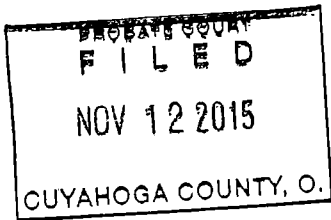


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M. WALLACE
CASHIER



COURT OF COMMON PLEAS
PROBATE DIVISION
CUYAHOGA COUNTY, OHIO

ERIC H. CARMEN
2155 Woodstock Road
Gates Mills, OH 44040

Plaintiff

v.

FRED N. CARMEN
776 Village Trail
Mayfield Village, OH 44040

Defendant

) CASE NO.

) ERIC H. CARMEN
) 2015ADV211860
) JUDGE ANTHONY J. RUSSO

) **COMPLAINT FOR LEGAL**
) **AND EQUITABLE RELIEF**

1. This is a sad story, where the Trustee of the Carmen Family Gift Trust, who is also the brother of, and was the trusted advisor and lawyer for Eric Carmen ("Plaintiff" or "Eric"), the Trust's beneficiary, has abused his position in engaging in a pattern of mismanagement and self-dealing which has deprived the Trust of hundreds of thousands of dollars and left the Trust in a financial mess. By way of example:

a. Over a period of years, Fred N. Carmen ("Defendant" or "Trustee") has paid himself more than \$600,000 in "legal fees" even though little to no fees were earned and while other attorneys, hired by Defendant, were paid hundreds of thousands of dollars to handle all legal work. In 2014 alone, Defendant paid himself \$100,000 in "legal fees."

2015ADV211860



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b. Defendant has failed to maintain proper books and records of the Trust, which has resulted in numerous unexplained and unsupported payments and movements of money.

c. Defendant has repeatedly paid Trust expenses from his own accounts and then “reimbursed” himself. There are significant discrepancies in both the documentation allegedly supporting and the amount of money paid by Defendant to himself as “reimbursements.”

2. Pending a final adjudication on the merits, Plaintiff seeks the immediate removal of the Trustee. Plaintiff also seeks damages for Defendant’s repeated breaches of fiduciary duty, breach of trust, overpayments, “mistakes,” and/or outright theft.

PARTIES

3. Eric Carmen is an individual residing in Gates Mills, Cuyahoga County, Ohio. At all times, Eric was the grantor and beneficiary of the Carmen Family Gift Trust (the “Trust”).

4. Fred N. Carmen is an individual residing in Mayfield Village, Cuyahoga County, Ohio. At all times, Defendant was the Trustee of the Trust.

JURISDICTION

5. This Court has jurisdiction pursuant to O.R.C. § 2104.24(B)(1)(b) and O.R.C. § 5802.03. The matter in controversy concerns an inter vivos trust, and all causes of action in this complaint relate to or arise out of the Trust.

FACTUAL BACKGROUND

6. Eric Carmen is a musician who was the lead song writer and singer of one of Cleveland's most successful and famous bands, The Raspberries. Plaintiff's musical career continued long after the Raspberries, including a tremendous amount of solo work for which he has gained critical acclaim.

7. Eric's music still enjoys widespread appeal. Owing to the continuing popularity of his music, Eric's music consistently generates royalties from the record labels on which his music appears and from organizations that collect and consolidate payments from entities that ensure that those who publicly perform or play an artist's music pay a licensing fee to do so.

THE TRUST

8. On the advice of his brother, confidant, and lawyer, Fred N. Carmen, on July 11, 2007, Plaintiff created The Carmen Family Gift Trust (the "Trust"), for which Plaintiff is the sole beneficiary during his lifetime. All of the Trust's bank records and tax returns identify the Trust as The Carmen Family Gift Trust dated July 11, 2007.

9. Plaintiff then contributed all of the rights and ownership to his music copyrights and other property to the Trust. Despite repeated requests, a complete inventory of the Trust's assets has yet to be provided.

10. The Trust is governed by the "Trust Agreement for the Carmen Family Gift Trust" (the "Trust Agreement") executed on July 11, 2007. (The Trust Agreement is attached as Exhibit A.)

11. In the Trust Agreement, Plaintiff designated Defendant as the trustee ("Trustee"). Under the Trust Agreement, the Trustee was given wide discretion to operate the Trust to make

investments, apportion income and principal, and hold and transfer real estate, among other powers. (Ex. A, Section 7.)

12. The main purposes of the Trust were to protect all of Plaintiff's assets that were contributed to the Trust; to provide a stream of income to Plaintiff during his life; and provide for Plaintiff's children after his death. In essence, the Trust pays all of Eric's expenses and taxes.

13. Section 7 of the Agreement governs the duties of the Trustee. Those duties are supplemented by the duties enumerated in the Ohio Trust Code, O.R.C. § 5808.

