Charitable Planning with CRATs,

CRUTs, CLATs, and CLUTs

By:

Ellen M. Deeter, JD, CFP®, CTFA

Of Counsel

Dale & Eke, P.C.

9100 Keystone Crossing, Suite 400

Indianapolis, IN 46240

[edeeter@daleeke.com](mailto:edeeter@daleeke.com)

© All Rights Reserved

Ellen M. Deeter

Ellen M. Deeter is Of Counsel with the law firm of Dale & Eke, PC. She is an attorney, a registered civil mediator, a registered domestic relations mediator, a collaborative professional, a CERTIFIED FINANCIAL PLANNER CERTIFICANT™, and a Certified Trust and Financial Advisor. Ms. Deeter earned her B.A. degree, *magna cum laude*, from the University of Notre Dame in 1976 and her J.D. degree, *magna cum laude,* from Indiana University School of Law at Indianapolis (now known as the Indiana University Robert H. McKinney School of Law) in 1982. She is admitted to practice in the State of Indiana and the U.S. District Court, Southern District of Indiana.

Ms. Deeter spent nearly 35 years working for bank trust departments, with a focus on trust and estate administration, fiduciary income taxation, estate and gift taxation, and by serving as in-house trust counsel. She has lectured extensively in numerous programs on estate and trust administration, and estate, gift and fiduciary income taxation, including programs sponsored by the Indiana Continuing Legal Education Forum, the Indiana State Bar Association, the Indianapolis Bar Association, and National Business Institute. She was on the faculty of the American Bankers Association National Graduate Trust School from 1995 – 2009.

Ms. Deeter is a member of the Indiana State and Indianapolis Bar Associations, and the Estate Planning Council of Indianapolis (past President). She has also served on the board of the Planned Giving Group of Indiana and the board of the Indianapolis Bar Foundation, of which she is a Distinguished Life Fellow.

**Disclaimer**

                These seminar materials and the seminar presentation are intended to stimulate thought and discussion, and to provide those attending the seminar with useful ideas and guidance in the areas of estate planning and administration.  The materials and the comments of Mr. Deeter do not constitute, and should not be treated as, legal advice regarding the use of any particular estate planning or other technique, device or suggestion, or any of the tax or other consequences associated with them.  Although we have made every effort to ensure the accuracy of these materials and the seminar presentation, neither Mrs. Deeter nor Dale & Eke, Professional Corporation, assumes any responsibility for any individual's reliance on the written or oral information presented during the seminar.  Each seminar attendee should verify independently all statements made in the materials and during the seminar presentation before applying them to a particular fact pattern, and should determine independently the tax and other consequences of using any particular device, technique or suggestion before recommending the same to a client or implementing the same on a client's or his or her own behalf.

Charitable Trusts

Outline

Introduction 4

Charitable Remainder Trusts 5

Overview, Types of CRTs 5

Duration of CRTs 7

Testing Requirements 7

Income Taxation of CRTs 8

Income Tax Charitable Deduction 8

Estate and Gift Tax Charitable Deduction 11

Planning Issues and Opportunities 13

Charitable Lead Trusts 15

Types of CLTs 15

Duration of CLTs 16

Testing and Payout Requirements of CLTs 16

Income Taxation of CLTs and the Income Tax Charitable Deduction 16

Estate and Gift Tax Charitable Deduction 17

Who Can Serve as Trustee 18

Private Foundation Restrictions 19

Charitable Planning for Smaller Gifts 19

Summary 20

Glossary 22

Sample CRT 24

INTRODUCTION

Charitable Remainder Trusts (CRTs) and Charitable Lead Trusts (CLTs) are creations of statute. They are also referred to as “split-interest” trusts. The split occurs because for a period of time the trust benefits both non-charitable and charitable beneficiaries. Their interests are successive, not joint. The significance of structuring a trust as a CRT or CLT is that it allows the Settlor/Donor to take advantage of income tax deductions and charitable estate and gift tax deductions for transfers to the trust. It is possible to create a trust that specifies “net income to individual(s) for life, remainder to charity;” however, a transfer to such a trust will not qualify for any type of charitable deduction. The structure of a CRT and CLT are similar. The difference is the timing of when the trust benefits charity. As the names indicate, a charitable lead trust is one that pays a stream of money to a charity first, with individuals receiving the remainder interest. A charitable remainder trust is one that pays a stream of money to individuals first, with the remainder interest going to charity.

A key concept for both types of trusts is that the upfront payout or lead interest (to charity in a lead trust or to individuals in a remainder trust) must be structured either as a unitrust payout or as an annuity. The duration of the lead interest can be for a fixed number of years, not exceeding twenty, or for the lifetime of one or more individuals. There is not technically a limit on the number of lives during which the lead interest is to be paid. However, charitable remainder trusts must pass actuarial tests to ensure that a certain minimum percentage of the funds actually will pass to charity.

Split-interest trusts are an excellent vehicle for the Settlor who desires to make a charitable transfer, but who either doesn’t want, or can’t afford, to exclude individuals from receiving any benefits from the transferred property. They also present planning opportunities using the concept of leverage. A charitable remainder trust is particularly useful as the recipient of qualified plan monies at the death of the donor (but not during the donor’s lifetime).

CHARITABLE REMAINDER TRUSTS

Overview

There are two main types of charitable remainder trusts – charitable remainder annuity trusts (CRATs) and charitable remainder unitrusts (CRUTs). In addition, there are several different variations of CRUTs: the standard CRUT (SCRUT), the net income CRUT (NICRUT), the net income with make-up CRUT (NIMCRUT) and a flip CRUT. CRTs may be established as inter-vivos trusts or as testamentary trusts. The payout from a CRT to the non-charitable beneficiary is based upon a percentage of the fair market value of the trust assets. The minimum payout is 5% and the maximum payout is 50%. IRC 664(d)(1) and IRC 664(d)(2). With a CRAT the payout is determined at the inception of the trust, and then never changes (hence the term “annuity” trust). No matter how much the market value of the trust assets changes, the annuity payout remains constant (unless the trust declines in value to the point that it is depleted and there are no more funds to pay the annuity). Additional contributions may not be made to a CRAT. Reg. 1.664-2(b). If the donor desires to do another gift, he or she must create another CRAT.

In a CRUT, the trust is revalued on an annual basis, and the percentage stated in the document is applied to the (new) value every year. Reg. 1.664-3(a)(1)(1)(a). If the market value of the trust increases then the CRUT payment increases. Likewise, if the market value of the trust declines, then the CRUT payment will also decline. A CRUT, unlike a CRAT, may receive additional contributions during its term. Reg. 1.664-3(b)(1) and (2). Thus, a donor who desires to make additional gifts can simply add more property to an existing CRUT. The minimum frequency of the payout is annual for both a CRAT and a CRUT, although it can be more frequently. Quarterly payouts are common.

