

# **EXHIBIT 5**

**TRUST AGREEMENT FOR THE  
DIANA C. SHEPARD  
REVOCABLE TRUST**

**TRUST AGREEMENT FOR THE  
DIANA C. SHEPARD REVOCABLE TRUST**

THIS TRUST AGREEMENT (the "Agreement") is made between DIANA C. SHEPARD as Grantor and DIANA C. SHEPARD as Trustee. By executing this Agreement, Grantor establishes the Diana C. Shepard Revocable Trust and Trustee accepts this Trust and assumes the duties and responsibilities of Trustee under this Agreement.

**ARTICLE I**

**PURPOSE OF TRUST**

This Trust is established for the benefit of Grantor and Grantor's spouse during Grantor's lifetime and for the benefit of Grantor's spouse and Grantor's children thereafter. The name of Grantor's spouse is R. GREGORY SHEPARD and the names and birthdates of Grantor's children are:

Andrea Marie Shepard	November 27, 1972
Matthew Gregory Shepard	November 23, 1974
Shauna Sue Shepard	November 22, 1976
Mark Blakely Shepard	July 22, 1986

References in this Agreement to Grantor's children shall mean only the children listed above.

ARTICLE II

TRUST ESTATE

Grantor hereby transfers to Trustee the property listed on Exhibit "A", which is attached hereto and incorporated herein by reference, as initial principal of the Trust estate. Grantor or any other person shall have the right at any time to add to the principal of the Trust estate by deed, will or otherwise. Trustee shall hold, administer and distribute any property transferred to the Trust estate according to the terms and conditions of this Agreement. It is specifically anticipated that any additional property owned by Grantor at the time of Grantor's death which is not currently subject to this Agreement will be received by Trustee as a beneficiary of Grantor's will. Any life insurance policy listed on Exhibit "A" has been or will be made payable to Trustee as primary or contingent beneficiary. The Trust estate shall include the death benefits and the rights as beneficiary of death benefits under employee benefit plans and under all life insurance policies which name Trustee or this Trust as the primary or contingent beneficiary thereof.

ARTICLE III

AMENDMENT OR REVOCATION

3.1 Right to Amend. Grantor retains the right to amend or revoke this Agreement and the Trust, in whole or in part, at any time, by an instrument in writing dated and signed by Grantor or Grantor's authorized representative and delivered during Grantor's lifetime to Trustee. If the Trust is revoked in its entirety, the revocation shall take effect upon the delivery of the required writing to Trustee and Trustee shall transfer and deliver all property

then in the Trust estate to Grantor, or to such other person(s) as Grantor may direct in the instrument of revocation.

3.2 Irrevocability. The Trust and this Agreement shall become irrevocable and unamendable if Grantor is determined to be incompetent or if Grantor relinquishes all right to amend or revoke the Trust by written notice to Trustee. Following the death of Grantor, this Agreement shall be irrevocable and unamendable with respect to the Family Trust.

#### ARTICLE IV

#### TRUST DURING LIFETIME OF GRANTOR

During Grantor's lifetime, Trustee shall pay to Grantor and Grantor's spouse, or to such other person(s) as Grantor may direct in writing, the income from the Trust estate in convenient installments and such part or all of the principal of the Trust estate as Grantor shall direct in writing. In the absence of such direction or if Grantor is determined to be incompetent as provided in Section 9.5, Trustee shall pay such amounts of income or principal, to such person(s) as in Trustee's discretion is necessary for the health, education, support and maintenance of Grantor, Grantor's spouse, and any person who, in Trustee's judgment, is dependent on Grantor. If Grantor and Grantor's spouse become divorced, all rights of Grantor's spouse in any trust assets (other than for allocation of assets pursuant to a decree of divorce entered by a court of competent jurisdiction) or under this Agreement shall terminate with the entry of the decree of divorce.

ARTICLE V

TRUST AFTER DEATH OF GRANTOR

5.1 Collection of Life Insurance Proceeds. Upon Grantor's death or upon maturity of any policy maturing prior to Grantor's death, if Trustee is named beneficiary and upon receiving possession of any policy insuring the life of Grantor, Trustee shall use reasonable efforts to collect all sums payable on such policy, which sums shall become part of the Trust estate upon receipt. Trustee may compromise, arbitrate or otherwise adjust claims upon any such policy. The insurer shall not be required to see to the application of the proceeds of any policy. Trustee shall not be responsible for any acts or omissions of Grantor in connection with or relating to any policy. Trustee shall not be required to institute or maintain any legal action to collect any insurance proceeds or to defend any action relating to any policy unless Trustee is indemnified by the Trust against costs and expenses, including attorney's fees.

5.2 Discretion to Pay Debts, Expenses and Taxes. After Grantor's death, Trustee may cooperate and consult with the Personal Representative of Grantor's estate, and thereafter Trustee shall have the discretion, but not the legally binding obligation, to pay from the Trust estate all or any part of Grantor's debts, the expenses of Grantor's last illness, burial and the administration of Grantor's estate, and the taxes arising at or because of Grantor's death (including death taxes imposed upon properties not part of the Trust estate), together with any interest and penalties thereon. However, no part of such payment shall be distributed from or charged against the properties allocated to the Marital Trust established in Section 5.3 or any source that is exempt from federal estate taxes, to the extent other property is available in the Trust estate. Trustee shall have the discretion, but not the legally binding obligation, to

purchase assets from Grantor's estate at their fair market value, as determined by Trustee, or to advance funds with or without interest and with or without security to the Personal Representative of Grantor's estate.