14. As the Trustee, Defendant has the following statutory fiduciary duties:

- a. Duty to "administer the [T]rust in good faith...." R.C. § 5808.01
- b. Duty of loyalty; conflict of interest. R.C. § 5808.02
- c. Duty of loyalty. R.C. § 5808.03
- d. Duty of prudent administration. R.C. § 5808.04
- e. Duty to maintain "adequate records" and to "keep trust property separate from the trustee's own property." R.C. § 5808.10

15. Defendant also has the common law fiduciary duties of loyalty, good faith and prudent administration.

16. During his tenure as Trustee, Defendant has engaged in a pattern of failing to uphold his fiduciary duties, including his failure to: keep adequate records of the Trust; avoid self-dealing; act purely for the benefit of Plaintiff; not commingle Trust funds with Defendant's personal funds; and administer the Trust in a prudent fashion.

17. Plaintiff only discovered Defendant's misdeeds on August 25, 2015 after Defendant produced the Trust's ledgers. Defendant **never** provided financial reports prior to that date or information sufficient to discover Defendant's misdeeds.

DEFENDANT HAS FAILED TO MAINTAIN PROPER BOOKS AND RECORDS

18. The Trust Agreement, Section 7(O), states that “[t]he Trustee shall keep full books of account showing the condition of each trust, which shall be open at all reasonable times to the inspection of the respective beneficiaries of said trust.”

19. Defendant did not comply with the requirements of the Trust Agreement, Section 7(O).

20. In December, 2014, while at Defendant’s office, Plaintiff asked to see the Trust books. In response, he was shown a stack of bills.

21. In May, 2015, Plaintiff became concerned about the management of the Trust and sought the advice of separate legal counsel.

22. On July 11, 2015, Plaintiff’s counsel sent Defendant an email requesting to review the books for the Trust.

23. On July 16, 2015, Plaintiff’s counsel sent an email reiterating that he “need[s] to review the books of account of the Trust that you [Defendant] were and are required to maintain for the trust in accordance with [Section] 7(O) of the trust agreement,” and asking for a time frame.

24. Despite his requirement under Section 7(O) to have “full books of account ... open at all reasonable times,” Defendant, on July 16, 2015, responded, stating that: “I couldn’t give you an answer because I didn’t know [my accountant] Linda [Burt]’s schedule.”

25. Plaintiff’s counsel inquired as to the status of the request on July 24, 2015. On July 27, 2015, Defendant responded: “Linda Burt is putting together exactly what you have described. She continues to work on it but she too has other clients.”

26. After more than two weeks of requesting records that should have been readily available, Plaintiff's counsel sent another e-mail on July 29 asking Defendant to "have Linda confirm ... that she is working on the matter and when she expects to complete it." On July 29, in response, Defendant stated: "I advised you that Linda is working on this. My word should be good enough. If it's not, I'm sorry. Linda is making progress *but it may take a few more weeks to complete.*" (Emphasis added).

27. Exactly a month after asking for the accounting of the Trust, Defendant's counsel, on August 11, sent a letter stating that the accounting "will be completed no later than August 21, 2015.

28. On August 25, 2015, Defendant's counsel produced the newly created general ledgers of the Trust account.

29. On August 27, 2015, Defendant's counsel made available for review a box containing 5,484 pages of documents consisting of: tax returns and tax records; bank statements; numerous copies of canceled checks that had recently been obtained from the bank; and numerous documents evidencing bills and payments of those bills.

30. While numerous documents were produced, the records were far from complete and failed to satisfy Plaintiff's request or comply with the requirements in the Trust Agreement, Section 7(O).

31. The items that Defendant did produce such as the check register, bank statements, and certain "reimbursements," raised numerous additional questions about how the Trust's assets had been utilized.

32. The missing documents include sources of deposits; numerous checks evidencing disbursements; receipts for thousands of dollars of payments to the Trustee as "reimbursements;"

bank statements and ledgers for other accounts within the Trust to which money has been transferred; statement of all assets and accounts; documentation for a \$25,000 loan to the Trustee; statements for hundreds of thousands of dollars in “legal fees.”

33. The records indicate that there are numerous missing checks for what amounts to hundreds of thousands of dollars in disbursements from the Trust. Defendant has never provided copies of these checks and therefore Plaintiff has been unable to properly account for these disbursements.

34. Several follow-up requests for proper documentation were sent to Defendant’s counsel following the receipt of the Trust records.

35. On September 1, 2015 and periodically thereafter, Plaintiff’s counsel requested:

- a. All documents related a \$25,000 loan made from the Trust at a 5% interest rate. Defendant has still not provided these records.
- b. The books and records for debit or credit entries related to assets labeled as “The Carmen Group” and “Woodstock.” The ledger and bank statements show the movement of money between accounts. Defendant provided a couple of bank statements but no other documents.
- c. The records and statements for numerous “bank checks” and transfers to various brokerage accounts, including Merrill Lynch and Charles Schwab. To this date, Defendant has still not provided these records.