A NICRUT is a CRUT that states that the trustee is to pay out the lesser of the trust’s net income or the stated percentage amount. IRC 664(d)(2) and (3). A NIMCRUT directs the trustee to pay out the lesser of the trust’s net income or the stated percentage amount with an additional feature that the trustee is to make up deficiencies from earlier years (i.e. years when the net income was less than the stated percentage amount) in years that the net income exceeds the stated payout amount. IRC 664(d)(2) and (3). Finally, a FLIP CRT is one that will change from either a NICRUT or NIMCRUT to a SCRUT upon the occurrence of a triggering event, such as the sale of a non-marketable asset used to fund the CRT. The event cannot be something within the discretion of the trustee. Permissible events include marriage, divorce, death, and birth. The sale of non-marketable assets may also be a triggering event. Once the triggering event occurs, the flip takes place not in the year of the occurrence, but in the following year. After the flip, any make up amount from a NIMCRUT is forfeited.

In the year that either type of CRT is initially funded or the year that it terminates, it is most likely to be a short year – i.e. not a full 365 days. (It is unusual for a CRT to be funded on January 1st, and income beneficiaries don’t always die on December 31st.) In both of these instances, the income payout is prorated based upon the partial year. Reg. 1.664-2(a)(1)(iv) and 1.664-3(a)(1)(v). A similar computation is done for a mid-year addition to an existing CRUT. Reg. 1.664-3(b)(1) and (2).

The trust agreement can specify which day of the year is to be used to value the trust. Most documents provide that the valuation is to be done either on the first day of each taxable year or on the first business day of each taxable year.

Duration of CRTs

A CRT (both annuity and unitrust varieties) can be set up for the income payout to last for a term of years, not exceeding 20, or for the lifetime of one or more income recipients. There is not technically a limit on the number of lives to whom the payout can be made. However, when the payout is based on someone’s life that “someone” has to be alive at the time the trust is created. This leads to the question of when is a CRT created? For an inter-vivos CRT, the creation date is the date it receives funding. For a testamentary CRT, it is the date of death.

If, however, a trust is set up to pay out for a term of years, then during that term the payments can be made to a class of beneficiaries, some of whom might not be born at the time the trust is created. It is possible to have the income distributed on a “sprinkle-spray” basis among the members of the class. However, it is important that the Trustee not be the Settlor or a party subordinate to the Settlor if this provision is included.

Testing Requirements

One test that a CRAT (but not a CRUT) must pass is the 5% Probability Test. If there is more than a 5% probability that the trust assets will be exhausted prior to the end of the measuring term (i.e. prior to the charity receiving the remainder interest), then transfers to the trust will not qualify for income, gift and estate tax charitable deductions. A second test that all CRTs must pass is that the present value of the charitable remainder interest of the trust must be at least 10% of the value of the trust at the time that it is funded. There are reformation rules in place in order to permit a CRT that fails the 10% test to either reduce the payout rate or the measuring term in order to qualify the trust.

Income Taxation of CRTs (Tax-Exempt Status)

One of the marvelous benefits of a CRT is that it is a tax-exempt entity at the trust level. Unless a CRT has unrelated business taxable income (UBTI), it will not pay tax at the trust level. IRC Section 664(c). However, distributions from the trust to the income recipient do carry out taxable income, based on the 4 tier system of accounting, as follows:

Tier One: Ordinary (taxable) income

Tier Two: Capital gains

Tier Three: Other income (i.e. tax-exempt income)

Tier Four: Return of principal

Note that this is a different system of income being carried out, or distributed, to beneficiaries than exists for traditional irrevocable trusts. In those trusts ordinary income (taxable and tax-exempt) is carried out proportionately and capital gains generally stay within the trust and are taxed to the trust.

CRTs frequently have a significant amount of tier two (capital gain) income within the trust. If the trustee sells an appreciated asset and reinvests the proceeds in municipal tax-exempt bonds, the capital gains will be distributed to the income recipient and the tax-exempt income remains within the trust (which is a tax-exempt entity). This can be a trap for the unknowledgeable trustee.

Even though a CRT is tax-exempt at the trust level, the trustee still needs to obtain cost basis information from the donor on the property contributed to the trust. The trustee is also required to file income tax returns (informational in nature). These include Form 5227 and IT-41. CRTs are required to be on calendar tax years. IRC Section 645.

It used to that if a CRT had any UBTI in a taxable year the consequence was that all the trust’s income for that tax year was subject to income taxes – i.e. the trust lost its tax-exempt status for the that taxable year. Reg. 1.513-1(b). This has, fortunately, been changed. Instead a 100% excise tax is imposed upon UBTI in a CRT, but the trust is able to keep its tax-exempt status.

Retention of Right to Change Charitable Beneficiaries/Alternate Remainderman

It is permissible for the grantor of the CRT to retain the right in the trust agreement to change the charitable beneficiaries who will ultimately receive the property. Rev. Rul. 76-8, 1976-1 C.B. 179; PLR 2000-34-019 (May 25, 2000). The trust must also contain a provision that provides for an alternate charitable remainder beneficiary to be selected in the event the original named charity does not exist or is not qualified as a charity.

Income Tax Charitable Deduction

When a donor funds a CRT during lifetime, he or she is entitled to a charitable income tax deduction. The deduction is not, however, for the full value of the property contributed to the trust. Rather, it is for the present value of the future interest that will pass to charity at the end of the distribution period.

There are eight factors that affect the amount of the charitable income tax deduction. These are:

* The net fair market value of the property transferred
* Whether the CRT is an annuity trust or a unitrust.
* The payout factor of the CRT.
* The duration of the up-front income distribution period [term of years, lifetime(s) of income recipient(s)].
* The frequency of the payment of the income distribution (annual, semi-annual, quarterly.
* The amount of time that elapses between the valuation date and the first payment date.
* Whether the payout occurs at the beginning of the period or end of the period.
* The Applicable Federal Mid-term Rate.

As you might expect, the younger the income recipient (for duration measured by life expectancy) or the longer the term (fixed years), the lower the charitable deduction. The more income recipients (for example, in a trust using consecutive life estates as the measuring term) the lower the charitable deduction. The higher the payout amount, the lower the charitable deduction. The imposition of the 10% minimum present value of the remainder interest has the effect of disqualifying CRTs for young donors.

The calculation of the present value of the charitable remainder interest uses unisex mortality tables. The discount rate used in the calculation is 120% of the AFMR in the month of the gift. The donor may also elect to use the AFMR from one of the two months preceding the gift.

If the income recipient is terminally ill at the time of the funding of the CRT, then the standard actuarial tables and discount rules do not apply. A terminally ill person is someone who is known to have an incurable illness with a 50% probability of death within one year.

The steps in which the present value of the remainder interest is determined is actually to value the up-front income interest and then subtract that from the total amount of the transfer to the CRT. The difference is the value of the remainder interest. Although it is possible to do the calculations manually (and in the dark ages this author did so), a number of software programs are available that do the calculations. The deductibility of the charitable gift for income tax purposes is subject to the same rules as other charitable income tax deductions (percent of income tests, carry forward, etc.). IRC Section 170. Note the differences for income tax purposes of naming a 30 percent type charity versus a 50 percent type charity as remainderman. When a power of substitution is retained you want to make sure that the substituted charity is required to be of the same type as the removed charity.

