviving parent of a minor beneficiary for whose estate no guardian has been appointed may act for such beneficiary in making any appointment and giving any direction under this Trust.

7.9 The Grantor hereby waives compliance by any Trustee serving hereunder with any provision of the Florida Statutes, including Chapter 737, requiring qualification, administration or accounting by such Trustee to any court of law.

7.10 The Grantor hereby directs that no bond be required of any Trustee serving hereunder.

#### ARTICLE VIII: MISCELLANEOUS

8.1 Unless otherwise clearly indicated, words in the singular or plural shall include the plural and singular respectively, where they would so apply. Words in the feminine, masculine or neuter gender shall include the feminine, masculine or neuter gender where applicable.

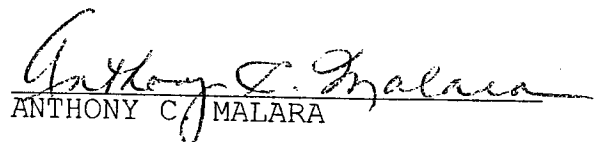
8.2 Wherever "Trustee" is used herein the same shall be deemed to include any singular Trustee, successor Trustee, or Co-Trustees.

8.3 The Grantor shall have the right to reside upon any real property placed in this Trust as his permanent residence during his life, it being the intent of this provision to grant to Grantor the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes, such that said beneficial interest and possessory right constitute in all respects equitable title to real estate as that term is used in Section 6, Article VII, of the Constitution of the State of Florida. Notwithstanding anything contained in this Trust Agreement to the contrary, the interest of Grantor in any real property upon which Grantor resides pursuant to the provisions of this Trust Agreement shall be deemed to be an interest in real property, and not personalty.

8.4 The Grantor, ANTHONY C. MALARA, is married to his spouse, MARY D. MALARA. The Grantor, ANTHONY C. MALARA, and the Grantor's spouse, MARY D. MALARA, have three children from their marriage, namely: ELIZABETH HAMILTON, MARGARET WILMETH, and A. J. MALARA.

Unless otherwise clearly indicated, the terms "child" or "children" as used in this Trust shall mean ELIZABETH HAMILTON, MARGARET WILMETH, and A. J. MALARA, and the terms "issue" or "lineal descendants" shall mean the lawful blood descendants of all degrees of the individual designated; provided, however, that (i) adopted children of the Grantor and of the Grantor's lineal descendants (whether or not adopted) adopted before the age of eighteen (18) years shall be considered and treated in all respects as children or lineal descendants hereunder, and (ii) any child in gestation, later born alive, shall for purposes of this Trust be considered as a child in being.

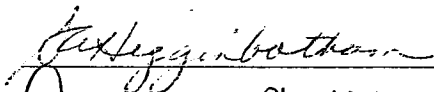
IN WITNESS WHEREOF, this Amended and Restated Trust Agreement has been executed by the Grantor herein, this 21st day of March, 2005.

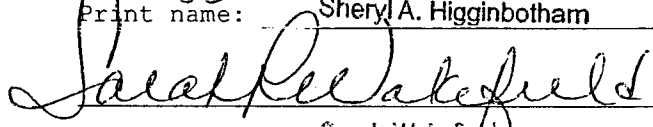
  
ANTHONY C. MALARA

"GRANTOR"

Signed, Sealed, Published and Declared by ANTHONY C. MALARA, the Grantor, as and for his Amended and Restated Trust, in the presence of us and each of us, who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witness on the date first written above.

WITNESSES:

  
Print name: Sheryl A. Higginbotham

  
Print name: Sarah Wakefield

STATE OF FLORIDA  
COUNTY OF SARASOTA

I, ANTHONY C. MALARA, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my Amended and Restated Trust.

  
ANTHONY C. MALARA

We, Sheryl A. Higginbotham and Sarah Wakefield, have been sworn by the officer signing below, and declare to that officer on our oaths that the Grantor declared the instrument to be his Amended and Restated Trust and signed it in our presence, and that we each signed the instrument as a witness in the presence of the Grantor and of each other.

*Sheryl A. Higginbotham*  
Witness

Sheryl A. Higginbotham

[printed name]

*Sarah Wakefield*  
Witness

Sarah Wakefield

[printed name]

Acknowledged and subscribed before me by the Grantor, ANTHONY C. MALARA, ☐ who is personally known to me or ☒ who has produced FL Driver's License as identification; and sworn to and subscribed before me by the witnesses, Sheryl A. Higginbotham, ☒ who is personally known to me or ☐ who has produced \_\_\_\_\_ as identification; and Sarah Wakefield, ☒ who is personally known to me or ☐ who has produced \_\_\_\_\_ as identification; and subscribed by me in the presence of the Grantor and the subscribing witnesses, all on the 21st day of March, 2005.

*Rebecca J. Proctor*  
Notary Public

Printed Name/My Commission Expires:



Rebecca J. Proctor  
MY COMMISSION # DD099832 EXPIRES  
March 13, 2006  
BONDED THRU TROY FAIN INSURANCE, INC.

ACCEPTANCE BY CO-TRUSTEES

The undersigned hereby accept the Trust imposed by the foregoing Trust Agreement and agree to serve as Co-Trustees upon the terms and conditions therein set forth.

WITNESSES: '

Sheryl A. Higginbotham  
Sarah Wakefield  
As to ANTHONY C. MALARA

Anthony C. Malara  
ANTHONY C. MALARA

"CO-TRUSTEE"

Sheryl A. Higginbotham  
Sarah Wakefield  
As to MARY D. MALARA

Mary D. Malara  
MARY D. MALARA

"CO-TRUSTEE"

STATE OF FLORIDA  
COUNTY OF SARASOTA

Acknowledged and subscribed before me by the Co-Trustees, ANTHONY C. MALARA and MARY D. MALARA, ☐ who are personally known to me or ☒ who have produced FL Drivers License as identification; and sworn to and subscribed before me by the witnesses, Sheryl A. Higginbotham, ☒ who is personally known to me or ☐ who has produced Sarah Wakefield as identification; and ☒ who is personally known to me or ☐ who has produced \_\_\_\_\_ as identification; and subscribed by me in the presence of the Co-Trustees and the subscribing witnesses, all on the 21st day of March, 2005.

Rebecca J. Proctor  
Notary Public

Printed Name/My Commission Expires:

THIS INSTRUMENT PREPARED BY:  
JOHN A. MORAN, Esquire  
Florida Bar No. 718335  
DUNLAP & MORAN, P.A.  
Post Office Box 3948  
Sarasota, FL 34230-3948  
Telephone: 941-366-0115  
JAM:rr\6410-3 Malara-H A&R TRUST



Rebecca J. Proctor  
MY COMMISSION # DD099832 EXPIRES  
March 13, 2006  
BONDED THRU TROY FAIN INSURANCE, INC.