5.3 Basic Division and Trust Names. If Grantor's spouse survives Grantor, the remainder of the Trust estate not used in the discretionary payment of debts, expenses and taxes as allowed in Section 5.2 shall be used to create two trusts--the Marital Trust and the Family Trust. The Marital Trust shall be known as the Diana C. Shepard Marital Trust and the Family Trust shall be known as the Diana C. Shepard Family Trust. If Grantor's spouse does not survive Grantor (or is not married to Grantor on the date of Grantor's death) the remainder of the Trust estate not used in the discretionary payment of debts, expenses and taxes shall be allocated to the Family Trust.

5.4 Allocation of Property to Marital Trust. If Grantor's spouse survives Grantor, Trustee shall allocate to the Marital Trust all of the trust estate not specifically allocable or payable to the Family Trust, reduced by the following item(s), if any:

- (a) An amount equal to the maximum amount protected by the unified credit amount permitted for federal estate tax purposes and available to Grantor's estate, which shall be held, administered and distributed pursuant to the provisions of Section 5.6 as part of the Family Trust; and
- (b) Any portion of the property passing to the Marital Trust in which Grantor's spouse (or a representative, as permitted by the law of the State of Utah) disclaims their interest. Such disclaimer shall be made within a period of nine (9) months following the date of Grantor's death, shall be in writing and may be made with respect to all or any portion of the property passing to the Marital Trust hereunder. Any property with respect to which a disclaimer is made as provided herein, shall be held, administered and distributed pursuant to the provisions of Section 5.6 as if Grantor's spouse had predeceased Grantor.

If there is any question as to the order of death of Grantor and Grantor's spouse, and if Grantor's estate would otherwise be subject to Federal estate tax, then for purposes of this paragraph, Grantor's spouse shall be deemed to have survived Grantor and there shall be allocated to the Marital Trust an amount which will cause Grantor's estate and the estate of Grantor's spouse to be subject to the Federal estate tax at the same rate. In determining the allocation to the Marital Trust, Trustee shall comply with the following:

(c) Trustee shall use the values which are finally determined for use in computing the federal estate tax on Grantor's estate.

(d) The allocation to the Marital Trust may be made in cash or in kind, or partly in cash and partly in kind. Because it is anticipated that the resources of the Marital Trust will most likely be expended before the resources of the Family Trust, Trustee shall attempt to allocate to the Marital Trust the most liquid and saleable assets of Grantor's estate, taking into consideration the requirements of the remaining provisions of this Section 5.4. Such allocations shall be consistent with equitable principles requiring impartiality between beneficiaries so that any allocation of assets, including cash, shall be fairly representative of appreciation or depreciation in the value of all property available for allocation.

(e) If, in Trustee's opinion, there are sufficient liquid assets to otherwise fund the Marital and Family Trusts and meet the anticipated future needs of the beneficiaries of such Trusts, Trustee shall allocate Grantor's interest in the home used by Grantor as a principal residence to the Marital Trust if such home is an asset of the Trust.

(f) Except to the extent such property is insufficient, payment of all death taxes and expenses, together with interest and penalties thereon, if any, shall be made from property other than that allocated to the Marital Trust.

It is Grantor's intention that, subject to the limitations mentioned herein, Trustee shall allocate to the Marital Trust only such property, or the proceeds of such property, as will qualify for the federal estate tax marital deduction, and no other property.



5.5 Marital Trust. The property set aside for and allocated to the Marital Trust shall constitute the trust estate of the Marital Trust and shall be held, administered and distributed for the benefit of Grantor's spouse as follows:

(a) Distribution of Income. Trustee shall pay to Grantor's spouse the income of the Marital Trust estate on a monthly basis.

(b) Discretionary Invasion of Principal. Trustee shall pay to Grantor's spouse so much of the principal of the Marital Trust estate as Trustee, in Trustee's sole discretion, deems necessary for the proper health, education, support and maintenance of Grantor's spouse, having in mind the standard of living to which Grantor's spouse has become accustomed prior to Grantor's death. In addition, Trustee shall have discretion to apply the principal of the Marital Trust estate to discharge any mortgage on the residence used by Grantor's spouse provided that the residence is an asset of the Marital Trust or is owned by Grantor's spouse, and to loan or advance funds with or without interest and with or without security for such purpose and to acquire a residence for the benefit of Grantor's spouse.

(c) Lifetime Power of Appointment. From time to time during the lifetime of Grantor's spouse, Trustee shall distribute to Grantor's spouse or any one or more of Grantor's issue such amount or amounts from the principal of the Marital Trust estate as Grantor's spouse shall direct or appoint by an instrument in writing delivered to Trustee during such spouse's lifetime and making specific reference to the power granted herein. Any appointment by Grantor's spouse may be of such estates and interests and upon such terms, trusts, conditions, powers and limitations as Grantor's spouse shall determine. Any appointment may exclude one or more of the enumerated classes of beneficiaries and any one or more or all of the beneficiaries of any enumerated class.