36. Such a delay is not only beyond unreasonable, it is a breach of Defendant’s duty as Trustee under Section 7(O) of and under the Ohio Trust Code.

DEFENDANT HAS TAKEN MORE THAN \$600,000 IN “FEES”

37. The Trust provides that “*Reasonable* compensation may be paid to any individual serving as Trustee....” (Ex. A, Section 11 (emphasis added).)

38. From 2007 through 2015, Defendant did not take a reasonable Trust fee but instead paid himself “legal fees.” Defendant, in his capacity as Trustee, compensated himself thousands of dollars per year in “legal fees.” During 2012-2014, the Trustee paid himself more than \$100,000 in “legal fees,” per year. There is no approved fee agreement as required by § 1.5 of the Rules of Professional Conduct.

39. Since the inception of the Trust, the Trustee has taken “legal fees” in excess of 10% of all royalty payments to the Trust.

40. Reasonable fees, by any measure, should not exceed 1-2% of Trust income.

41. The fees taken by Defendant are grossly excessive compared to reasonable trust fees or for any actual legal work done for the Trust.

42. In general, the Trustee’s work for the Trust consisted of retaining lawyers to represent the Trust of Plaintiff; receiving and depositing royalty checks; and paying Trust transactions and obligations. In general, there are between 20 and 40 banking transactions per month. A general purpose bookkeeper could bundle all Trust financial transactions in a few hours per month.

43. Defendant has taken these excessive fees even as the Trust has paid at least four law firms hundreds of thousands of dollars in fees and maintains a \$138,000 debt to Squire Patton Boggs dating back to 2012.

DEFENDANT HAS USED TRUST MONIES FOR AN UNAUTHORIZED LOAN

44. On March 8, 2014, Defendant used Trust monies to loan himself \$25,000.

45. That loan was an improper use of Trust funds and constitutes a breach of the Trust.

46. The books do not show an actual loan agreement or any repayment of the loan. Indeed, the ledger only shows a \$25,000 debit and no credit.

47. But counsel's August 28 letter states: "As your client is aware, and has been documented in the loan agreement between the Trust and Mr. Carmen, a \$25,000 loan was made on March 8, 2014, at an above prime interest rate of five percent (5%). *That loan has been fully repaid....*" To date, no evidence of this illegal and self-dealing transaction has been produced.

**DEFENDANT HAS COMMINGLED FUNDS AND FAILED TO DOCUMENT ALL
PURPORTED REIMBURSEMENTS**

48. On numerous occasions, Defendant has paid Trust obligations using his own credit cards (and thus, obtaining the benefit of credit card points or miles for his personal use), or through personal checks or cash. In several instances, the Trust has paid service charges so that Defendant could use his personal credit card for Trust expenses.

49. Defendant then "reimbursed" himself with payments from the Trust.

50. These reimbursements do not contain sufficient documentation and evidence of payments in order to determine whether they are proper reimbursements.

51. For example, the receipts contain thousands of dollars in cash payments for things such as domestic help which cannot be verified. On January 8, 2014, Defendant wrote a check to himself in the amount of \$3,807.50. Of this amount, \$1,170.00 is attributed to "maids" for purported cash payments. Numerous similar examples exist.

52. Defendant has charged many purported “reimbursements” to the Trust but has not properly documented them.

IMPROPER USES OF TRUST FUNDS

53. Plaintiff is aware of numerous instances of Defendant improperly using funds from the Trust, in violation of Defendant’s fiduciary duty of loyalty to “administer the trust solely in the interests of the beneficiaries.” O.R.C. § 5808.02(A). The following are by way of example only.

54. On September 6, 2010, Defendant reimbursed himself \$826.40 for a ticket on Continental Airlines for a flight to Florida. The identity of the person using this ticket is not known and no receipt was provided.

55. On March 7, 2011, Defendant wrote a \$1,150.20 check to Continental Airlines. The ledger only states “Continental Airlines” and presumably was for a flight. The beneficiary of this flight is not known as no receipt was provided.

56. On July 27, 2010, Defendant made an electronic transfer to American Express for \$7,289.10. The entry on the ledger only states “No Statement” and provides no explanation.

57. On May 5, 2012, Defendant paid himself \$23,279.15 out of the Trust as a “reimbursement.” The accompanying worksheet evidences a discrepancy regarding this “reimbursement” as \$3,279.77 of it is “unaccounted” for. In what is a possible effort to hide this discrepancy, the amounts shown on the ledger do not show the same amounts shown on Defendant’s handwritten worksheet.