Estate and Gift Tax Charitable Deduction

When a CRT is created and funded during the donor’s lifetime, then he or she is entitled to a charitable gift tax deduction for the present value of the remainder interest that will eventually pass to charity. The amount of the charitable gift tax deduction is the same as the charitable income tax deduction. If there is an income recipient other than the donor, then he or she has also made a taxable gift. Depending upon the terms of the trust, the donor may be able to use the annual gift tax exclusion for the non-charitable portion of the gift, based on the present interest rules. For example, if the donor is the initial income recipient and the donor’s child has a consecutive life interest that begins at the donor’s death, the child does not have a present interest in the trust, and the annual exclusion will not available for the gift to the child. Gifts that are either in excess of the annual exclusion or that do not qualify for the annual exclusion may be offset by the donor’s credit shelter amount. The donor may retain a testamentary power to revoke an income beneficiary’s interest. Reg. 1.664-2(a)(4) [CRATs} and Reg. 1.664-3(a)(4) [CRUTs]. In this case, there is not a completed gift to that (potential) income recipient.

If a donor creates a lifetime CRT reserving the income interest for himself, then at death the full value of the CRT will be pulled back into the donor’s estate for federal estate tax purposes. The estate tax consequences of the CRT depend on whether the trust continues for non-charitable beneficiaries or terminates in favor of the charity at the death of the donor. In the latter case, there is a wash from a tax standpoint. The full value of the trust is pulled into the estate, but then the estate can take a charitable deduction for the full value of the trust.

When an inter-vivos CRT that continues for other non-charitable beneficiaries is pulled back into the estate, then the estate goes through the process of redetermining the present value of the remainder interest. This also occurs if a CRT if funded (for the first time) at the death of the donor. In both cases, the determination is made using the mortality tables, AFMR, the duration of the non-charitable interest (term of years versus lifetime), etc.

It is particularly important that the CRT document prohibit the payment of federal estate taxes from the CRT. Rev. Rule 82-128, 1982-2 C.B. 71. One option for providing for the payment of the taxes is to include a provision that requires the income beneficiary to provide the funds for the taxes attributable to his/her interest (or else forfeit the interest). The donor may also make provisions for the federal estate taxes to be paid from other estate assets.

A CRT can be drafted in such a way as to qualify for the marital deduction. If the decedent’s surviving spouse is the only income recipient, then the trust will qualify. IRC Section 2056(b)(8). Another option for estate planning for spouses is to create a QTIP trust under which the spouse is entitled to all the net income for life where the remainder beneficiary is a charity. The trustee can also be given the right to invade principal for the surviving spouse, which provides for more flexibility. At the death of the surviving spouse, the full value of the trust is pulled into the spouse’s estate, but is entitled to an offsetting charitable deduction

Planning Issues and Opportunities

The selection of the type of CRT is important in the planning process. For example, if a standard unitrust is funded with non-income producing real estate how will the trustee make the unitrust payment? Deed out a fractional interest in the real estate? This is not a good idea for several reasons. First of all, you don’t want to end up with small fractional amounts of the real estate being owned by multiple parties. If it takes a long time to sell the real estate, there will be multiple transfers out. Secondly, this can be expensive because of the need to obtain up to date valuations and legal descriptions for the pieces being carved out. Thirdly, if a CRAT or SCRUT makes an in-kind distribution, it is deemed to be a sale of the property distributed and gain will be recognized. Reg. 1.664-1(d)(6). A trust funded with non-income producing real estate is an example of when using a flip CRT makes good sense. During the time period that the CRT holds the real estate there will be no income, so the trustee will not make any distributions. The sale of the real estate can be the triggering event that will transform the NIMCRUT to a standard CRT. Because the CRT now has cash, it has the funds with which to make the unitrust distributions. Remember, however, that the beneficiary will have to wait until the following calendar year in which to receive the standard payout. You will want to remind the beneficiary of that so that he or she is not expecting a check immediately after the sale!

One of the features that makes a CRT such an important tool is the fact that it is a tax-exempt entity at the trust level. This is particularly valuable when dealing when a donor’s highly appreciated assets and qualified plan assets.

It is not unusual for a donor to have assets that have appreciated significantly in value. The donor is often faced with the dilemma of selling the assets in order to create a more diversified portfolio or to generate more income, but then having to recognize capital gains on the sale. By the time the taxes are paid and the amount left after taxes is reinvested, the donor may not be getting any more income than before the sale (although he or she may have minimized some risk because of reducing a concentration). If the donor gifts the appreciated assets to the CRT, the CRT can sell them and pay no tax. The trustee then has 100% of the proceeds of the sale to reinvest and generate an income stream for the donor. The donor receives an income tax deduction for the present value of the remainder interest.

Qualified plan assets pose challenges for estate planners. Not only are the assets subject to estate tax in a decedent’s estate, they retain their character as taxable income. These assets represent income in respect of a decedent (IRD). Thus, whoever inherits the qualified plan assets will still have to pay income tax on the funds – there is no step up in basis. An alternative is to use the qualified plan assets to fund a CRT at death. Because the CRT is a tax-exempt entity, it will not pay income tax on the receipt of the funds. It can invest 100% of the proceeds in order to generate the annuity or unitrust payout for the income recipient(s).

CRTs can also be useful vehicles for income deferral. For example, a donor might want to fund a CRT in a high taxable income year, thus obtaining the charitable income tax deduction. If the CRT is invested in such a way as to generate little income, then, under a NICRUT or NIMCRUT, the donor will not be receiving distributions from the trust. In later years, for example after retirement when the donor is in a lower income tax bracket, the investment strategy for the trust can be changed in order to generate income for the payout. In the meantime, the trust will have had the benefit of tax-deferred investing.

Selection of the appropriate type of CRT and appropriate and realistic payout rate are important in the planning process. For the donor who needs an assured income stream, the CRAT may be a more suitable vehicle than a CRUT. Over a long period of time in a CRUT, a lower payout rate may ultimately result in higher payouts during the term of the trust, due to the benefit of keeping more dollars in the trust and allowing them to grow.

From a planning standpoint, a lower interest rate environment favors charitable lead trusts, whereas higher interest rates generate higher charitable deductions for charitable remainder trusts. In the 1990s the 7520 rate ranged from 5.4% to 10.6%. In the 2000’s it ranged from 2% to 8%, and since 2010 the highest it has been is 3.4%. The July 2016 rate was 1.8% and the August and September rates were 1.4%.

CHARITABLE LEAD TRUSTS

A charitable lead trust is often thought of as the reverse of a charitable remainder trust. And, to the extent that the timing of the distribution to charity is flip-flopped, this is true. However, there is a distinct set of tax rules that are very different than those that apply to charitable remainder trusts. A common theme, however, is the use of actuarial tables and the applicable federal midterm rate to determine the present value of the amount going to charity.

