

[Form Approved: OMB No. 3209-0007]

OFFICE OF GOVERNMENT ETHICS

Model Qualified Diversified Trust Provisions

[For use in the case of multiple fiduciaries]

The model qualified diversified trust agreement contained in this memorandum is made available by the Office of Government Ethics to attorneys for their use in drafting proposed trust agreements to be submitted for certification pursuant to section 102(f)(4) of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) and 5 C.F.R. Part 2634(D). Under the statutory scheme, a trust agreement is not permitted to be recognized as creating an efficacious blind trust arrangement for any purpose under Federal law unless it had been certified by the Office prior to its execution. Proposed trust drafts submitted to the Office for consideration must adhere to the language of the model except to the extent, as agreed to by the Office of Government Ethics, that variations are required by the unusual circumstances of a particular case. The certificates of fiduciaries must be executed in the exact form indicated.

It is strongly recommended in any case in which the use of a blind trust is contemplated that the Office be consulted as early as possible. Prospective trustees or their representatives

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should schedule an appointment with the staff of the Office of Government Ethics for an orientation to the specialized procedures and requirements which have been established by law with respect to blind trust administration prior to the certification of the trust. As a condition of approval by the Office, prospective trustees must exhibit a familiarity with and commitment to the specialized nature of blind trust administration.

For further information, contact the Office of Government Ethics directly: telephone 202-208-8000, fax 202-208-8037.

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TRUST AGREEMENT

THIS TRUST AGREEMENT is made and entered into this _____ day of _____, _____, between _____ whose mailing address is _____, hereinafter called the Settlor; _____ [financial institution], whose business address is _____, hereinafter called the Trustee; and _____ [financial institution], whose business address is _____, hereinafter called the Investment Manager; such Trustee and Investment Manager hereinafter collectively called the Fiduciaries.

WITNESSETH

SETTLOR has been appointed by the _____ to the position of _____ of the _____ [department or agency], with respect to which appointment the _____ has given its advice and consent. To avoid any conflict of interest, or appearance of any such conflict, which may arise from his duties and powers in such office and any other office to which he may subsequently be appointed to the extent provided for by section 102(f)(4) of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) [hereinafter referred to as

1 the "Act"], Settlor hereby creates a trust which shall become
2 effective on the date this agreement bears.

3

4 The Trustee is an eligible entity as specified in
5 paragraph (a)(2) of 5 C.F.R. §2634.406, which meets the
6 requirements of paragraph (a)(3) of that section. The existence
7 of any other banking or client relationship between any
8 interested party and the Trustee is disclosed in annexed Schedule
9 A, and no other such relationship shall be instituted without the
10 prior written approval of the Director of the Office of
11 Government Ethics.

12

13 The Investment Manager is an eligible person as
14 specified in paragraph (b) of 5 C.F.R. §2634.406, who meets the
15 requirements of paragraph (c) of such section. The existence of
16 any other banking or client relationship between any interested
17 party and the Investment Manager is disclosed in annexed Schedule
18 A, and no other such relationship shall be instituted without the
19 prior written approval of the Director of the Office of
20 Government Ethics.

21

22 Settlor, therefore, hereby delivers to the Trustee, and
23 the Trustee hereby acknowledges receipt of, the property listed
24 in annexed Schedule B, subject to the provisions of this Trust
25 and the Act, and regulations promulgated thereunder, and other
26 applicable Federal laws, Executive orders, and regulations.

1 The primary purpose of this Trust is to confer on the
2 Fiduciaries the sole responsibility to administer the trust and
3 to manage trust assets without the participation by, or the
4 knowledge of, any interested party. This includes the duty to
5 decide when and to what extent the original assets of the trust
6 are to be sold or disposed of and in what investments the
7 proceeds of sale are to be reinvested. Accordingly, the Settlor
8 and the Fiduciaries agree as follows:

9
10 FIRST: (A) This Trust shall terminate upon the first to occur
11 of the following -- (1) Settlor's ceasing for any reason to
12 serve as _____ and in any other position to which he may
13 have been subsequently appointed in the Federal Government and
14 Settlor thereafter giving Trustee written notice directing that
15 this Trust be terminated; or (2) Settlor's death or incompetence.
16 The period between the date of this agreement and the termination
17 of the Trust shall be called the "Trust Term".