58. On February 25, 2013, Defendant wrote a \$1,898.15 check to a person named Joshua Millstein. The memo for this check is blank, but the ledger states that it was for “Salon Appointments.” On March 23, 2013, there was a deposit of \$1,898.15 -- the exact same amount.

59. In November, 2012, Defendant agreed to purchase the Range Rover that Plaintiff had been driving for \$35,000. The Range Rover was titled to ECB, Inc. which is part of the Trust and thus, controlled by the Trustee. The Defendant used Trust funds to repair the Range Rover; changed the title to Defendant's name; and only paid the Trust a below market value price over a 21-month period.

60. Plaintiff and Defendant's mother, Ruth, has been in a declining state of health. Defendant is apparently the self-appointed Trustee for Ruth.

61. In violation of the Trust Agreement, Defendant has taken thousands of dollars of reimbursements from the Trust for "Ruth's care."

62. While Plaintiff would not have any objection to assisting in his mother's care, there is nothing in the Trust Agreement that permits Defendant to take monies directly from the Trust for such purpose. Furthermore, after a specific request for such information, Defendant provided thousands of pages of purported receipts, yet he did not provide any type of accounting or reconciliation showing exactly how much money has been paid for Ruth's care by Defendant, Ruth's sources of income, and thus how much money could be considered Plaintiff's fair contribution.

63. On February 11, 2013, Defendant donated \$150.00 to The Friends of the Beachwood Library. While Defendant's wife works for the City of Beachwood, there is no connection to Beachwood that would justify a donation from the Trust.

64. On October 14, 2009, the ledger shows that Defendant had a \$50,000 "money order for Scott Hamilton Charity" drawn on U.S. Bank. Other than a handwritten worksheet, there is no receipt for this transaction.

65. In July, 2013, there are unexplained transfers of \$15,000 in and out of the Trust and Defendant's personal accounts.

66. On January 21, 2012, Defendant wrote a \$200.00 check payable to his wife as a "birthday gift."

67. Defendant has given birthday and/or holiday gifts to his son and unrelated third parties.

NEGLIGENT MANAGEMENT OF THE TRUST

68. The Trust receives an average \$600,000 - \$800,000 per year in royalty payments.

69. From 2009 - 2013, the Trust and Plaintiff incurred significant legal fees in a divorce proceeding.

70. Defendant hired and fired counsel for the Trust and caused the Trust to incur needless and excessive legal fees.

71. Following Plaintiff's divorce proceeding, the Trust paid alimony and child support.

72. The sudden volume of payments, coupled with Defendant's excessive fees, caused cash flow problems for the Trust.

73. No cash flow problems were timely disclosed and no financial records were shared with Plaintiff.

74. Defendant made no effort to conserve the cash of the Trust or to put money aside for taxes, a Trust obligation.

75. In December, 2013, Defendant convinced Plaintiff that a royalty advance was needed. In particular, Defendant represented that hundreds of thousands of dollars in legal fees were still owed.

76. In early, 2014, Defendant hired a lawyer to negotiate a \$500,000 advance on royalties.

77. In doing so, Defendant never considered that taxes would be owed on this advance and never put any money aside. Instead, Defendant paid himself \$100,000 in “legal fees” and caused significant cash flow problems when the tax bill was due.

78. Defendant never evaluated financing options other than a royalty advance.

COUNT I
ACCOUNTING/BREACH OF FIDUCIARY DUTY –
DUTY TO KEEP ADEQUATE RECORDS

79. Plaintiff incorporates each and every allegation in paragraphs 1 through 78 of this Complaint.

80. Defendant never provided an annual report because he failed to maintain adequate Trust records. Such failure is a violation of the Ohio Trust Code, O.R.C. § 5808.10(A) and Section 7(O) of the Agreement.

81. Defendant, to this day, has failed or refused to provide a single proper accounting of the Trust during Defendant’s tenure as trustee for the Trust.

82. Pursuant to the Ohio Trust Code, O.R.C. § 5808.10, Plaintiff is entitled to an order that Defendant render a proper accounting of the Trust including but not limited to support and detail for every Trust transaction and payment.

83. As a result of Defendant’s inadequate recordkeeping, Plaintiff has been damaged in an amount to be determined at trial, but in excess of \$25,000.00 and for which Plaintiff, pursuant to the Ohio Trust Code, O.R.C. § 5810.02(A), is entitled to damages.

COUNT II
BREACH OF FIDUCIARY DUTY –
DUTY OF LOYALTY/DUTY AGAINST SELF-DEALING

84. Plaintiff incorporates each and every allegation in paragraphs 1 through 83 of this Complaint.

85. Defendant had an obligation to administer the Trust solely in the interest of Plaintiff -- i.e., the Trust's beneficiary.

