**Form 5-3: Irrevocable Trust Agreement**

[[Text Box Start]]

Appointment of Co-Trustees with Successors

CrummeyWithdrawal Power for Additions to Trust

Beneficiaries are Spouse for life then to Settlor's children

Discretionary payments of income and principal during life

of Settlor and Settlor's Spouse

Spouse limited to ascertainable standard

Upon death of survivor of Settlor or Settlor's

mandatory payments of principal an accumulated income

to Settlor’s children at 25, 30, 35

[[Text Box End]]

**(*insert name of Trust* )**

**Irrevocable Trust Agreement**

**THIS IRREVOCABLE TRUST AGREEMENT** made this \_\_\_\_\_day of\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, between (*insert name of Settlor*) of (*insert county of domicile)*, Maryland (hereinafter called the "Settlor") and (*insert name of Co-Trustee*) and (*insert name of Co-Trustee*) (hereinafter called the "Trustees").

**Identification of Family**

Settlor is married to (*insert name of Spouse*) and any reference herein to Spouse shall mean (*insert name of Spouse)* or any person to whom Settlor is married. Settlor has (*insert number*) children namely (*insert names of the children*) and any additional born to or adopted by Settlor are referred to as children of Settlor.

**I. Irrevocable Assignment**

The Settlor hereby relinquishes all power to alter, amend, revoke or terminate any provisions of this Trust agreement. The Settlor hereby expressly acknowledges that the Settlor shall have no right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke or terminate the Trust Agreement or any of the terms of this Agreement in whole or in part or to designate the persons who shall possess or enjoy the Trust property, or income therefrom. The Trust shall be irrevocable and not subject to amendment by Settlor or any other person.

**II. Purpose**

Settlor in creating this Trust intended to enable the Trustees to receive, hold, manage, and invest assets in such a manner as the Trustees in the Trustees’ discretion shall deem reasonable and necessary for the health, education, maintenance and support of Spouse life and for the general welfare, support and education of Settlor's children. For the purposes of this Trust the term "beneficiaries" shall be deemed to refer to Settlor's Spouse and Settlor’s children*.*

**II. Trust Property**

The Settlor does hereby irrevocably transfer and assign to the Trustees all the Settlor’s title and interest in and to the property listed in "Schedule A" attached hereto. The Trust created hereunder shall be known as the "(*insert name of Trust*) Irrevocable Trust Agreement."~~.~~

**IV. Additions to Trust**

Any property, real, tangible, or intangible may be transferred to the Trust by the Settlor, or any other person, at any time, either by gift during lifetime, or by designating the Trust hereof as beneficiary under Will or otherwise shall become a part of the Trust and the property transferred becomes irrevocable, and subject to the terms and conditions of this Trust Agreement.

**V. Crummey Withdrawal Powers**

A. If at any time or times, any addition is made to this Trust by anyone, the Trustee shall, for the purposes of this Article V, divide such addition into as many separate and equal parts as shall provide one such part for each of the then-living beneficiary or beneficiaries.

B. The then-living beneficiaries shall thereupon have the absolute right, at all times during the forty-five (45) day period commencing on the date of such addition, to withdraw said beneficiary’s separate and equal part, which was added to this Trust estate.

C. Notwithstanding anything herein to the contrary, for any given calendar year the amount of which the individual right of withdrawal in any beneficiary attaches shall not exceed the greater of Five Thousand ($5,000) Dollars or Five (5%) Percent of the principal of this Trust (said percentage to be calculated to include any additions to any accumulated income of this Trust). The total amount which may be withdrawn by any beneficiary on account of such additions hereunder shall not be cumulative and, to the extent that such a withdrawal right has not been exercised by the end of such forty-five (45) day period, it shall lapse forever.

D. Each such withdrawal right shall be exercisable only by a written instrument executed by the beneficiary having such right (if such beneficiary is then under any legal disability of any kind, execution may be made by such beneficiary’s legal guardian or, if no guardian has been appointed, by such beneficiary’s natural or general guardian (other than the donor(s) of the addition to which the withdrawal right relates), in each case acting solely on behalf of such beneficiary in making such withdrawal and receiving such distribution for such beneficiary's sole benefit) delivered to the Trustee during the forty-five (45) day period commencing on the date of such addition. Distribution of the thus withdrawn amount pursuant to any proper instrument of withdrawal shall be made within thirty (30) days of receipt of such notice by the Trustee.