18
19 (B) Notwithstanding Paragraph (A) of this Article
20 FIRST, this Trust agreement may in addition be terminated through
21 revocation. However, such revocation or any amendment of the
22 terms of this Trust agreement shall require the prior written
23 approval of the Director of the Office of Government Ethics, upon
24 a showing of necessity and appropriateness.

1 SECOND: The Fiduciaries in the exercise of their authority and
2 discretion to manage and control the assets of this Trust shall
3 not consult or notify any interested party.

4

5 THIRD: (A) The assets initially placed in Trust hereunder, as
6 listed in annexed Schedule B, shall consist of a
7 widely-diversified portfolio of readily marketable securities.
8 None of the assets is prohibited as a holding by any interested
9 party by the Act and regulations promulgated thereunder, and
10 other applicable Federal laws, Executive orders, and regulations,
11 or consist of securities of entities having substantial
12 activities in the area of the Settlor's primary responsibility
13 within the Federal government.

14

15 (B) The portfolio shall be deemed to be
16 widely-diversified if --

17

18 (1) the value of the securities concentrated in any
19 particular or limited industrial, economic or geographic sector
20 is no more than twenty percent, and

21

22 (2) the value of the securities of any issuer (other
23 than the United States Government) is no more than five percent,

24

1 of the total value of such assets. For purposes of this
2 paragraph (B), securities issued by the United States Government
3 are obligations of the United States.

4

5 (C) A security will be deemed readily marketable, for
6 purposes of this Article THIRD, if --

7

8 (1) daily price quotations for such security appear
9 regularly in newspapers of general circulation, and

10

11 (2) the Trust holds the security in a quantity that
12 does not unduly impair liquidity.

13

14 (D) Each asset listed in annexed Schedule B is free of
15 any restriction with respect to its transfer or sale except as
16 fully described in such Schedule B.

17

18 (E) During the Trust Term, the interested parties
19 shall not pledge, mortgage, or otherwise encumber their interests
20 in the property held in trust hereunder.

21

22 FOURTH: The Fiduciaries shall not acquire any securities or
23 other property in excess of the diversification standards of
24 Paragraph (B)(1) and (2) of Article THIRD of this Trust.

25

1 FIFTH: The Fiduciaries shall not knowingly or negligently
2 disclose to the public or to any interested party any information
3 as to the acquisition, retention, or disposition of any
4 particular securities or other Trust property.

5

6 SIXTH: (A) The income tax return of the Trust shall be
7 prepared by the Trustee or his delegate.

8

9 (B) During the Trust Term, the Trustee shall be
10 responsible for the preparation and filing of such income (joint
11 or separate) and other tax returns, with respect to the property
12 held hereunder and the income therefrom and with respect to any
13 other income of the Settlor, as shall be required by the laws of
14 the United States of America and any State or other political
15 subdivision thereof. The Settlor shall furnish to the Trustee
16 such additional information as it shall, from time to time, need
17 for the completion of such returns. The Settlor shall give to
18 the Trustee powers of attorney (I.R.S. Form 2848) and any other
19 instruments which it may need in order to prepare and file such
20 returns and to represent the Settlor in connection with any audit
21 of returns filed by it and to adjust, settle and pay any taxes
22 due in respect of such returns. The Settlor shall deliver to the
23 Trustee funds for the payment of any income tax obligation
24 estimated to have arisen otherwise than with respect to the
25 property held in Trust hereunder. The Trustee in its discretion

1 shall be entitled to reserve an appropriate amount of Trust
2 income for payment of any additional income tax obligation.

3

4 (C) Any tax return filed pursuant to this Article
5 SIXTH and any information relating thereto shall not be disclosed
6 publicly or to any interested party.

7

8 SEVENTH: An interested party shall not receive any report on the
9 holdings and sources of income of the Trust; except that the
10 Trustee shall --

11

12 (A) Make quarterly reports of the aggregate
13 market value of the assets representing such interested party's
14 interest in the Trust, and

15

16 (B) Provide an annual report for purposes of
17 section 102(a)(1) of the Act of the aggregate amount actually
18 paid from the Trust to such interested party (or applied for his
19 benefit), categorized in accordance with the provisions of such
20 section. For purposes of this Article SEVENTH, only amounts
21 actually received in respect of this Trust by such interested
22 party (or applied for his benefit) shall be deemed income derived
23 from this Trust.