(d) General Testamentary Power of Appointment. Upon the death of Grantor's spouse, Trustee shall distribute the Marital Trust estate to such person(s) as Grantor's spouse may appoint by a provision in such spouse's will which meets the requirements of Section 9.7. Grantor's spouse may exercise this power to appoint by will in favor of such spouse's estate, creditors, the creditors of that estate, a charity or any other person(s).

(e) Distribution at the Death of Grantor's Spouse. In the absence of appointments by Grantor's spouse which completely dispose of the Marital Trust estate, Trustee shall distribute the Marital Trust at the death of Grantor's spouse as follows:

(1) Expenses of Spouse's Estate. Trustee shall have the discretion (but not the obligation) to utilize Marital Trust assets to pay taxes (including penalties and interest) arising at or because of the death of Grantor's spouse, administration expenses of the estate of Grantor's spouse and expenses of the last illness and burial of Grantor's spouse.

(2) Distribution of Remainder. All remaining property of the Marital Trust estate shall be distributed to the Trustee of the Family Trust.

(f) Non-productive Assets. Grantor's spouse shall have the absolute right, at any time, to direct Trustee to convert any non-income producing assets of the Marital Trust to income producing assets.

5.6 Family Trust. The property not set aside for and allocated to the Marital Trust, plus any property referred to in Section 5.5(e)(2), shall constitute the trust estate of the Family Trust. Trustee shall hold, administer and distribute the Family Trust estate as follows:

(a) Distributions for Spouse. During the lifetime of Grantor's spouse, Trustee shall pay to Grantor's spouse so much (up to all) of the income and principal of the Family Trust estate as Trustee deems necessary for the health, education, support and maintenance of Grantor's spouse after taking into consideration the circumstances, the size of the Family Trust estate, the probable future needs of Grantor's spouse, and, to the extent Trustee deems advisable, any other income, resources and sources of support of Grantor's spouse known to Trustee. In determining the amount paid to Grantor's spouse under this Section 5.6(a), Trustee shall take into account the amounts required by Grantor's spouse for the health, education, support and maintenance of the children of Grantor who are dependent on Grantor's spouse. Trustee shall also have discretion to apply the income and principal of the Family Trust estate to discharge any mortgage on the principal residence used by Grantor's spouse provided that the residence is an asset of either the Marital Trust or the Family Trust or is owned by Grantor's spouse, or to loan or advance funds with or without interest and with or without security for such purpose.

(b) Limitations. In exercising discretion to make distributions to Grantor's spouse pursuant to Section 5.6(a), Trustee shall consider the size of the Marital Trust and, where reasonably possible, and without selling or mortgaging the principal residence of Grantor's spouse, shall make distributions from and diminish the trust estate of the Marital Trust before resorting to the trust estate of the Family Trust.

(c) Provision for Issue of Grantor. For so long as Grantor's spouse lives, Trustee shall pay to the issue of Grantor such amounts from the income and principal of the Family Trust (not reasonably required for Grantor's spouse under subparagraph (a) above), as Trustee may from time to time consider necessary or advisable for the proper health, education, support and maintenance of any issue of Grantor. Any payments made under this paragraph need not be equal with respect to the issue of Grantor, whether as individuals, couples or as separate groups. In determining the need for such payments or application to or on behalf of any of the issue of Grantor, the Trustee shall take into consideration to the extent the Trustee considers advisable, any other resources or sources of support of the particular issue of Grantor outside this Trust and known to the Trustee.

(d) Power of Appointment. Notwithstanding any of the provisions of Section 5.6(a), at the death of Grantor's spouse, Trustee shall distribute to or for the benefit of any one or more of the issue of Grantor such amount or amounts from the principal of the Family Trust estate as Grantor's spouse shall appoint by a provision in such spouse's Will which meets the requirements of Section 9.7. Any appointment may exclude one or more of the enumerated classes of beneficiaries and any one or more or all of the beneficiaries of any enumerated class.

(e) Creation of Separate Trusts. If, or to the extent that, Grantor's spouse does not exercise the special power of appointment granted to Grantor's spouse pursuant to Section 5.6(d), then after the death of Grantor's spouse, or after Grantor's death if Grantor's spouse predeceases Grantor, Trustee shall divide the Trust estate into as many equal shares as the sum of (1) the number of Grantor's then living children, plus (2) the number of Grantor's deceased children who have then living issue, and Trustee shall hold, administer and distribute such shares as Separate Trusts for the living children and living issue of deceased children of Grantor pursuant to the following provisions of this Section 5.6. Each Separate Trust shall be identified by the name of the child of Grantor for whom (or for whose issue) such Separate Trust was created.