Types of CLTs

A charitable lead trust must be structured either as a charitable lead annuity trust (“CLAT”) or a charitable lead unitrust (“CLUT. This is similar to the requirement for the income payment to the non-charitable beneficiary of a CRT to be either an annuity or unitrust amount. Additional contributions to a charitable lead annuity trust (“CLAT”) cannot be made. However, additions may be made to a charitable lead unitrust (“CLUT”). The trustee may also be given the discretion to pay out trust income that exceeds the annuity/unitrust amount to the charitable beneficiary. In essence this would be paying out the greater of trust income or the stated annuity/unitrust amount.

Duration of CLTs

A charitable lead trust may be structured to last for a term of years or for the life of one or more individuals, each of whom must be living on the date the trust is funded. Unlike a CRT, there is no maximum term of years for which the CLT may be established, although a state’s rule against perpetuities will apply.

Testing and Payout Requirements

Unlike a CRT, there are no minimums or maximums that apply to the payout rate of a CLT. In addition, neither the 5% probability test nor the 10% minimum charitable interest test applies. The payout to the charitable beneficiary or beneficiaries must be made at least annually. A charitable lead trust may have more than one charitable beneficiary, and the trustee may have the discretion to sprinkle the annuity or unitrust amount among the beneficiaries. In addition, the trustee (so long as it is not the donor) may have the right to choose a charitable recipient. (A donor may serve as the trustee, but the right to designate the recipients will cause estate tax inclusion.)

Income Taxation of CLTs and the Income Tax Charitable Deduction

A very significant difference between a CLT and a CRT is that a CLT is not a tax-exempt entity for income tax purposes. A CLT will either be taxed as a grantor trust for income tax purposes (i.e. all items of gross income and deductions will be reflected on the grantor’s personal tax return) or as a complex trust. This is a choice made by how the trust instrument is drafted. It is not as simple as stating this is going to be a grantor CLT or this is going to be a complex trust CLT. In order to be a grantor trust, the trust agreement must contain provisions that would cause it to be a grantor trust under Sections 671 – 679 of the Internal Revenue Code. Care must be taken to ensure that the trust is only a grantor trust for income tax purposes without causing inclusion in the donor’s estate for federal estate tax purposes.

If the CLT is created as a grantor CLT, then in the year that it is funded, the grantor may take an income tax deduction for the present value of the income stream going to charity. This is a one-time charitable income tax deduction. In the future years of the trust, all the income will be taxed to the grantor, but he or she will not receive any additional deductions. If the trust is structured as a complex trust, then the donor does not receive any income tax deduction for creating the trust. The trust will be taxed as a complex trust, but will be able to take a deduction for the amounts paid to charity. Any income earned by the trust over and above what is distributed to charity will be taxed to the trust at the high trust rates. The concept of four-tier accounting that applies to CRTs is not applicable to CLTs. Instead, the regular fiduciary income tax rules apply.

Estate and Gift Tax Charitable Deduction

As we saw in the discussion on the estate and gift tax charitable deduction for charitable remainder trusts, a calculation is done to determine the present value of the income stream that is going to go to charity in a charitable lead trust. The factors that are used in doing CRT calculations are used in CLT calculations, namely the applicable federal mid-term rate, the duration of the charitable lead period, the rate of the payout, the frequency of the payout, whether the trust is an annuity trust or a unitrust, for example.

One key difference is that there is no availability of the annual exclusion to be applied to the portion of the trust that will ultimately pass to the non-charitable beneficiary. This is because the annual exclusion is only available for gifts of a present interest. If the lead trust is one that reverts to the donor upon the expiration of the charitable lead interest, then there is no taxable gift to someone else. If, however, upon the expiration of the lead interest, the trust assets pass to other individuals, then that is a taxable gift. The donor’s gift or estate tax exemption amount can be used against that portion of the gift.

WHO CAN SERVE AS TRUSTEE?

The grantor of a CRT is permitted to serve as the trustee. Care must be taken in the drafting, however, to avoid retention of powers that cause the trust to be considered a “grantor” trust, because the trust then no longer qualifies as a CRT. Such powers include the right to sprinkle spray the distribution among a class of income beneficiaries. If this feature is desired, then the grantor should not only not serve as trustee, but should be prevented from serving in the future (in other words, also review the powers to remove the trustee and appoint a successor).

Another area which can cause problems if the grantor is also serving as trustee has to do with the valuation of hard to value assets. A CRT’s unmarketable assets must be appraised either by an independent trustee or by a qualified appraiser. Reg. 1.664-1(a)(7).

Important considerations in selecting the CRT trustee are costs and experience. Does the proposed trustee under the 4 tier accounting system? If a donor insists on naming a charity as the trustee, the charity may want to consider outsourcing the administration and investment of the CRT.

The considerations for a choice of trustee for a CLT are the same as for a CRT. The donor may serve, depending upon how the trust is drafted. For example, if the intent is to allow the trustee the right to select a charitable recipient, then someone other than the donor should serve as trustee and the donor should be prevented from serving in the future (in other words, also review the powers to remove the trustee and appoint a successor).

Selection of a trustee for any type of trust, whether it is a charitable split-interest trust or credit shelter trust or other type of trust should take into consideration the competence of the trustee, the time available to serve as trustee, the trustworthiness of the trustee, and costs. When evaluating costs and doing a comparison between a professional fiduciary such as a bank or trust company and an individual, remember that the individual will likely need to hire investment managers and tax professionals.

PRIVATE FOUNDATION RESTRICTIONS

CRTs and CLTs are subject to private foundation restrictions against self-dealing. Reg. 1.664-1(b). Self-dealing includes the sale, exchange or leasing of property between the CRT and a disqualified person, as well as lending money from the trust to a disqualified person. A disqualified person in relation to a CRT/CLT includes the creator of the trust, the trustee, a spouse, ancestor, child, grandchild, great grandchild and their spouses. The penalty for an act of self-dealing starts with an initial tax of 5% of the amount involved and is imposed on the disqualified person. If an act of self-dealing is not corrected, an additional tax of 200% is imposed on the disqualified person.

Other aspects of the private foundation rules that apply to split-interest trusts include rules regarding excess business holdings and jeopardizing investments.

CHARITABLE PLANNING FOR SMALLER GIFTS

One of the advantages of charitable remainder and charitable lead trusts is the ability to structure a gift in such a way as to provide monetary benefits to an individual as well as charity. A factor in establishing these trusts, however, is the cost. First of all there is the cost to have the trust drafted. Secondly, there are trustee fees to be considered, along with investment management fees and accounting fees if a professional fiduciary is not used. Professional fiduciaries usually have minimum fees that apply, that can make it cost prohibitive to use a professional trustee.

For lifetime planning, one option for the smaller gift is to fund a charitable gift annuity. This allows the donor to make a current gift, keep for himself/herself an income stream, and receive a gift tax deduction for the present value of the amount that will eventually go to charity. The donor may also have the income payout be made to a third person, instead of retaining it for himself or herself. The contract to create a charitable gift annuity is one or two pages long, typically, and is something that the charity has on hand. Not all charities offer charitable gift annuities, but it can provide an alternative for the donor with fewer assets. From an estate planning standpoint, charities are happy to receive outright bequests, even small ones.