24

25 A copy of each written communication under this Article SEVENTH
26 shall be filed by the Trustee with the Director, Office of

1 Government Ethics, within five days of the date of the
2 communication.

3

4 EIGHTH: There shall be no direct or indirect communication
5 between an interested party and the Fiduciaries with respect to
6 the Trust unless the communication is with the Trustee, in
7 writing, and has the prior written approval of the Director of
8 the Office of Government Ethics, and unless it relates only --

9

10 (A) To a request for a distribution in cash or other
11 unspecified assets of the trust,

12

13 (B) To the general financial interest and needs of the
14 interested party (including, but not limited to, a preference for
15 maximizing current income or long-term appreciation), or

16

17 (C) To information, documents, and funds provided by,
18 or needed from, the Settlor, to effectuate the provisions of
19 Paragraph (B) of Article SIXTH of this Trust, with respect to any
20 income tax obligation arising otherwise than with respect to the
21 property held in Trust hereunder.

22

23 A copy of each written communication under this Article EIGHTH
24 shall be filed by the person initiating the communication with
25 the Director, Office of Government Ethics, within five days of
26 the date of the communication.

1 NINTH: The interested parties shall not take any action to
2 obtain, and shall take appropriate action to avoid receiving,
3 information with respect to the holdings of, and the sources of
4 income of, the Trust, including obtaining a copy of any Trust or
5 individual tax return filed by the Trustee or any information
6 relating thereto, except for the reports and information
7 specified in Article SEVENTH of this Trust.

8

9 TENTH: The Fiduciaries shall each file with the Director,
10 Office of Government Ethics, by the May 15th after any calendar
11 year during which the Trust was in existence properly executed
12 Certificates of Compliance in the form prescribed in Appendix B
13 to 5 C.F.R. Part 2634. In addition, the Fiduciaries shall
14 maintain and make available for inspection by the Office of
15 Government Ethics, as it may from time to time direct, the
16 Trust's books of account and other records and copies of the
17 Trust's tax returns for each taxable year of the Trust.

18

19 ELEVENTH: The Fiduciaries shall not knowingly or
20 negligently --

21

22 (A) Disclose any information to any interested party
23 with respect to this Trust that may not be disclosed pursuant to
24 any provision or requirement of Title I of the Act (and the
25 regulations thereunder) or this Trust,

26

1 (B) Acquire any holding the ownership of which is
2 prohibited by, or not in accordance with the terms of, this
3 Trust,
4

5 (C) Solicit advice from any interested party with
6 respect to this Trust, which solicitation is prohibited by any
7 provision or requirement of Title I of the Act (and the
8 regulations thereunder) or this Trust, or
9

10 (D) Fail to file any document required by Title I of
11 the Act (and the regulations thereunder).
12

13 TWELFTH: The Settlor shall not knowingly or negligently --
14

15 (A) Solicit or receive any information with respect to
16 this Trust that may not be disclosed pursuant to any provision or
17 requirement of Title I of the Act (and the regulations
18 thereunder) or this Trust, or
19

20 (B) Fail to file any document required by Title I of
21 the Act (and the regulations thereunder).
22

23 THIRTEENTH [**Optional provision**]: Subject to such amounts as the
24 Trustee may from time to time reserve for the payment of such
25 income taxes as may be due and payable by the Trust, and for
26 payment of expenses and compensation as provided for in this

1 Trust, during the Trust Term the Trustee shall pay to the Settlor
2 \$_____ at the beginning of each month.

3

4 **FOURTEENTH [Optional provision]: [A provision delineating the**
5 **respective powers and responsibilities of the Fiduciaries is**
6 **recommended. Note that the Fiduciaries will not be able to**
7 **communicate with the Settlor for resolution of any disputes which**
8 **may arise between them.]**

9

10 FIFTEENTH: In addition to the rights, duties, and powers
11 conferred upon the Fiduciaries by law, the Fiduciaries shall have
12 the following powers, rights, and discretion with respect to any
13 Trust property held by them:

14

15 (A) To sell, exchange, or otherwise dispose of the
16 property in such manner and upon such terms as the Fiduciaries in
17 their sole discretion shall deem appropriate;

18

19 (B) Except as limited by specific enumeration in this
20 Trust agreement, to invest and reinvest the principal and any
21 undistributed income, in property of any kind;

22

23 (C) Except as limited by specific enumeration in this
24 Trust agreement, to participate in any reorganization,
25 consolidation, merger, or dissolution of any corporation having
26 stocks, bonds or other securities which may be held at any time,

1 to receive and hold any property which may be allocated or
2 distributed to it by reason of participation in any such
3 reorganization, consolidation, merger, or dissolution;