(f) Sprinkling Trust. After the creation of the Separate Trusts as provided above, Trustee shall distribute one percent (1%) of the Separate Trust assets each month to or for the benefit of the Separate Trust beneficiary or beneficiaries (for a Separate Trust created for the benefit of the living issue of a deceased child of Grantor). In addition, Trustee may distribute to a Separate Trust beneficiary or beneficiaries so much (up to all) of the income and principal of the Separate Trust estate as Trustee deems necessary for the health, education, support and maintenance of the Separate Trust beneficiary or beneficiaries, after taking into consideration the circumstances, the size of the Separate Trust estate, the probable future needs of the beneficiary or beneficiaries, and, to the extent Trustee deems advisable, any other income or resources of the Separate Trust

beneficiary or beneficiaries known to Trustee. To the extent possible, Trustee shall utilize only the income from the Separate Trust estate in making such payments, it being Grantor's desire that the principal of the Separate Trust estate remain intact unless the special or emergency needs of a child of Grantor dictate otherwise. It is Grantor's intention that each of Grantor's children shall be afforded the opportunity to serve a full-time mission for the Church of Jesus Christ of Latter-day Saints, if such child so desires, and the opportunity to obtain a complete education, including undergraduate, post graduate and extended professional training. Trustee shall exercise Trustee's discretion in utilizing and distributing the income and principal of the Separate Trust estate in such a manner as to accomplish these special intentions of Grantor. However, in regard to distributions for education, Trustee shall make such distributions to a child of Grantor only if, in Trustee's judgment, the child has a sincere and bona fide intention of pursuing an education. Prior to the end of each year, if Trustee, in Trustee's sole discretion, determines that a distribution of all or any portion of the undistributed income of a Separate Trust would be in the best interest of the beneficiary(ies) of such Separate Trust, Trustee shall distribute such part or all of the undistributed income to the beneficiary(ies) of such Separate Trust.

(g) Distribution of Principal to Children. When a child for whom a Separate Trust was created as provided in Section 5.6(e) attains the age of 30 years, Trustee shall distribute 10% of the principal of such Separate Trust to such child. Trustee shall distribute an additional 20% of the remaining principal balance when such child attains age 35, an additional 30% when such child attains age 40, and Trustee shall distribute the remaining principal balance of such Separate Trust to such child when such child attains the age of 45 years.

(h) Death of a Child before Final Distribution. If a child for whom a Separate Trust was created dies before receiving all of the principal from such child's Separate Trust, his Separate Trust shall terminate and Trustee shall distribute to any one or more of such child's then living issue and the then living spouse of such child, such amount or amounts from the principal of his Separate Trust as such child shall appoint by will, as provided in Section 9.7. Any such appointment shall be of such estates and interests and upon such terms, trusts, conditions, powers and limitations as the child of Grantor shall determine. Any appointment may exclude any one or more of the enumerated classes of beneficiaries and any one or more or all of the beneficiaries of any enumerated class. To the extent that the Separate Trust principal has not been distributed by the exercise of the above-mentioned power, the Separate Trust principal shall be distributed to his issue according to the provisions of Section 5.6(i), or, if he has no surviving issue, to the issue of Grantor by representation in accordance with the provisions of this Agreement.



(i) Distribution to Issue of Deceased Child. Each Separate Trust established for the benefit of the living issue of a deceased child of Grantor, shall be administered in accordance with the following provisions:

(1) Benefits. Trustee shall have discretion to distribute to the beneficiaries of each such trust such part or all of the income and principal of such trust estate in such amounts, manner and proportions as Trustee deems necessary for the health, education, support and maintenance of each beneficiary after having considered other income and resources of each beneficiary of such trust.

(2) Distribution. The Separate Trust shall terminate when all of the children of such deceased child of Grantor who are living at the time the Trust becomes irrevocable attain the age of 21 years or sooner die. Trustee shall thereupon distribute the Separate Trust estate by representation to the living issue of such deceased child of Grantor. If all of the issue of a deceased child of Grantor die prior to final distribution, such Separate Trust shall thereupon terminate and Trustee shall distribute the Separate Trust estate by representation to the issue of Grantor according to the provisions of this Agreement. However, if there are no issue of Grantor then living, such trust estate shall be distributed according to the provisions of Section 5.6(h). Nothing in this Section 5.6(i) shall be construed to empower Trustee to continue a Separate Trust for a period of time which would cause such trust to be in violation of any applicable rule against perpetuities, rule limiting suspension of the power of alienation, or other similar rule.

(j) Postponed Distribution. Notwithstanding any other provision of this Agreement, except the perpetuities clause contained in Section 9.3, if any beneficiary of a Separate Trust is incompetent at the time such beneficiary is entitled to any distribution of principal, Trustee may delay distribution of his Separate Trust for so long as Trustee deems necessary for the benefit of said incompetent beneficiary. During such period of delayed distribution, Trustee shall hold and administer such Separate Trust estate and shall make such distributions of income and principal as are necessary for the proper health, education, support and maintenance of such incompetent beneficiary. A determination of incompetency shall be made as provided in Section 9.5.

(k) Remarriage of Grantor's Spouse. During any period of time following Grantor's death that Grantor's spouse maintains a marital relationship, if Grantor has then living issue, all benefits in terms of income and principal to which Grantor's spouse would otherwise be entitled under the provisions of the Family Trust in this Section 5.6 shall cease. It is Grantor's intention that the

Family Trust shall be utilized for the benefit of Grantor's issue under such circumstances. Following the death of Grantor's spouse, the assets of the Family Trust estate shall be distributed as provided in this Section 5.6.