E. Except that any unexercised portion of the withdrawal right in excess of the greater of Five Thousand ($5,000) Dollars or Five (5%) Percent of the principal of this Trust during the year will be carried over to future years.

**VI. Dispositive Provisions**

The Trustees shall distribute the net income and principal of the Trust in the following manner:

**A. Payments During Settlor's Life**

During the lifetime of the Settlor, the Trustees may make payments out of the net income and/or principal in the Trustees sole discretion for the health, education, maintenance and support of Settlor's Spouse.

**B. Payments Upon the Death of the Survivor of Settlor and Settlor’s Spouse**

Upon the death of the survivor of the Settlor and the Settlor's Spouse, the Trustees shall distribute the net income and principal of this Trust in the following manner:

1. The Trustees shall divide the then-remainder of this Trust into equal shares so as to provide one (1) share for each then-living child of Settlor and one (1) share for each deceased child of Settlor who shall leave issue then surviving. Each such share shall be distributed or retained in Trust as hereinafter provided:

a. The share so set apart for each of Settlor's then-living child shall be held by the Trustees as a separate Trust. Each child shall be entitled to receive the entire net income from said child’s respective trust, in installments not less frequent than quarter-annually until said child’s death or until the entire balance of said child’s share has been distributed to said child as hereinafter provided.

b. Each such child shall have the absolute right to withdraw from the principal and income of said child’s share by written demand as follows: at any time after said child attains the age of twenty-five (25) years, cash or assets valued as of the date of demand which, when added to the value of all previous withdrawals at their respective demand dates will not exceed in the aggregate one-third (1/3) of the total of: (1) the principal and income valued as of the date of the demand, and (2) all previous withdrawals valued at their respective demand dates; at any time or times after said child attains the age of thirty (30) years, cash or assets valued as of the date of demand, which, when added to the value of all previous withdrawals at their respective demand dates, will not exceed in the aggregate two-thirds (2/3) of the total of: (1) the principal and income valued as of the date of the demand, and (2) all previous withdrawals valued at said child’s respective demand dates; at any time or times after said child attains the age of thirty-five (35) years, any portion or all of the principal and income of such share.

2. As to each separate share so set apart for a child of Settlor, the Trustees shall have authority in the Trustees sole and absolute discretion to make payments out of principal to the extent that the Trustees may deem reasonable and proper for the general welfare and comfort of each said child in accordance with said child’s station in life; for the purpose of providing for said child, in the event of accident, illness or other financial emergency; and for the purpose of providing for the education and/or professional training of each said child; and for any purpose the Trustees deem reasonable. In exercising the discretionary powers provided for herein, the Trustees shall take into account the other financial resources of the child and shall make only such discretionary payments as may be necessary to supplement such other financial resources; provided, however, that as a prerequisite to the making of such discretionary payments, the Trustees shall not require the liquidation of any such other financial resources as in the Trustee’s sole discretion as the Trustees may deem inadvisable to liquidate under then-existing circumstances. Further in considering such other financial resources, the Trustees shall accept as conclusive evidence thereof the written statement of any child who is *sui juris* as to the nature and amount of said beneficiary’s financial resources.