SUMMARY

Split-interest gifts are an important part of the estate planner’s toolkit. They offer clients a number of options in structuring their estates to take advantage of the tax-exempt aspects of CRTs, of leveraging the credit equivalent, and for obtaining charitable deductions for trusts that have both charitable and non-charitable beneficiaries. Great care must be taken, however, in making sure the trusts comply with the IRS Code and Regulations.

Planners who are interested in using CRTs and CLTs to help their clients accomplish their estate planning and financial goals can avail themselves of a number of low cost or free resources. These include the Central Indiana Community Foundation (CICF) and its Planned Giving Design Center, which can be found at [www.pgdc.com](http://www.pgdc.com). In addition, the Partnership for Philanthropic Planning (formerly known as the National Committee on Planned Giving) is headquartered in Indianapolis. Membership is available through the Planned Giving Group of Indiana. More information can be found at [www.plannedgivingindiana.org](http://www.plannedgivingindiana.org).

In 2003 IRS issued eight new sample charitable remainder annuity trusts, which can be found in Rev. Proc. 2003-54. In 2005 IRS issued eight new charitable remainder unitrust sample documents, which can be found in Rev. Proc. 2005-52 through Rev. Proc. 2005-59. They provide a beginning point.

GLOSSARY

**AFMR** Applicable Federal Mid-term Rate

**CLT** Charitable Lead Trust

**CLAT** Charitable Lead Annuity Trust

**CLUT** Charitable Lead Unitrust

**CRT** Charitable Remainder Trust

**CRAT** Charitable Remainder Annuity Trust

**CRUT** Charitable Remainder Unitrust

**FLIP CRT** Either a NICRUT or NIMCRUT that flips to a Standard CRUT upon

occurrence of a triggering event or date

**NICRUT** Net IncomeCharitable Remainder Unitrust

**NIMCRUT** Net Income with Make UpCharitable Remainder Unitrust

**SCRUT** StandardCharitable Remainder Unitrust

**UBTI** Unrelated Business Taxable Income

***Other Terms and Definitions***

***Four Tier Accounting*** A classification ordering system for CRTs that determines the nature of distributions from the CRT to the income recipient. Distributions are made first from ordinary taxable income, second from capital gains, third from tax-exempt income, and fourth from principal.

***Income Recipient*** The beneficiary who receives the annuity amount or unitrust amount from the CRT (to be distinguished from the

income beneficiary of a “traditional” trust, who receives

“net income”).

***Independent Trustee*** A person who is not the grantor of the trust, a noncharitable beneficiary, or a related or subordinate party to the grantor, the grantor’s spouse, or a noncharitable beneficiary (within the meaning of section 672©. 1.664-1(a)(7)(iii)

***Qualified Appraisal*** An appraisal that is prepared by qualified appraiser not earlier than 60 days prior to the date of the contribution of the property and not later than the due date of the return (and extensions), does not involve a prohibited appraisal fee and includes certain specified information. Reg. 1.170A-13(c)(3).

***Qualified Appraiser*** An individual who holds himself out to the public as an appraiser of the type of property being valued, is not an excluded individual and who understands the penalties for aiding and abetting an understatement of tax liability. Reg. 1.170A-13(c)(5).

***Unmarketable Assets*** Assets that are not cash, cash equivalents, or other assets that can be readily sold or exchanged for cash or cash equivalents. Unmarketable assets include real property, closely held stock, and an unregistered security for which there is no available exemption permitting public sale. 1.664-1(a)(7)(ii)

**NOTE: THIS IS A TRUST FROM 2000 AND HAS NOT BEEN UPDATED**

**CHARITABLE REMAINDER UNITRUST NO. 1**

THIS TRUST AGREEMENT is made and entered into this 18th day of September, 2000, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, both of Indianapolis, Marion County, Indiana, hereafter called the "Settlor," and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, of Indianapolis, Indiana, hereafter called the "Trustee." This Trust shall be known as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_CHARITABLE REMAINDER UNITRUST NO. 1."

W I T N E S S E T H :

ARTICLE I: Trust Property. The Settlor intends to assign and deliver property to the Trustee; said property, when received by the Trustee, shall then be set forth on Schedule “A” attached hereto. The Settlor intends that the Trust will become effective upon the delivery and acceptance of such property by the Trustee. The Trustee agrees to hold, manage, administer and distribute such property and any other property which the Trustee may, pursuant to the provisions of this Agreement, at any time hereafter hold or acquire for the purposes and on the terms set forth herein. It is Settlor's intention in executing this Agreement that the Trust created hereunder shall qualify as a Charitable Remainder Unitrust within the meaning of section 4 of Rev. Proc. 90-30 and section 664(d)(2) of the Internal Revenue Code (hereinafter called the "Code") and the corresponding regulations.

ARTICLE II: Additional Property. Either the Settlor or any other person, with the consent of the Trustee, may add other property to the trust hereby created, by transferring such property to the Trustee hereunder by deed, assignment, bequest, or devise.

ARTICLE III: Dispositive Provisions.

A. In each taxable year of the trust, the Trustee shall pay to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, during her lifetime hereafter called the “current Income Beneficiary” or “Income Beneficiary”, an amount, hereafter called the "Unitrust Amount," equal to seven and sixth tenths percent (7.6%) of the net fair market value of the trust assets valued as of the first business day of the first calendar month in each taxable year of the trust, hereafter called the "Valuation Date," except, where no Valuation Date occurs in a taxable year of the trust which is a short taxable year or which is the taxable year in which the noncharitable interests terminate, the trust assets shall be valued as of the last day of such short taxable year or as of the day on which such noncharitable interests terminate. In determining the Unitrust Amount, the Trustee shall prorate the same on a daily basis for a short taxable year in accordance with Treasury Regulation section 1.664-3(a)(1)(v)(a) and for the taxable year in which all noncharitable interests terminate, in accordance with Treasury Regulation section 1.664-3(a)(1)(v)(b). The Unitrust Amount for each taxable year shall be paid from income and, to the extent income is not sufficient, from principal, in equal quarterly installments at the end of each quarter of such year. Any income of the trust for a taxable year in excess of the Unitrust Amount shall be added to principal.

B. 1. Upon the death of the noncharitable Income Beneficiary, the Trustee shall pay over and distribute, outright and free of trust, all of the then principal and income of the trust, other than any amount due the Income Beneficiary or her estate, to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of Indianapolis, Indiana, or its legal successor.

2. Except as to the authority of the Trustee provided for in Article III.B.3. and 4. below, the above charitable remainder beneficiary designation is irrevocable.

3. In all events, any charitable organization named in accordance with this Article III.B. must be an organization of a type described in each of sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code (hereafter called a "Qualified Organization"). In the event that any portion of the remainder interest remains undesignated upon the death of the noncharitable Income Beneficiary, such undesignated portion shall be transferred to one or more Qualified Organizations, the selection of which shall be in the sole discretion of the Trustee.