## ARTICLE VI

### PROVISIONS PRIMARILY CONCERNED WITH

#### INCOME AND ACCOUNTING

6.1 Definition of "Income". "Income" shall be determined on a cash basis and shall mean income as determined for federal income tax purposes, excluding any gain or loss from the sale of assets of the Trust estate.

6.2 Income Payment and Accumulation. Except as otherwise provided in this Agreement, the income of each trust shall be paid to the beneficiary(ies) thereof as required by the terms of such trust at convenient times fixed by Trustee, but at least as often as quarter-annually. However, all or any part of the income of any trust except the Marital Trust may be accumulated and added to the principal of such trust as Trustee deems necessary or desirable in view of the needs and circumstances of such beneficiary(ies). Accumulated income shall become principal.

6.3 Ascertaining Income and Principal. Any gain from the sale of assets of the trust estate shall be added to the trust estate as principal. The income of all trusts funded at Grantor's death shall commence at Grantor's death. Trustee, in Trustee's sole discretion as to the best interests of the income beneficiaries, shall be guided (without being legally bound) in the ascertainment of income and principal and in the apportionment of receipts and expenses

between income beneficiaries and remaindermen by the provisions of the laws of the State of Utah except as follows:

(a) Stock Dividends. Any dividend or other distribution payable in the stock of the corporation declaring or distributing the same shall be income.

(b) Accrued Income. Income accrued on property originally placed in or subsequently added to any trust, at the time of its transfer to Trustee, and dividends on shares of stock originally placed in or subsequently added to any trust, which are declared prior to the transfer of such shares to Trustee but payable to stockholders of record determined as of a date which is on or subsequent to the date of such transfer, shall be income of the trust. Upon the termination of any estate hereunder, income accrued but not yet due and payable on property, subject to any charges or advances against it, shall belong to the next estate.

(c) Amortization of Securities Premium. Trustee shall have the power and discretion to amortize, in whole or in part, by sinking funds or otherwise, the premium on securities received or purchased at premium, or to treat as income the gross return thereon. Without limiting Trustee's discretion, it is Grantor's desire that such premiums be amortized only when Trustee shall determine that the failure to amortize would result in a substantial impairment of the principal of any trust created pursuant to this Agreement.

Trustee's decision as to determinations of income and principal shall be binding and conclusive on all persons.

6.4 To Whom Payments May Be Made. Payments of income or principal may be made directly to a beneficiary or may be applied for the use of the beneficiary, or in the case of a beneficiary under age 21, shall be made to the beneficiary's parent, guardian, or conservator, or to any person age 21 or over with whom the beneficiary resides, for the use of the beneficiary, without bond. Trustee shall not be bound to see to the application or use of any payments so made.

6.5 Distributions in Cash or Kind. The distribution of the whole or any part of the principal or the income of any trust may be made in cash or in kind or partly in cash and partly in kind as Trustee deems advisable, and Trustee may make such distributions without regard to the income tax basis of specific property allocated to any beneficiary or trust.

6.6 Invasion of Principal. Trustee is empowered to invade, in part or whole, the principal of any trust for the benefit of the beneficiary of such trust, as Trustee, in Trustee's sole discretion, deems to be in the best interests of such trust beneficiary in view of his needs, circumstances, ability to manage his affairs and the needs of other beneficiaries of such trust. Trustee may utilize this power of invasion in such a manner as to terminate the trust of any beneficiary if Trustee deems such termination advisable. Furthermore, if at any time any Separate Trust has a principal of less than \$5,000 in value, Trustee shall deliver the entire principal to the Separate Trust beneficiary if he is not incompetent and is at least age 21 and thus terminate such trust. If the principal of a Separate Trust is less than \$5,000 and the Separate Trust beneficiary is not at least age 21 or is incompetent, then Trustee may, in Trustee's discretion, deliver the Separate Trust principal to the legal custodian of such Separate Trust beneficiary, to the parent of such beneficiary or to a person at least age 21 with whom such beneficiary resides, and thus terminate such trust. However, it is Grantor's desire that Trustee refrain from exercising this power of invasion unless the Separate Trust beneficiary has special or emergency needs relating to his health, education, support and maintenance which in Trustee's sole discretion, cannot be covered by the income from such Separate Trust.



6.7 Spendthrift Clause. No principal or income payable or to become payable under any trust created by this Agreement shall be subject to anticipation or assignment by any beneficiary thereof or to attachment by or to the interference or control of any creditor of any such beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of a beneficiary prior to its actual receipt by the beneficiary.

6.8 Accounting. Trustee shall keep and maintain exact and proper books and records reflecting the receipts and disbursements and the income and principal of each trust. Such books and records shall be maintained consistent with generally recognized principles of trust accounting and shall be open at reasonable times for inspection by each beneficiary, by his personal representative, if any, and by any duly authorized agent or attorney of such beneficiary or personal representative. Each year, while a party other than Grantor is acting as Trustee, annual balance sheets and income statements shall be furnished to Grantor and, after Grantor's death, to each income beneficiary or his personal representative, if any. All accountings shall be deemed accepted and approved unless written objection is received by Trustee within 30 days after the accounting is furnished to the beneficiaries. Approval of accountings by Grantor or by income beneficiaries shall be binding and conclusive on remaindermen and all other persons. It is Grantor's intention that Trustee shall be free of judicial accountings and supervision of the trusts created in this Agreement.