3. Each child of the Settlor for whom a separate Trust share has been set aside shall have the right to appoint by Last Will and Testament who, following said child’s death, shall be entitled to the remainder thereof, and the portions to which and the manner in which such appointees shall be entitled, in Trust or otherwise; provided, however, that such child shall not appoint any part thereof to said child’s estate, said child’s creditors or the creditors of said child’s estate. Such appointment shall be exercised only by specific reference to the power herein granted. To the extent that a valid appointment is not exercised in accordance with the terms thereof, then the remaining share of such deceased child who is survived by one or more descendants shall be held under the terms of Paragraph 4 of this Article VI; and if there be no surviving descendant, then the Trustees shall divide the remaining share of such deceased child into equal shares so that there shall be one share for each then-living child of mine which shall be held under the terms of Paragraph 1 of this Article VI and one share for each then deceased child of mine who is survived by one or more then living descendants which shall be held under the terms of Paragraph 4 of this Article VI. For the purposes of determining whether or not and the extent to which a child has exercised said child’s right to appointment as granted herein, the Trustees may, but need not, rely conclusively upon any instrument first admitted to probate as said child’s Last Will and Testament by a court of competent jurisdiction, or upon the issuance by any such court of letters of administration upon said child’s intestate estate, or the Trustees may, but need not, assume conclusively that such child died intestate if neither letters of administration nor letters testamentary are issued by any such court within ninety (90) days following the date of said child’s death. Distribution in good faith by the Trustees under any of such circumstances shall fully exonerate them from all further liability for the assets so distributed.

4. As to the share set aside under any of the provisions of this Trust for a deceased child of Settlor, the Trustees shall divide such share among the then-living descendants of such deceased child, *per stirpes,* and not *per capita,* and shall distribute absolutely to each descendant, the descendant’s portion thereof, provided, however, that any portion which shall become payable to a descendant who has not attained the age of twenty-one, (21) years shall vest in such descendant, but the Trustees shall retain such portion in further Trust and shall use and apply so much of the income and principal thereof as in the Trustee’s discretion, may be necessary for the general welfare, support and education of such descendant until said descendant attains the age of twenty-one, (21) years at which time the Trustees shall distribute to said descendant absolutely the remaining principal and income of said descendant’s portion. If such descendant shall die before attaining the age of twenty-one (21) years, said descendant’s portion thereupon shall be distributed to said descendant estate.

5. It is the Settlor's desire to make it clear that the immediate and continuing welfare and comfort of beneficiaries hereunder are matters of primary concern to Settlor rather than the retention and appreciation of the principal of the Trust estate, and each of the provisions of this Trust shall be construed liberally to accomplish this purpose, even though the Trustees shall thereby exhaust the entire Trust estate.

6. If at any time there shall remain in the hands of the Trustees any portion of the Trust property not otherwise allocable or distributable under any other provisions of this Trust, the Trustees shall distribute absolutely such portion to such person as would then be entitled to receive the personal property of the Settlor.

**VII. Spendthrift Provision**

Except as otherwise specifically provided in this Trust, the Trustees shall make payments only into the hands of the beneficiaries entitled thereto so that neither the income nor principal shall be subject to assignment, nor be anticipated, nor be liable for the debts or contracts of a beneficiary, nor be taken in execution by attachment, garnishment or other proceeding while in the hands of the Trustees; provided, however, that deposit to the credit of a beneficiary in any banking institution in an account established by such beneficiary shall be deemed payment to said beneficiary; and provided further, that if a beneficiary be a minor or, in the judgment of the Trustees based on professional medical advice, shall be of unsound mind whether adjudicated an incompetent or not, or be suffering from physical or mental disorder which renders said beneficiary incapable of the management of the payments to which said beneficiary may be entitled hereunder, then the Trustees may in the Trustees discretion expend for the benefit of such beneficiary the amounts otherwise payable to said beneficiary; may make such payments to said beneficiary’s duly appointed committee or guardian; or to the person who in the Trustee’s judgment, has assumed responsibility for disbursing funds available for said beneficiary’s care and support, and the receipt of any such person or corporation shall be an absolute discharge to the Trustees for the sums so paid over.

**VIII. Rule Against Perpetuities**

The Rule Against Perpetuities shall not apply to the Trust. The Trustees hereunder have the power, under the terms of this Trust Agreement, to sell, lease, or mortgage property for any period of time beyond the period that is required for an interest created hereunder to vest, so as to be good under the Rule Against Perpetuities.

**IX. Appointment of Successor Trustees and Resignation**

I hereby nominate and appoint *(insert name of Successor Co-Trustee)*, and *(insert name of Co-Successor Trustee*), or the survivor thereof, to be the Successor Trustees of this Trust.