4. In the event that any remainderman named in accordance with Article III.B., is not, upon the death of the noncharitable Income Beneficiary, a qualified organization, the amount which would have been transferred to such remainderman shall instead be transferred to one or more qualified organizations, the selection of which shall be in the sole discretion of the Trustee.

5. The Trustee may distribute currently a portion of the trust assets to the qualified organization designated in Article III.B.1. pursuant to a separate written instrument which expressly references this Article III.B. and is provided to the Trustee in accordance with this Article. If any charitable organization so named is not a qualified organization, the distribution thereto shall lapse and the assets to be distributed to such charity shall remain instead in this trust. In the case of distributions in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for payment on the date of payment. After any distribution pursuant to this Article III.B.5., the Unitrust Amount shall thereafter be calculated based on the remaining net fair market value of the trust assets as of the next succeeding Valuation Date.

C. In computing the net fair market value of the trust assets, there shall be taken into account all of the trust's assets and liabilities as of the date of such computation without regard to whether particular items are taken into account in determining the income or the principal of the trust. All such determinations of net fair market value shall be made exclusively by the Trustee, the decision of whom, reached in good faith, shall be binding upon all persons interested in the trust. If the net fair market value of the trust assets is incorrectly determined by the Trustee for any taxable year, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the current Income Beneficiary (or the estate of such Income Beneficiary), in the case of an undervaluation, or shall receive from the current Income Beneficiary (or the estate of such Income Beneficiary), in the case of an overvaluation, an amount equal to the difference between the Unitrust Amount properly payable and the Unitrust Amount actually paid.

D. 1. If any additional contributions are made to the trust after the initial contribution by an inter vivos transfer, the Unitrust Amount for the taxable year in which the additional contribution is made shall be computed in accordance with Treasury Regulation section 1.664-3(b). If the Valuation Date for the taxable year in which the contribution is made has passed, the assets so added shall be valued as of the time of contribution.

2. If any additional contribution is made to the trust by will or any testamentary transfer as a result of a person's death, the obligation to pay the Unitrust Amount with respect to such additional contribution shall commence with the date of death of the person under whose will or other testamentary transfer caused the additional contribution to be made, but payment of the Unitrust Amount may be deferred from the date of such person's death until the end of the taxable year of the trust in which occurs the complete funding of the additional contribution. Within a reasonable time after the end of the taxable year in which the complete funding of the additional contribution occurs, the Trustee must pay to the current Income Beneficiary (or the estate of such Income Beneficiary), in the case of an underpayment, or must receive from the current Income Beneficiary (or the estate of such Income Beneficiary), in the case of an overpayment, the difference between:

a. Any Unitrust Amounts actually paid, plus interest, compounded annually, computed for any period at the rate of interest that the federal income tax regulations under section 664 of the Code prescribe for the trust for such computation for such period; and

b. The Unitrust Amount that is payable, determined under the method described in Treasury Regulation section 1.664-1(a)(5)(ii), plus interest, compounded annually, computed for any period at the rate of interest that the federal income tax regulations under section 664 of the Code prescribe for the trust for such computation for such period.

E. Except for the payment of the Unitrust Amount to the Income Beneficiary, the Trustee or any Independent Special Trustee shall not:

1. Engage in any act of self-dealing, as defined in section 4941(d) of the Code;

2. Make any taxable expenditures, as defined in section 4945(d) of the Code;

3. Retain any excess business holdings as defined in section 4943(c) of the Code that would subject the trust to tax under section 4943 of the Code; or

4. Make any investments in such manner as to incur tax liability under section 4944 of the Code.

The Trustee shall make distributions at such time and in such manner as not to subject the trust to tax under section 4942 if such section is at any time applicable to this trust.

F. No amount other than the Unitrust Amount or an amount transferred for full and adequate consideration, may be paid to or for the use of any person other than a Qualified Organization.

G. The first taxable year of the trust shall begin on the date the trust is first funded and shall end on December 31st of that year. Thereafter, the taxable year of the unitrust shall be the calendar year.

H. 1. No gift, legacy, succession, inheritance, estate or generation-skipping transfer taxes that may be assessed against the property of this trust by reason of a Settlor's transfer to this trust or death shall be paid out of any property held in trust hereunder. The Settlor agrees on behalf of himself, his heirs, legal representatives, successors and assigns, to provide for payments of any such taxes from sources other than property held by this trust and to indemnify and hold harmless the Trustee from any and all liability for such taxes.

2. Any Income Beneficiary must agree to provide for payment of any taxes referred to in Article III.H.1. that may arise as a result of his or her income interest in this trust from sources other than property held by this trust and failure to do so shall cause his or her income interest to terminate as if he or she predeceased the Settlor.

ARTICLE IV: Trust Administration.

A. In the investment, administration and distribution of the trust created herein, the Trustee (and any Independent Special Trustee) shall have all the powers given to trustees by Indiana statute, or case or rule of law. These include (but are not limited to) the following powers:

1. To retain any property transferred to the Trust hereunder and to invest and reinvest, irrespective of any laws, or rules of law, governing the investment or diversification of trust funds, in any form of property, including by way of illustration and not of limitation: real estate; common stocks up to one hundred percent (100%) hereof; common trust funds maintained by or securities issued by any corporate Trustee hereunder or securities issued by any corporation controlling or otherwise affiliated with such corporate Trustee; investment trusts; mutual funds; life insurance; deferred annuities; and securities issued outside of the United States.

2. To sell, exchange or lease for a period of time any property, real or personal; to enter into agreements of limited partnership; to maintain, repair, alter, improve, restrict, subdivide, develop, partition, dedicate or abandon real estate; to grant easements concerning and to otherwise encumber real estate; and to give options and execute option agreements for the sale or lease of assets held, without obligation to repudiate the same in favor of better offers.

3. To subscribe for stocks, bonds or other investments; to join in any plan of lease, mortgage, merger, consolidation, reorganization, foreclosure or voting trust and deposit securities thereunder; to exercise options to purchase stock and other property; and generally to exercise all the rights of security holders of any corporation.

4. To register securities in street name or in the name of a nominee or in such manner that title shall pass by delivery and to vote, in person or by proxy, securities held hereunder and in such connection to delegate discretionary powers.

5. To retain reasonable amounts of cash uninvested, in the commercial or trust department of any bank or trust company, including any corporate Trustee hereunder, for such periods of time as are deemed reasonable for the efficient administration of the Trust.

6. To lend money to any person or organization upon such security as may be deemed sufficient.

7. To borrow money from any person for any purpose in connection with the administration of any property held hereunder, to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any and all amounts so borrowed by mortgage or pledge of such property.

8. To make all reasonable compromises.

9. To make distribution in cash or in kind or partly in cash and partly in kind.

10. To determine finally all allocations, charges or credits or any portion thereof, as between principal and income under the governing statutory law or according to a generally accepted rule of trust accounting where there is no provision made therefor by statute, but regardless of any statute, to charge the Trustee’s fees to income.