6.9 Commingling Separate Trusts. Trustee is authorized to commingle the properties of the Separate Trusts created by this Agreement allotting to each Separate Trust an undivided interest in the commingled funds, which undivided interest always shall be equal to that trust's proportionate contribution (as adjusted from time to time as a result of accumulations of

income, payments of principal, additions to principal, etc.) to the commingled funds. It is Grantor's intention that each trust beneficiary shall have a separate and distinct trust, and the provisions of this Section 6.9 are merely designed to permit Trustee to avoid a division in-kind to accomplish that intention.

## ARTICLE VII

### POWERS OF TRUSTEE

7.1 General Powers. It is Grantor's intention that Trustee shall have such power and discretion with respect to the administration and management of the trusts created pursuant to this Agreement as Grantor has of Grantor's own property. Trustee shall have the power and discretion listed in the Uniform Trustees' Powers Provisions of the Utah Uniform Probate Code, which provisions are incorporated herein by this reference, except as such power and discretion are inconsistent with the provisions of this Agreement. Such power and discretion shall include, by way of illustration and not of limitation and in addition to any inherent, implied, or statutory powers not inconsistent with the other provisions of this Agreement, the following powers:

(a) Investments. In making investments, the trust funds should be invested with the intent of obtaining a reasonable rate of return while preserving capital. Following the death of Grantor, Trustee shall invest not less than 80% of the Trust assets in income or growth and income oriented mutual funds rated 4 or 5 star by the Morning Star Rating Service, or the equivalent. The balance of the Trust assets shall only be invested in U.S. Treasury bills, U.S. Treasury notes and/or certificates of deposit insured by the United States Government or in life insurance on the life of Grantor, a beneficiary or anyone in whom a beneficiary has an insurable interest.

- (b) Occupy Real Property. To permit any person having an interest in the income of the Trust to occupy any real property forming part of such Trust upon such terms as Trustee deems advisable, whether rent-free or in consideration of payment of taxes, insurance, maintenance and ordinary repairs, or otherwise, and, in all such events, Trustee shall be released from all responsibility to the remaindermen for maintenance of value of such property.
- (c) Taxes and Assessments. To pay taxes and assessments incurred in the collection, care, administration and protection of the Trust estate of any trust; to establish reserves for taxes and assessments which Trustee determines are likely to be imposed; and to make distributions of income or principal specifically subject to a retained interest in the Trust and Trustee requiring repayment by the beneficiary of such distribution to the Trust or Trustee for any such tax or assessment which the Trust or Trustee are required to pay subsequent to such distribution.
- (d) Maintain Reserves. Trustee shall have the power, out of rents, interest, dividends, profits, or other income, to set up and maintain reserves for taxes, assessments, insurance premiums, repairs, improvements, depreciation, obsolescence, general maintenance of buildings or other property, or for any other purpose.
- (e) Purchase of Insurance. Trustee may, in its sole discretion, purchase insurance to protect or conserve the assets of any Trust. Such power shall include the power to purchase property insurance to protect the interest of the Trust in Trust assets and life and/or health insurance on any beneficiary of any trust.
- (f) Housekeeper. Trustee may, in its sole discretion, use the assets of the Family Trust to hire a full or part-time housekeeper to assist in caring for the home and/or children of Grantor.
- (g) Remodeling Expenses. In Trustee's sole discretion, to use assets of the Family Trust to pay for the cost of remodeling Grantor's home.
- (h) Postpone Distribution. To postpone, for a reasonable time, such part or all of the final distribution of any Trust as is reasonable in Trustee's opinion for or as a result of tax audits, lawsuits, disputed claims, or similar matters remaining unresolved.
- (i) Expenses and Trustee's Compensation. To incur and pay all reasonable costs, charges and expenses in the administration of any Trust created pursuant to this Agreement including, but not limited to Trustee's compensation and reasonable fees for accounting, legal or other services rendered to the extent

incurred by Trustee or any agent of Trustee in the course of performance of duties under this Agreement.

(j) Merger of Trusts. Notwithstanding anything herein to the contrary, including, without limitation, the provisions of Section 5.6 hereof, to merge or consolidate any trust created hereunder together with any other trust or trusts benefitting the same beneficiaries and having substantially the same dispositive provisions. Notwithstanding any such merger or consolidation, any assets transferred pursuant to this Section 7.1(m) shall not be disbursed in any manner which would cause such amounts to be included in the estate of either Grantor or Grantor's spouse for federal estate tax purposes where such assets would not have been so included if they had been retained in the Marital Trust or Family Trust. Following such a merger or consolidation, Trustee shall render an accounting of the trust assets to the beneficiaries and shall have no further responsibilities under this Trust.

(k) Additional Powers. To perform all other acts necessary or appropriate to effectuate the purposes of the trusts created pursuant to this Agreement and to carry out the powers mentioned above.