86. As discussed in paragraphs 40-70, Defendant has engaged in a pattern of self-dealing.

87. Defendant has therefore breached his fiduciary duty of loyalty pursuant to the Ohio Trust Code, O.R.C. § 5808.03.

88. As a result of Defendant's breach, Plaintiff has been damaged in an amount to be determined at trial, but in excess of \$25,000.00 and for which Plaintiff is entitled to damages pursuant to the Ohio Trust Code, O.R.C. § 5810.02(A) and further relief afforded by Chapter 5810 of the Ohio Trust Code.

COUNT III
BREACH OF FIDUCIARY DUTY –
FAILURE TO KEEP TRUST PROPERTY SEPARATE FROM
DEFENDANT'S OWN PROPERTY

89. Plaintiff incorporates each and every allegation in paragraphs 1 through 88 of this Complaint.

90. Defendant had a duty to keep his own property separate from Trust property.

91. Defendant consistently commingled his own property with the Trust's property.

92. Defendant therefore breached his fiduciary duty pursuant to the Ohio Trust Code, O.R.C. § 5808.10(B).

93. Defendant's breach has resulted in the loss of Trust assets.

94. As a result of Defendant's failure to keep his properties separate from those of the Trust, Plaintiff has been damaged in an amount to be determined at trial, but in excess of \$25,000.00 and for which Plaintiff is entitled to damages pursuant to the Ohio Trust Code, O.R.C. § 5810.02(A) and further relief afforded by Chapter 5810 of the Ohio Trust Code.

COUNT IV
BREACH OF FIDUCIARY DUTY –
PRUDENT ADMINISTRATION OF TRUST

95. Plaintiff incorporates each and every allegation in paragraphs 1 through 94 of this Complaint.

96. Defendant had a duty to administer the Trust as a prudent person would, which required him to exercise reasonable care, skill, and caution in carrying out said duty.

97. Defendant has failed to prudently administer the Trust because he frequently used Trust assets for his own benefit or gain, commingled Trust assets with those of his own, and failed to maintain proper recordkeeping of the Trust.

98. Defendant has therefore violated his fiduciary duty of prudent administration pursuant to the Ohio Trust Code, O.R.C. § 5808.04.

99. As a result of Defendant's breach of his duty of prudent administration, Plaintiff has been damaged in an amount to be determined at trial, but in excess of \$25,000.00 and for which Plaintiff is entitled to damages pursuant to the Ohio Trust Code, O.R.C. § 5810.02(A) and further relief provided by Chapter 5810 of the Ohio Trust Code.

COUNT V
COMMON LAW BREACH OF FIDUCIARY DUTY

100. Plaintiff incorporates each and every allegation in paragraphs 1 through 99 of this Complaint.

101. Defendant, as a fiduciary, had a common law duty to maintain proper records and accounts.

102. Defendant, as a fiduciary, had a common law duty to avoid self-dealing with Trust assets.

103. Defendant, as a fiduciary, had a common law duty to administer the Trust solely in the interest of the Plaintiff (i.e., the beneficiary of the Trust.)

104. Defendant, as a fiduciary, had a common law duty of reasonable care and diligence in maintaining and protecting Trust assets.

105. Defendant breached each said common-law duty imposed on him.

106. As a result of Defendant's breaches, Plaintiff has been damaged in an amount to be determined at trial, but in excess of \$25,000.00 and for which Plaintiff and the Trust are entitled to relief.

COUNT VI
NEGLIGENCE

107. Plaintiff incorporates each and every allegation in paragraphs 1 through 106 of this Complaint.

108. Defendant owed Plaintiff a duty of care in administering the Trust.

109. Defendant breached that duty of care because he failed to maintain adequate records for the Trust and frequently commingled his own funds with those of the Trust.

110. Defendant's negligent actions were the direct and proximate cause of Plaintiff's injuries, which included a loss of Trust assets to which Plaintiff was entitled.

111. As a result, Plaintiff has been damaged in an amount to be determined at trial, but in excess of \$25,000.00 and for which Plaintiff and the Trust are entitled to relief.

COUNT VIII
BREACH OF CONTRACT/TRUST AGREEMENT

112. Plaintiff incorporates each and every allegation in paragraphs 1 through 111 of this Complaint.

113. Defendant entered into the Agreement with Plaintiff to have Defendant administer the Trust, for which Plaintiff was the sole beneficiary.

114. In return for administering the Trust, Defendant was to receive compensation.

115. Defendant materially breached the Agreement because he failed to perform his trustee duties pursuant to Section 7 of the Agreement.

116. As a result of Defendant's breach, Plaintiff has been damaged in an amount to be determined at trial, but in excess of \$25,000.00 and for which Plaintiff and the Trust are entitled to relief.