11. To employ and compensate from income or principal (according to the provisions of subparagraph 10. above) in the Trustee's discretion investment and legal counsel, accountants, brokers, appraisers and other specialists, and, whenever there shall be no corporate Trustee serving as a Trustee hereunder, a corporate custodian, and to delegate to investment counsel (including an account executive at a securities firm) discretion with respect to the investment and reinvestment of any or all of the assets held hereunder. Services rendered by such persons shall be paid for as an expense of trust administration and shall not offset the Trustee's fees.

12. To participate in a public or private sale of securities issued by any corporation whether or not any Trustee hereunder is a controlling shareholder as defined in the securities laws of the United States or any state thereof; to join with other shareholders in such a sale; to participate in the preparation of registration statements, prospectuses and other documents in connection with such a sale and to pay from other assets of the Trust hereunder an equitable portion of the expenses of such preparation; to make warranties respecting the ownership of such securities and such other matters as may be deemed advisable; to delegate to other persons the authority to negotiate on behalf of the Trustee with underwriters in connection with such a sale and to indemnify such underwriters or purchasers against any loss arising out of an omission or representation in such a prospectus or registration statement or arising out of any other matter in connection with such a sale; to pledge the assets of the Trust hereunder as security for such indemnity; and to purchase and pay premiums on any insurance against any loss arising in connection with such a sale.

B. All powers granted to the Trustee or any Independent Special Trustee under this Trust Agreement are exercisable only in a fiduciary capacity. No such power shall be construed to enable any person to purchase, exchange or otherwise deal with or dispose of any Trust asset for less than adequate consideration, nor shall any such power be construed to permit the Trustee or any Independent Special Trustee to take any action which would cause the Trust to fail to qualify as a Charitable Remainder Unitrust as defined in section 664 of the Code or to preclude the Trustee from investing the assets of the Trust in a manner which could result in the annual realization of a reasonable amount of income from such assets or of gain from the sale of other disposition thereof.

C. Notwithstanding anything in this Agreement to the contrary, an individual Trustee may from time to time relieve the corporate Trustee of any power to direct trust investments by written notice to the corporate Trustee. Thereafter, the corporate Trustee shall make only such purchases and sales as the individual Trustee may direct. The corporate Trustee shall act upon such investment direction without inquiry or any duty to determine suitability or investment merit and shall incur no liability for any action taken at, or for not taking any action in the absence of, such direction. The corporate Trustee will not be liable or accountable for any loss or reduction in the value of assets of the trust as a result of any investments made by the corporate Trustee at the direction of the individual Trustee.

D. 1. The individual Trustee may, by written notice, relinquish to the corporate Trustee the power to direct the purchase and sale of trust investments. Upon such relinquishment, or at any time that the individual Trustee becomes disabled or incompetent or ceases to act as Trustee, the corporate Trustee will have and may exercise all powers hereunder with respect to trust investments without any restrictions from the individual Trustee, as it in its sole and absolute discretion determines.

2. The corporate Trustee will have no obligation to initiate any inquiry with respect to the individual Trustee’s disability or incompetence and shall incur no liability for any action taken at the individual Trustee’s direction, or for any failure to act in the absence of the individual Trustee’s direction, prior to receiving written notice of (a) the individual Trustee’s death or resignation; (b) appointment of a guardian, conservator, or other personal representative of the individual Trustee’s person or estate; or (c) written certification of the individual Trustee’s disability or incompetence by two (2) licensed physicians.

3. At any time that the corporate Trustee assumes the power to direct trust investments in accordance with these provisions, it shall be entitled to payment for its services in accordance with its schedule of rates for managed trusts in effect at the time such compensation becomes payable.

E. The Trustee may, but shall not be required to, prepare and file accountings with any court. Prior to delivering all of the property of any trust hereunder to a successor Trustee or to making any partial or complete distribution of trust principal, the Trustee may require an approval of its accounting either by a release and discharge by the beneficiary or beneficiaries of any such trust or by a court of competent jurisdiction. All of the Trustee's fees and expenses (including reasonable attorneys' fees) attributable to any such accounting and approval shall be paid by such trust.

ARTICLE V: Irrevocability of Trust. The Settlor has carefully considered the advisability of reserving the right to amend, alter or revoke this Agreement and has determined not to reserve that right and now declares that this Agreement shall be irrevocable and shall not be subject to amendment, alteration or revocation by anyone, except as follows:

A. The Trustee shall have the power, acting alone, to amend this Agreement in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a Charitable Remainder Unitrust within the meaning of section 664(d)(2) of the Code and the corresponding regulations.

B. To the extent Article III.B. so allows, the Trustee shall have the power to transfer the trust assets to one or more Qualified Organizations other than the charitable remainder beneficiary designated in Article III.B.1. as provided in Article III.B.

ARTICLE VI: Resignation and Successor Trustee.

A. The Settlor shall have the right to remove the Trustee and appoint a successor Trustee. The Settlor shall also have the right to appoint a successor Co-Trustee. Upon the death of the Settlor, then \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_shall have the above-described rights of removal and appointment. The appointment of a successor Trustee shall be made by notice in writing to the former Trustee or the former Trustee's legal representative, and written acceptance of such appointment by the named successor shall be appended to such notice.

B. Any Trustee or Independent Special Trustee may resign at any time upon written notice given to any Co-Trustee and to the Settlor, if the Settlor is living, or if the Settlor is not living, to the current Income Beneficiary. If an Income Beneficiary is suffering under a legal disability, the notice shall be delivered to their natural or legal guardian. If no other Trustee is then serving, such resignation shall be effective upon the appointment of a successor Trustee. If no successor Trustee is serving, then the Settlor shall have the right to appoint a successor Trustee. If the Settlor is suffering under a legal disability, then the natural or legal guardian for the Settlor shall have the right of removal and substitution. If the Settlor's right to appoint a successor Trustee is not exercised, then the court having probate jurisdiction over this trust shall appoint a successor Trustee. For purposes of this Article VI.B., the following shall also be considered a resignation: (1) the death or incompetence of a Trustee or an Independent Special Trustee, and (2) as to the Independent Special Trustee, any act or event causing the Independent Special Trustee to cease being “Independent” as the term is defined in Article VIII. All of the Trustee’s fees and expenses (including reasonable attorneys’ fees) attributable to the appointment of a successor Trustee shall be paid by such Trust.

C. Any successor Trustee or successor Co-Trustee upon the Trustee's acceptance of the trust herein created shall succeed to all duties and obligations of the original Trustee as though such successor Trustee had been named herein as the original Trustee.

D. After receiving written notification of the appointment of a successor Trustee, the Trustee hereunder shall render a final accounting and deliver to the successor Trustee all assets as then constituted.

E. Any successor Trustee may accept, without examination or review, the accounts rendered and the property delivered by or from the predecessor Trustee without incurring any liability or responsibility for doing so.

F. Every successor Trustee appointed hereunder shall possess and exercise all power and authority conferred upon the original Trustee.

G. No Trustee of the trust hereby created shall be required to furnish bond or other securities to secure the faithful performance of the duties hereunder.

H. No fee shall be paid to the Settlor while serving as a Trustee; however, while serving in this capacity, the Settlor shall be entitled to reimbursement from trust assets for reasonable expenses incurred in administering the trust.