4

5 (D) To exercise all conversion, subscription, voting,
6 and other rights of whatsoever nature pertaining to any such
7 property and to grant proxies, discretionary, or otherwise, with
8 respect thereto;

9

10 (E) To elect, appoint, and remove directors of any
11 corporation, the stock of which shall constitute Trust property,
12 and to act through their nominee as a director or officer of any
13 such corporation;

14

15 (F) Except as limited by specific enumeration in this
16 Trust agreement, to manage, control, operate, convert, reconvert,
17 invest, reinvest, sell, exchange, lease, mortgage, grant a
18 security interest in, pledge, pool, or otherwise encumber and
19 deal with the property of this Trust, for Trust purposes and in
20 behalf of the Trust to the same extent and with the same powers
21 that any individual would have with respect to his own property
22 and funds;

23

24 (G) Except as limited by specific enumeration in this
25 Trust agreement, to borrow money from any person or corporation
26 (including the Fiduciaries hereunder) and for the purpose of

1 securing the payment thereof, to pledge, mortgage, or otherwise
2 encumber any and all such property for Trust purposes upon such
3 terms, covenants, and conditions as it may deem proper and also
4 to extend the time of payment of any loans or encumbrances which
5 at any time may be encumbrances on any such property irrespective
6 of by whom the same were made or where the obligations may or
7 should ultimately be borne on such terms, covenants, and
8 conditions as it may deem proper;

9
10 (H) To register any property belonging to the Trust in
11 the name of their nominee, or to hold the same unregistered, or
12 in such form that title shall pass by delivery;

13
14 (I) To abandon, settle, compromise, extend, renew,
15 modify, adjust, or submit to arbitration in whole or in part and
16 without the order or decree of any court any and all claims
17 whether such claims shall increase or decrease the assets held
18 under this Trust agreement;

19
20 (J) To determine whether or to what extent receipts
21 should be deemed income or principal, whether or to what extent
22 expenditures should be charged against principal or income, and
23 what other adjustments should be made between principal and
24 income, provided that such adjustments shall not conflict with
25 well-settled rules for the determination of principal and income

1 adjustments, or the Uniform Principal and Income Act, if in
2 effect in the State of _____;

3

4 (K) To determine whether or not to amortize bonds
5 purchased at a premium;

6

7 (L) Except to the extent otherwise expressly provided
8 in this Trust agreement, to make distributions in kind or in cash
9 or partly in each and for such purposes to fix, insofar as
10 legally permissible, the value of any property;

11

12 (M) To pay such persons employed by the Fiduciaries to
13 assist them in the administration of the Trust, including
14 investment counsel, accountants, and those engaged for assistance
15 in preparation of tax returns, such sums as the Fiduciaries deem
16 to be reasonable compensation for the services rendered by such
17 persons. Such persons may rely upon and execute the written
18 instructions of the Fiduciaries, and shall not be obliged to
19 inquire into the propriety thereof;

20

21 (N) No person may be employed or consulted by the
22 Fiduciaries to assist it in any capacity in the administration of
23 the Trust or the management and control of Trust assets,
24 including investment counsel, investment advisers, accountants,
25 and those engaged for assistance in preparation of tax returns,
26 unless the following four conditions are met --

1 (1) when an interested party learns about such
2 employment or consultation, the person must sign the Trust
3 instrument as a party, subject to the prior approval of the
4 Director of the Office of Government Ethics,

5
6 (2) under all the facts and circumstances, the person
7 is determined pursuant to the requirements for eligible entities
8 under 5 C.F.R. §2634.406(a)(3) to be independent of any
9 interested party with respect to the trust arrangement,

10
11 (3) the person is instructed by the Fiduciaries to
12 make no disclosure publicly or to any interested party which
13 might specifically identify current Trust assets or those assets
14 which have been sold or disposed of from Trust holdings, and

15
16 (4) the person is instructed by the Fiduciaries to
17 have no direct communication with any interested party, and that
18 any indirect communication with an interested party shall be made
19 only through the Trustee pursuant to Article EIGHTH of this
20 Trust;

21
22 (0) Except as specifically limited in this Trust
23 agreement, to do all such acts, take all such proceedings, and
24 exercise all such rights and privileges, although not otherwise
25 specifically mentioned in this Article FIFTEENTH, with relation
26 to any such property, as if the Fiduciaries were the absolute

1 owners thereof, and in connection therewith to make, execute, and
2 deliver any instruments and to enter into any covenants or
3 agreements binding the Trust.