A. The Trustees of any trust created hereunder may resign at any time with or without cause. If the Trustees named herein, or any Successor Trustee, shall wish to resign, or shall for any reason fail to be able to continue as such, such Trustee or Successor Trustee shall have the right, power and authority to designate a Successor Trustee, (other than the Settlor) provided that no Trustee so appointed shall be a related or subordinate party who is subservient to the wishes of the Settlor.

B. Any Trustees hereunder shall have no duty to examine the tax returns, accounts, records or proceedings of my Personal Representative nor any responsibility or liability for any action of, or any failure to act on the part of my Personal Representative, and the Trustees shall be chargeable only with such assets of my estate as are actually received by the Trustees from my Personal Representative.

**X. Trustee Powers**

In the administration of the Trust, the Trustees shall have the following powers, all of which shall be exercised in a fiduciary capacity, primarily in the interest of the beneficiary or beneficiaries:

A. To hold any or all of the Trust estate in the form of investment in which received.

B. To sell at public or private sale, to mortgage, create a security interest in, pledge, or hypothecate, or to exchange or lease (including lease for a period extending beyond the term of this Trust), any stocks, notes, securities, real estate, minerals, and other Trust property, upon such terms, cash or credit, or both, as they may deem advisable.

C. To invest and reinvest the Trust estate, without limitation to Trust or chancery investments, in investments of any kind, real or personal, including, without limitation, stocks, bonds, notes, mortgages, lands, minerals, royalties, leaseholds, participations in partnerships, joint ventures, and other business enterprises.

D. To construct, add to, repair, or demolish (in whole or in part), any improvements upon any Trust property.

E. To participate in any reorganization, consolidation, merger or dissolution of any corporation, the stocks, bonds, or other securities which may be held at any time as part of the Trust estate and to receive and continue to hold any property which may be allocated or distributed to them by reason of participation in any such reorganization, consolidation, merger or dissolution.

F. To make or hold investments or any part of the Trust estate in common or undivided interests with other persons, corporations or Trusts.

G. To demand, receive, receipt for, sue for and collect any and all rights, money, properties, or claims to which this Trust may be entitled, and to compromise, settle, arbitrate, or abandon any claim or demand in favor of or against this Trust.

H. To borrow funds for this Trust in such amounts and for such purposes that are for the best interest of this Trust and the beneficiaries thereof, and to purchase property on the credit of this Trust, and, in connection with such borrowing or such purchase, to execute and deliver promissory notes or other evidences of indebtedness of this Trust and to mortgage, create a security interest in, or pledge all or any part of the Trust estate to secure payment of such indebtedness, and to repay such indebtedness out of the Trust estate.

I. To employ agents, legal counsel, brokers, and assistants, and to pay their fees and expenses, as the Trustees may deem necessary or advisable to carry out the provisions of this Trust.

J. To vote in person or by proxy any shares of stock which may form part of this Trust.

K. To lend money to any person or persons upon such terms, but with adequate interest and security, as the Trustees may deem advisable for the best interest of this Trust and the beneficiaries hereunder.

L. To elect, appoint, and remove directors of any corporation, the stock of which shall constitute Trust property, and to act as a director and officer of any such corporation.

M. To exercise options, rights and privileges contained in a life insurance policy, annuity, or endowment contract constituting property of the fiduciary estate, including the right to obtain the cash surrender value, convert a policy to another type of policy, revoke any mode of settlement, and pay any part or all of the premiums on the policy or contract.

N. The Settlor directs that no person acting as a Co-Trustee hereunder shall participate in any discretionary decision regarding whether, and the extent to which, any payment shall be made to or for the Co-Trustee’s benefit, or the benefit of any other person for whose support such Co-Trustee may be legally liable, and such decision shall be made solely by the remaining Trustee.

O. Generally, and without limitation by any specific enumeration herein, to manage, control, operate, convert, reconvert, invest, reinvest, sell, exchange, lease, mortgage, create a security interest in, pledge, pool, or otherwise encumber and deal with the property of this Trust, for and on behalf of this Trust and the beneficiaries thereof, to the same extent and with the same powers that any individual would have in respect to the Trustees own property and funds.