ARTICLE VIII: Independent Special Trustee.

A. Notwithstanding anything herein to the contrary, when no Independent Trustee is acting with respect to this Trust, an Independent Special Trustee (as defined in this Article VIII) shall be appointed whenever the Trust holds any asset that does not have a readily ascertainable fair market value, including by way of example (but not limited to) the real estate, stock in a closely held corporation, patents (or similar intangible property), to take title to and make all valuations of such trust assets; which valuations shall be made solely by the Independent Special Trustee, and any other Trustee then serving shall have no power, duty, right or obligation with respect to such valuation. Similarly, all investment decisions regarding any asset described in the preceding sentence, including (but not limited to) the determination of whether to dispose of such asset and, if so, under what terms, shall be made solely by the Independent Special Trustee, and any other Trustee then serving shall have no power, duty, right or obligation with respect to such investment decisions.

B. At any time during the term of this Trust whenever a situation described in paragraph A. above requires an Independent Special Trustee and none is then serving, an Independent Special Trustee shall be appointed by the Trustee in a separate written document that expressly refers to said paragraph A.

C. The Independent Special Trustee shall provide the Trustee with accountings at least quarter-annually (and a final accounting upon resignation) showing all receipts, disbursements and distributions regarding any assets over which the Independent Special Trustee has authority. The Independent Special Trustee may accept the accounting records of his, her or its predecessor without further investigation and without incurring any liability to any person claiming or having an interest in the Trust. Any accounting required hereunder shall be deemed settled and approved, and the Independent Special Trustee and the Independent Special Trustee’s estate shall be discharged and released from all liability, unless the Trustee delivers a written objection to the Independent Special Trustee or its legal representatives within ninety (90) days of receipt by the Trustee of the Independent Special Trustee’s accounting.

D. No Independent Special Trustee named in or in accordance with this trust document shall be liable to any beneficiary or to any heir of the Settlor for the Independent Special Trustee’s acts or failure to act, except for intentional and willful misconduct, negligence, bad faith or reckless indifference to the beneficiaries’ interest.

E. The Independent Special Trustee shall have the power to employ and make reasonable use of appraisers, actuaries, accountants and other agents to assist the Independent Special Trustee in his, her or its duties and the Independent Special Trustee shall be entitled to rely on such experts’ advice as long as the Independent Special Trustee does so in good faith. All reasonable fees and costs of such experts shall be paid from the assets of the trust estate and shall be charged in accordance with the terms of this Agreement.

F. The Independent Special Trustee shall have no powers, duties or liabilities hereunder, except with respect to matters described in this Article VIII. Pursuant to this Article VIII, the powers of the Independent Special Trustee (and certain limitations thereon) are described in Article IV and include (by way of example and not limitation) the power to sell, exchange or otherwise dispose of any property that is subject to this Article VIII (either real or personal) at either public or private sale, for cash or on credit. In no event may an Independent Special Trustee undertake his, her or its duties in a manner that will jeopardize the continuing status of this trust as a charitable remainder unitrust as defined in section 664 of the Code and clarified in related Treasury Regulations and Revenue Rulings.

G. An Independent Special Trustee and any successor thereto must be an “Independent” Trustee. As used herein, an Independent Trustee is someone other than the Settlor, and persons no more than half of whom are “Related or Subordinate Parties” who are subservient to the wishes of the Settlor within the meaning of section 674(c) of the Code. The definition in section 672(c) of the Code shall be used to define the term, “Related or Subordinate Parties.”

ARTICLE IX: Environmental Expenses.

A. The Trustee is expressly authorized to take such remedial action as the Trustee deems appropriate to prevent, abate, remove or otherwise respond to any actual, threatened or alleged violation of, or otherwise comply with, any environmental law or regulation, or federal, state or local agency or court order, affecting any real property which is an asset of the trust, including any real property owned or operated by a sole proprietorship, general or limited partnership, limited liability company or closely held corporation, or any interest in any such business enterprise. The Trustee may employ agents, consultants or legal counsel to assist or perform such action. All costs and expenses incurred by the Trustee in connection with such action shall be paid by the trust or the Settlor.

B. The Trustee shall be held harmless from, and shall be indemnified by the Settlor for, any liability or expense, including the costs of remediation and reasonable attorney fees, incurred by the Trustee and any loss or diminution in value of the trust resulting from any violation, actual, threatened or alleged, of any such environmental law or regulation with respect to any such property which is an asset of the trust, except for any such liability, expense, loss or diminution arising out of the willful misconduct or gross negligence of the Trustee.

ARTICLE X: Miscellaneous.

A. This Agreement shall be construed and regulated in all respects by the laws of the State of Indiana. The Trustee, however, is prohibited from exercising any power or discretion granted under said laws which would be inconsistent with the qualification of the Trust as a Charitable Remainder Unitrust under section 664(d)(2) of the Code and the corresponding regulations.

B. The references to the Internal Revenue Code, and regulations, are to the Internal Revenue Code of 1986, as amended, and as may be amended, and to the Treasury Department Regulations, as amended, and as may be amended.

C. Any words herein used in the neuter shall read and be construed in the feminine or masculine where they would so apply. Words in the singular shall be read and construed as though used in the plural in all cases where they would so apply.

D. The interest of the Income Beneficiary shall not be subject to the claims of any creditor, any spouse for alimony or support, or others, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered other than by assignment by the Income Beneficiary of the income interest defined in Article III to the Qualified Organizations designated in accordance with Article III.

E. For all purposes under this Agreement, a person shall be deemed mentally or physically incompetent if and so long as a guardian or conservator of his or her person or estate duly appointed by a court of competent jurisdiction continues to serve, or upon the determination of two (2) physicians (licensed to practice under the laws of the state where the person is domiciled), that such person is unable properly to care for his or her person or property, which determination shall be set out in writing and delivered to the Trustee. A determination that an individual Trustee is incompetent shall be deemed a resignation by the individual Trustee as of the date of that determination.

F. Any successor corporate Trustee, or any Independent Special Trustee shall receive payment for its services in accordance with its schedule of rates in effect at the time such compensation becomes payable, without reduction for any other fees or other compensation paid to the Trust Company or an Affiliated Entity, including, but not limited to, such fees or other compensation paid by any mutual fund, unit investment trust or other investment vehicle, or an agent. Such compensation may be paid without Court approval.

ARTICLE XI: Powers Retained by Settlor.

Any authority or power retained by the Settlor shall be exercisable by both Settlors jointly or the survivor of them.

IN WITNESS WHEREOF, this Agreement has been executed the day and year above written.

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

"SETTLOR"

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

"TRUSTEE"

STATE OF INDIANA )

) SS:

COUNTY OF MARION )

Before me, the undersigned, a Notary Public in and for the County of Hamilton, State of Indiana, personally appeared the above\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me, and acknowledged the execution of the above and foregoing trust as a voluntary act and deed of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as the Settlor, on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2000.

WITNESS my hand and notarial seal.

Notary Public

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

(Printed Signature)

My Commission Expires:

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

My County of Residence:

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