7.2 Exercise of Powers. Trustee shall not exercise the foregoing powers, or any other powers granted to Trustee in this Agreement, in such a manner as would cause the Marital Trust or any assets of such trust to become disqualified for the federal estate tax marital deduction. In exercising the foregoing powers, Trustee shall act in a manner which is reasonable and equitable in view of the interests of income beneficiaries and remaindermen and in the manner in which men of ordinary prudence, diligence, discretion and judgment would act in the management of their own affairs.

7.3 Continuation of Powers. The powers and discretions granted to Trustee by law or by this Agreement shall continue undiminished after the termination of all trusts created pursuant to this Agreement until final distributions have been made and all reports, returns, accountings and other documents have been filed and accepted.

**ARTICLE VIII**

**TRUSTEE**

8.1 No Bond or Other Security. No bond or other security shall be required of any trustee unless requested by a majority of the income beneficiaries.

8.2 Compensation. Except as otherwise provided in this Agreement, Trustee shall be entitled to receive compensation not in excess of that which would be charged by corporate trustees in the same general area for similar services to trusts of a similar nature and size. Such compensation may be collected annually by Trustee and may be paid in a year subsequent to the year in which it is earned. Such compensation shall be shown in Trustee's annual accounting. If Trustee is a family member, compensation to Trustee shall not exceed \$1,000 per year.

8.3 Liabilities. Except as provided below, an error of judgment or an exercise of discretion or taking or failing to take any action shall never be grounds for liability of any individual serving as Trustee. Any individual serving as Trustee shall be liable only for willful fraud. Any corporate Trustee shall be liable for its acts and omissions in accordance with the laws of the State of Utah.

8.4 Resignation or Removal of Trustee. Any Trustee may resign at any time by giving 30 days written notice to Grantor or, after Grantor's death, to each of the then current income beneficiaries of any trust created pursuant to this Agreement. Any trustee may be removed without cause by Grantor during Grantor's lifetime. After Grantor's death, a trustee may be removed for reasonable cause (as defined in Section 8.6) by a majority of the current income beneficiaries of the trusts created pursuant to this Agreement. Such removal shall be

effective upon receipt by such Trustee of written notice of the removal. Trustee shall be notified promptly of such removal. Any Trustee shall cease to serve upon a determination of incompetency, as provided in Section 9.5. Notice required to be given to any beneficiary who is a minor shall be given to such beneficiary's parent(s) or guardian(s). Decisions to be made by any beneficiary who is a minor shall be made by such beneficiary's parent(s) or guardian(s).

8.5 Successor Trustee. Upon notice of resignation or the death, incompetency or other inability to serve of Grantor as Trustee, Matthew Gregory Shepard shall serve as Trustee. Upon notice of resignation or the bankruptcy, death, incompetency or other inability to serve of Matthew Gregory Shepard (or of any successor serving as Trustee), Shauna Sue Shepard shall serve as Trustee. Upon notice of resignation or the bankruptcy, death, incompetency or other inability to serve of Shauna Sue Shepard (or of any successor serving as Trustee), Andrea Marie Shepard shall serve as Trustee. If there is no successor Trustee designated in this Section 8.5 who is available to serve, then the income beneficiaries shall have the power to appoint a third party as successor Trustee. If no successor Trustee is appointed within thirty days after the date of the resignation, bankruptcy, death, incompetency or other inability to serve of a Trustee, then a Court of competent jurisdiction may appoint a successor corporate Trustee upon application of any interested party. In no event shall any successor Trustee be Grantor's spouse.

8.6 Definition of "Reasonable Cause". The term "reasonable cause" includes, but is not limited to:



- (a) Inability of Trustee and the beneficiaries to agree on reasonable compensation for Trustee;
- (b) Unreasonably poor investment performance by Trustee;
- (c) The removal of all current income beneficiaries from the state wherein a corporate Trustee is licensed to conduct business as a corporation Trustee;
- (d) Unreasonable inattention to the reasonable needs of the beneficiaries;
- (e) Unreasonable lack of communication between Trustee and the beneficiaries;
- (f) Unreasonably inaccurate or unclear transaction statements or statements of account;
- (g) Unreasonable conflicts between Trustee and the beneficiaries;
- (h) Merger, acquisition or deteriorating financial condition of a corporate Trustee; or
- (i) Unreasonably high turnover of account officers (of a corporate Trustee) assigned to any trust hereunder.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS

9.1 Thirty-Day Survivorship. In determining beneficiaries of any trust created pursuant to this Agreement, and except as may otherwise be provided in Section 5.4, a beneficiary shall be deemed to have survived Grantor, an insured, any other person, a point in time, or an event, as the case may be, only if such survivorship is for at least 30 days. This clause shall not apply to any case where its application would cause any provision of this Agreement, which would otherwise be valid, to be void under any applicable rule against perpetuities, rule limiting suspension of the power of alienation, or other similar rule.

9.2 Governing Law. This Trust has been created in the State of Utah and its validity, construction and all rights, duties, privileges and powers and immunities created by it shall be governed by the laws of the State of Utah, regardless of Grantor's place of residence or domicile.