COUNT IX
REMOVAL OF TRUSTEE

117. Plaintiff incorporates each and every allegation in paragraphs 1 through 116 of this Complaint.

118. Defendant's breach of his fiduciary duties as Trustee, and other wrongful and negligent actions, constitute a serious breach of the Trust.

119. Defendant has shown hostility towards Plaintiff since demands for Trust records were made, including threatening to appoint Plaintiff's ex-wife as Trustee.

120. Defendant has refused to resign as Trustee, unless he is given a complete release, and has abdicated his duties as a Trustee.

121. Defendant's breach of his fiduciary duties, and other wrongful and negligent actions, demonstrate his unfitness, unwillingness, or persistent failure to administer the Trust effectively.

122. Plaintiff therefore is entitled to have Defendant removed as trustee for the Trust pursuant to the Ohio Trust Code, O.R.C. § 5807.06(B)(1)&(2) and § 5810.01(B)(5), (6), & (7).

123. Plaintiff requests the removal of Defendant as trustee for the Trust, and the appointment of Sheldon Berns as successor trustee.

WHEREFORE Plaintiff demands judgment against Defendant in excess of \$25,000 together with interest, the cost of this action, attorney fees, and such further relief as this Court deems just and proper or as authorized by R.C. § 5810.01.



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**TRUST AGREEMENT
FOR THE
CARMEN FAMILY GIFT TRUST**

THIS AGREEMENT is entered into at Cleveland, Ohio, this 14 day of July, 2007, between ERIC H. CARMEN, referred to in the first person, and FRED N. CARMEN, Trustee.

WHEREAS, I desire to have the Trustee take title to and hold in trust, upon the terms and subject to the uses and purposes hereinafter set forth, certain property presently belonging to me, and/or I have caused, or will cause, the Trustee hereunder to be designated the beneficiary of certain policies of insurance on my life or retirement plans, which property, insurance policies and/or retirement plans may from time to time be described in Schedule A, attached hereto and made a part hereof; and

WHEREAS, additional property may be transferred in the future to the Trustee hereunder, by way of lifetime transfers or by way of proceeds of insurance policies or retirement plans, or by way of transfers pursuant to the terms of my Will or the Wills of other persons, or by way of transfers pursuant to directions contained in other trust instruments, or otherwise, such property to be held upon the terms and subject to the uses and purposes hereinafter set forth, whether or not such additional property is added to Schedule A hereto;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

SECTION 1. CAPTIONS

The captions of the various Sections of this trust instrument are for convenience and identification purposes only and in no way define, limit, expand or describe the scope or intent of

this trust instrument or the provisions of this trust instrument or in any manner affect this trust instrument. For ease of reference, there appear frequently in this trust instrument references to specific Sections; all such references shall mean the specific Sections as follows:

References to the "Descendant's Trust" shall mean that Section entitled "DESCENDANT'S TRUST: TRUST FOR ANY DESCENDANT OF MINE;" and

References to the "Discretionary Standards Section" shall mean that Section entitled "DISCRETIONARY STANDARDS: STANDARDS GOVERNING DISCRETIONARY DISTRIBUTIONS BY TRUSTEE."

SECTION 2. PAYMENTS DURING MY LIFETIME

During my lifetime, the Trustee shall pay to me or for my personal benefit such portions of the net income of the trust as the Trustee, in the Trustee's sole discretion, may determine for my care and happiness. No distributions of principal shall be made to me or any other person during my lifetime.

SECTION 3. UPON MY DEATH

Upon my death, all the assets then remaining in the trust estate (including all assets payable or deliverable to this trust on account of my death, whether by way of proceeds of insurance on my life or retirement plans, or transfers pursuant to the terms of my Will or otherwise) shall be distributed in such amounts or shares and upon such conditions, in trust or otherwise, to or for the benefit of one or more of that group of persons that includes every person who is a descendant of mine, the spouse or surviving spouse of any descendant of mine, or any organization to which gifts are deductible for the purpose of determining federal estate taxes. No purported exercise of this power of appointment shall be valid unless it includes specific reference to this instrument. Any part of such assets that I shall not effectively appoint shall be held and/or distributed as follows:

A. Payment of Taxes, Source of Payment and Limitation.

(1) Subject to the following limitations of this Paragraph A, the Trustee shall contribute from the principal of the trust estate the amount of all estate, inheritance, succession or transfer taxes or other death duty, federal or state, payable by reason of my death, including interest and penalties thereon, if any (hereinafter referred to in this Paragraph A as the "Taxes"); and in connection with any such action the Trustee shall rely upon the written statement of my Executor, if any, as to the validity and correctness of the amounts of any such Taxes, and shall furnish funds to my Executor so as to enable my Executor to discharge the same, or shall discharge any part or all thereof itself by making payment directly to the governmental official or agency entitled or claiming to be entitled to receive payment thereof. No consideration need be required by the Trustee from my Executor for any disbursement made by the Trustee pursuant to this Paragraph (A)(1), nor shall there be any obligation upon my Executor to repay to the Trustee any of the funds disbursed by it hereunder, and all amounts disbursed by the Trustee pursuant to the authority hereby conferred upon it shall be disbursed without any right in or duty upon the Trustee to seek or obtain contribution or reimbursement from any person or property on account of such payment. The Trustee shall not be responsible for the application of any funds delivered by it to my Executor pursuant to the authority herein granted, nor shall the Trustee be subject to liability to any beneficiary hereunder or account of any payment made by it pursuant to the provisions hereof. The Trustee, in the payment of such Taxes, shall be subject to, and shall follow, the provisions of my

Will that are applicable to my Executor in the payment of such Taxes (whether or not an Executor is appointed under my Will).

(2) Any provisions of this Paragraph A to the contrary notwithstanding, under no circumstances shall the Trustee make any disbursement pursuant to this Paragraph A from (a) assets which are excluded from my gross estate for purposes of the federal estate tax payable by reason of my death or (b) assets which are not subject to a state inheritance, state estate or other state death tax imposed by reason of my death; provided, however, that assets described in clause (a) of this sentence) may be used to the extent that other assets which are included in my gross estate for purposes of the federal estate tax payable by reason of my death and subject to a state inheritance, state estate or other state death tax imposed by reason of my death shall be insufficient to satisfy the Trustee's obligation hereunder.

(3) The contribution towards the payment of the Taxes made by the Trustee, as specified in Paragraph (A)(1) above, shall not exceed the excess of (a) all Taxes which become payable by reason of my death, over (b) all Taxes that would become payable by reason of my death if in the tax computation thereof there had not been included any property belonging to the trust estate. The Trustee shall pay this amount at such times as my Executor may in writing request (or, if no Executor has been appointed, at such time as the Trustee shall determine) as funds are needed to pay said Taxes. Notwithstanding the aforesaid provisions of this Paragraph A, to the extent my Will contains a different direction for the payment of death taxes which specifically refers to this Trust Agreement,

the Trustee shall follow the provisions of my Will except that the total amount of death taxes to be paid from this Trust Agreement shall not exceed the amount of death taxes that would have been paid if my Will had not contained such a different direction for the payment of death taxes.

B. Disposition of Balance of Trust Assets. The balance of the trust assets remaining after giving effect to the preceding provisions of this Section 3 shall be held and/or distributed as follows:

(1) All such assets, including without limitation all membership units in The Carmen Group, LLC, an Ohio limited liability company, or any successor entity thereto (The Carmen Group LLC or any successor entity thereto being hereinafter referred to as "The Carmen Group"), shall be allocated per stirpes among my descendants who survive me and, as so allocated, shall be distributed outright to each such beneficiary; provided, however, that if any such beneficiary is then less than twenty-five (25) years of age, such assets shall not be distributed outright to such beneficiary but shall be retained by the Trustee hereunder in the Descendant's Trust for the primary benefit of such beneficiary, all as hereinafter provided.

(2) If none of my descendants survive me, such assets shall be allocated and distributed as follows:

(a) All membership units in The Carmen Group shall be distributed to my brother, Fred N. Carmen, if he survives me and if, at the time of my death, he or any trust created by him is a member of The Carmen Group. In default of the foregoing, such membership units shall pass pursuant to Paragraph B(2)(b) of this Section 3.

(b) The trust estate remaining after giving effect to the provisions of Paragraph B(2)(a) of this Section 3 shall be distributed per stirpes to my parents' descendants who survive me.

C. Funding of Allocation to Beneficiaries. The Trustee is authorized to fund the foregoing allocations of assets among my beneficiaries with dissimilar assets, rather than being required to divide each and every asset among the beneficiaries pro rata based on their proportionate share of the trust. Further, the Trustee is authorized, but not required, (i) to marshall all membership units or all voting membership units in The Carmen Group, to the portion of the trust estate allocable to a beneficiary who is then a member or employee of The Carmen Group, (ii) to marshall no membership units or all nonvoting membership units of The Carmen Group, to the portion of the trust allocable to any beneficiary who is not then a member or employee of The Carmen Group, (iii) to reorganize The Carmen Group into a voting/nonvoting and/or managing/nonmanaging membership structure to achieve the funding described in the immediately preceding (i) and (ii), it being my intention that any beneficiary who is a member or employee of The Carmen Group may, in the Trustee's discretion, succeed to all of the trust estate's equity and/or voting/controlling/managing power in The Carmen Group, and the Trustee may take into account a beneficiary's age, ability, maturity, past and potential contributions to The Carmen Group, and any other factor the Trustee considers relevant; provided, however, that the Trustee in no event shall marshall such membership units in such a manner so as to overfund or underfund the portion of the trust estate otherwise allocable to any beneficiary hereunder. The Trustee's decisions and actions shall be final and binding on all persons.