P. The powers herein granted to the Trustees shall be deemed to be supplementary to and not exclusive of the general powers of Trustees pursuant to law, and shall include all powers necessary to carry the same into effect.

**XI. Trustee Compensation**

In addition to the Trustees reasonable expenses incurred in the performance of the Trustees’ duties under the Trust hereby created, the Trustees shall be entitled to receive for the Trustees services just and reasonable compensation.

**XII. Trustee Bond**

No bond or other security shall be required of the Trustees or any Successor Trustees.

**XIII. Premature Termination**

If the current value of the principal of any trust at any time becomes less than One Hundred thousand, ($ 100,000.00) Dollars (after allowances for expenses and commissions), the Trustees may, in the Trustee’s sole discretion, terminate such trust and pay over the remainder thereof to the person or persons then entitled to the income therefrom, in the proportions to which the Trustees are then entitled to such income; provided, however, that any payment which would be made to a beneficiary who has not attained the age of majority, shall be distributed to a Custodian under the Maryland Uniform Transfers to Minors Act, such Custodian to hold such payment for the benefit of such minor under the terms of said Act. The Trustees shall have the power to select any qualified person as Custodian.

**XIV. Acceptance By Trustee**

The Trustees hereby accept the Trust created by this Agreement and agree to carry out the provisions hereof on their part according to the best of the Trustees’ ability, but the Trustees shall not be responsible for any mistake in judgment or for any decrease in value of or loss to the Trust Estate or for any cause whatever, except his own bad faith or gross negligence.

**XV. Validity of Trust**

All questions pertaining to the validity of any Trust hereunder and its construction and administration, shall be determined in accordance with the laws of Maryland, unless otherwise expressly provided.

**XVI. Limitations on Powers**

Notwithstanding anything herein contained to the contrary, no powers enumerated herein or accorded to the Trustees generally pursuant to law shall be construed to enable the Trustees, or any other person to purchase, exchange, or otherwise deal with or dispose of the principal or income of the Trust for less than an adequate or full consideration in money or money's worth, or to enable the Trustees to borrow the principal or income of the Trust, directly or indirectly, without adequate interest or security. No person, other than the Trustees, shall have or exercise the power to vote or direct the voting of any stock or other securities of the Trust, to control the investment of the Trust either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, or to reacquire or exchange any property of the Trust by substituting other property of an equivalent value.

IN WITNESS WHEREOF, the Settlor and the Trustee have executed this instrument as of the day first written above.

Witness: Settlor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

(*insert name of Settlor*)

Witness: Trustee:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

(*insert name of Co-Trustee)*

Witness: Trustee:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

(*insert name of Co-Trustee)*

STATE OF MARYLAND, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to wit:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_, before me, the subscriber, a Notary Public in and for the state aforesaid, personally appeared (*insert name of Settlor*), known to me to be the person whose name is subscribed to the foregoing instrument as Settlor, and made oath in due form of law that the Settlor executed the same voluntarily for the purposes therein contained.

IN WITNESS my hand and Notarial Seal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

STATE OF MARYLAND, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to wit:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_, before me, the subscriber, a Notary Public in and for the state aforesaid, personally appeared (*insert name of Co-Trustee)* , known to me to be the person whose name is subscribed to the foregoing instrument as Trustee, and made oath in due form of law that the Trustee executed the same voluntarily for the purposes therein contained.

IN WITNESS my hand and Notarial Seal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

STATE OF MARYLAND, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to wit:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_, before me, the subscriber, a Notary Public in and for the state aforesaid, personally appeared (*insert name of Co-Trustee*), known to me to be the person whose name is subscribed to the foregoing instrument as Trustee, and made oath in due form of law that the Trustee executed the same voluntarily for the purposes therein contained.

IN WITNESS my hand and Notarial Seal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

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Description of Asset and Fair Market Value

valuation basis on date of transfer

Textbox End

**(*insert name of Trust* )**

**Irrevocable Trust Agreement**

**Schedule A**

**Asset Value**

1. (*insert initial description of asset*) $(*insert* *initial value*)