9.3 Perpetuities. Notwithstanding anything contained herein to the contrary, no trust created by this Agreement shall continue for more than 21 years after the death of the last survivor of the class consisting of Grantor, Grantor's spouse and the issue of Grantor who are living at the date this Agreement becomes irrevocable. Any trust created by this Agreement which has not terminated at or prior to the expiration of such period, shall terminate and all of the properties of such trust shall be distributed as though the time for distribution had occurred.

9.4 Discretion of Trustee. In all instances in this Agreement where Trustee is permitted or directed to exercise discretion, judgment, decision-making authority or opinion, such action on the part of Trustee shall be done solely by Trustee, in Trustee's sole and absolute discretion, without being subject to control or limitations from any other person(s), unless the context of this Agreement expressly provides otherwise, and such action by Trustee shall be binding and conclusive on all persons.

9.5 Determination of Incompetency. "Incompetency" shall not mean legally adjudicated incompetency, but in the case of Grantor shall mean either the mental or physical inability to attend to one's financial affairs in the manner of an ordinary prudent person. In the case of Trustee, incompetency shall mean either the mental or physical inability to fulfill the obligations of Trustee in the manner of an ordinary prudent person. Except as otherwise



indicated, such determination shall be made by two physicians regularly attending the person in question, at least one of whom is board certified in the specialty most closely associated with the alleged disability. Such physicians shall certify that the person in question has become physically or mentally incapacitated, regardless of cause and regardless of whether or not there has been any adjudication of incompetence, mental illness or need for a committee, conservator, guardian or other personal representative. If Grantor is found to be incompetent, Trustee shall give written notification thereof to Grantor and to Grantor's spouse or guardian (if any), and the children of Grantor who are age 21 or over. During any such period of Grantor's incompetency, Trustee shall render accountings and shall give any other notices required to be given by Trustee under the terms of this Agreement, to Grantor's spouse or guardian (if any), and the children of Grantor who are age 21 or over. If Trustee is found to be incompetent, notice shall be given to such Trustee and to the successor Trustee named in Section 8.5.

9.6 Ascertainable Standard. The terms "health, education, support and maintenance" shall be construed in such a manner as to be an ascertainable standard for federal estate and gift tax purposes, such that the exercise, release or lapse of a power which is limited by this standard will not be taxable for federal estate and gift tax purposes. In this regard, "support" and "maintenance" are synonymous, shall not be limited to the bare necessities of life and shall be the same as "support and maintenance in reasonable comfort." "Education" shall include (but not be limited to) college and professional education. "Health" shall include (but not be limited to) medical, dental, hospital and nursing expenses and expenses of invalidism.

9.7 Exercise of Testamentary Power. No testamentary power of appointment granted herein shall be deemed to have been exercised effectively unless the will of the donee of such power makes specific reference to the power and to the Section of this Agreement in which such power is granted. If Trustee has no actual or written knowledge of the existence of any will of such donee within a period of six months after the donee's death, Trustee may assume that such donee died intestate without exercising such power, and may make distribution of the property subject thereto without any liability whatsoever.

9.8 Reliance on Dates and Communications. Trustee may rely on the birthdates set forth in this Agreement and on other birthdates or information communicated to Trustee in writing as well as other dates or information which may be indicated to Trustee and which are important in the administration of any trust created pursuant to this Agreement.

9.9 Number and Gender. The singular may be interpreted as the plural, and vice versa, and the feminine, masculine or neuter genders may be interpreted as one of the other genders, if such treatment is necessary to interpret this Agreement in accord with its manifest intent.

9.10 Headings. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to limit or affect in any way the meaning or interpretation of any of the terms or provisions of this Agreement.

9.11 Binding on Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of Grantor, Grantor's spouse and Trustee.

9.12 Severability. The provisions of this Agreement are severable, and should any provision hereof be void, unenforceable, or invalid, such void, unenforceable, or invalid provision shall not affect any other provision of this Agreement.

9.13 Definition of "Issue". "Issue" shall mean children and other lineal descendants of Grantor or of such other person(s) specifically named or identified by the text or context of this Trust. Issue shall include adopted issue, provided that such adoption occurs before the child's twenty-first birthday. A child in gestation, who is later born alive, shall be regarded in this Trust as a living child during the period of gestation in determining whether any person has died without leaving issue surviving him or her.

DATED: May 5, 1998.

TRUSTEE:

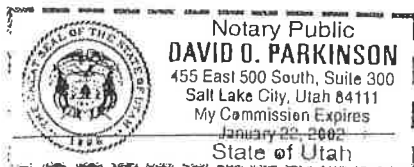
GRANTOR:

Diana C. Shepard  
Diana C. Shepard

Diana C. Shepard  
Diana C. Shepard

STATE OF UTAH )  
)ss.  
COUNTY OF SALT LAKE )

Subscribed, sworn to and acknowledged before me by Diana C. Shepard as Grantor and subscribed and sworn to and acknowledged before me by Diana C. Shepard as Trustee on May 5<sup>th</sup>, 1998.



David O. Parkinson  
NOTARY PUBLIC

**EXHIBIT "A" TO  
DIANA C. SHEPARD REVOCABLE TRUST**

<u>Assets Transferred to Trust</u>	<u>Value</u>
1. Cash	\$10.00