4
5 SIXTEENTH: Notwithstanding the provisions of Article
6 FIFTEENTH of this Trust, the Fiduciaries shall not acquire by
7 purchase, grant, gift, exercise of option, or otherwise, without
8 the prior written approval of the Director of the Office of
9 Government Ethics, any securities, cash, or other property in
10 addition to that listed in the annexed Schedule B, from any
11 interested party.

12
13 SEVENTEENTH: The Fiduciaries shall not at any time be held
14 liable for any action taken or not taken or for any loss or
15 depreciation of the value of any property held in the Trust
16 whether due to an error of judgment or otherwise where the
17 Fiduciaries have exercised good faith and ordinary diligence in
18 the exercise of their duties such as would have been exercised by
19 a prudent man.

20
21 EIGHTEENTH: No Fiduciaries hereunder shall be required, in any
22 jurisdiction, to furnish any bond or other security, or to obtain
23 the approval of any court before applying, distributing, selling,
24 or otherwise dealing with property.

1 NINETEENTH: Except as provided in Article SEVENTH of this
2 Trust, the Fiduciaries shall make no accounting to the Settlor
3 until the date of termination of this Trust, and, at such time,
4 they shall be required to make full and proper accounting and
5 turn over to the Settlor all assets of the Trust then held by
6 them the said Fiduciaries.

7

8 TWENTIETH: The Fiduciaries shall be compensated in accordance
9 with the table in the annexed Schedule C, or as provided for by
10 the laws of the State of _____.

11

12 TWENTIETH-FIRST: The Fiduciaries (and any substitutes or
13 successors) shall have the right, by duly acknowledged
14 instruments delivered to the Settlor to resign as Fiduciaries in
15 which event the Settlor shall designate and appoint substitute or
16 successor Fiduciaries (subject to the prior written approval of
17 the Director of the Office of Government Ethics) in their place
18 and stead, which shall have all of the rights, powers,
19 discretions, and duties conferred or imposed hereunder upon the
20 original Fiduciaries.

21

22 TWENTY-SECOND: Any amendment of the terms of this Trust
23 Agreement, including the appointment of substitute or successor
24 Fiduciaries, shall require the prior written approval of the
25 Director of the Office of Government Ethics, upon a showing of
26 necessity and appropriateness. Any such substitute or successor

1 Fiduciaries shall have all of the rights, powers, discretions,
2 and duties conferred or imposed hereunder upon the original
3 Fiduciaries.

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5 The term "interested party" as used in this Trust means
6 the Settlor, his spouse, any minor or dependent child, and their
7 representatives.

Privacy Act Statement

Section 102(f) of the Ethics in Government Act of 1978 as amended (the "Ethics Act"), 5 U.S.C. Appendix, § 102(f), and subpart D of 5 CFR part 2634 of the regulations of the Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the Ethics Act. The primary use of the information on the trust instrument prepared based in part upon this model draft document is for review by Government officials of OGE and the agency of the Government employee for whom the trust is being established to determine compliance with applicable Federal laws and regulations as regards qualified trusts. Additional disclosures of the information in the trust document itself may be made: (1) to any requesting person in accordance with the access provisions of section 105 of the Ethics Act (underlying trust information is not generally available under this routine use, except for the list of assets initially placed in trust and statutorily mandated notifications by the trustee of divestitures of initially transferred assets to below \$1,000 in value in the case of a qualified blind trust); (2) to a Federal, State or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (3) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest issue; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; and (7) in response to a discovery request or for the appearance of a witness in a pending judicial or administrative proceeding, if the information is relevant to the subject matter. Knowing or willful falsification of information on the trust document prepared from this model draft or failure to file or report information required to be reported under title I of the Ethics Act and 5 CFR part 2634 of the OGE regulations may lead to disqualification as a trustee or other fiduciary as well as possible disqualification of the underlying trust itself. Knowing and willful falsification of information required under the Ethics Act and the regulations may also subject you to criminal prosecution.

Public Burden Information and Paperwork Reduction Act Statement

This collection of information is estimated to take an average of one hundred hours per response, given the estimated amount of time deemed necessary to structure an actual trust arrangement based in part on this model draft. You can send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for

reducing this burden, to: Deputy Director for Office of Administration and Information Management, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Do not send your completed trust document to this address; rather, see the remainder of the instructions to this model draft.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0007, is displayed here and in the upper left-hand corner of the first page of this OGE model qualified trust draft document).