SECTION 4. DESCENDANT'S TRUST:
TRUST FOR ANY DESCENDANT OF MINE

All assets directed to be held in the Descendant's Trust after my death for the primary benefit of any descendant of mine less than twenty-five (25) years of age (the "primary beneficiary") shall be held as follows:

A. Discretionary Distribution of Income and Principal. The Trustee may pay from time to time to or for the benefit of such primary beneficiary and/or such primary beneficiary's descendants from the Descendant's Trust held for such primary beneficiary's benefit such portions of the income and/or principal as the Trustee may determine, pursuant to the provisions of the Discretionary Standards Section below.

B. Distribution Upon Beneficiary Attaining Age 25. Upon such primary beneficiary attaining the age of twenty-five (25) years, all assets remaining in the Descendant's Trust for such primary beneficiary shall be distributed outright to such primary beneficiary.

C. Distribution by Appointment of Such Beneficiary or upon Failure of Appointment. Upon the death of such primary beneficiary before attaining the age of twenty-five (25) years, all assets remaining in the Descendant's Trust held for such primary beneficiary shall be distributed in such amounts or shares and upon such conditions, in trust or otherwise, as such primary beneficiary shall have appointed by such primary beneficiary's Will executed after the date of this instrument, to or for the benefit of one or more of that group of persons that includes every person who is a descendant of mine, the spouse of a descendant of mine, the surviving spouse of a descendant of mine, or any organization to which gifts are deductible for the

purpose of determining federal estate taxes. No purported exercise of this power of appointment shall be valid unless it includes specific reference to this instrument.

Those assets of the Descendant's Trust which such primary beneficiary shall not effectively appoint shall be allocated per stirpes among such primary beneficiary's then living descendants; in default thereof, per stirpes among the then living descendants of the person who is a member of the class comprised of me and my descendants and is said deceased primary beneficiary's most immediate ancestor (living or dead) having one or more descendants then living. All assets allocated to a beneficiary pursuant to the foregoing provisions of this paragraph shall be distributed outright to such beneficiary; provided, however, that if any such beneficiary is then less than twenty-five (25) years of age, such assets shall not be distributed outright to such beneficiary but shall be retained by the Trustee hereunder in trust for such beneficiary's primary benefit, all as provided in this Descendant's Trust. If no descendants of mine are then living, such assets shall be distributed per stirpes to my parents' descendants who are then living.

SECTION 5. DISCRETIONARY STANDARDS: STANDARDS
GOVERNING DISCRETIONARY DISTRIBUTIONS BY TRUSTEE

In this instrument, I have authorized certain discretionary payments of income and/or principal to be made to or for the benefit of designated persons pursuant to the provisions of this Discretionary Standards Section. The Trustee may make such discretionary distributions at such times and in such amounts as in the discretion of the Trustee shall be necessary or appropriate for the health, support, education, maintenance, and comfort of such persons at their accustomed standard of living. My intention is that such distributions shall not be limited to supplying necessities for such persons, but shall maintain them liberally according to

their accustomed standard of living, account being taken of their possible desire for travel, owning a home and all other reasonable desires not clearly inconsistent with their accustomed standard of living. In addition, there may be paid to or for the benefit of such persons in order to permit them to enter into or continue in business or professional ventures, and for any other purposes whatsoever, such portions of income and/or principal as the Trustee, in the Trustee's discretion, may from time to time determine. However, the Trustee, based upon information reasonably available to the Trustee, shall make such distributions to any such person for the purposes set forth above only to the extent such person's income, and funds available from others obligated to supply funds for such purposes, are insufficient in the Trustee's opinion for such purposes.

Notwithstanding the provisions of the first paragraph of this Discretionary Standards Section, or any other provision of this instrument, during such time as any person to whom or for whose benefit discretionary distributions of income and/or principal are authorized to be made is acting as a Trustee of any trust hereunder, all such distributions of income and/or principal to or for the benefit of any beneficiary from such trust shall be limited to such distributions as may be reasonably required for the health, support, education or maintenance of such beneficiary. Further notwithstanding the provisions of the first paragraph of this Discretionary Standards Section, or any other provision of this instrument, no such discretionary distributions of income and/or principal shall be made for the support which any person serving as Trustee hereunder is legally obligated to provide to any trust beneficiary, or to defray the cost of any such legal obligation of such person serving as Trustee.

SECTION 6. TRUSTEE

I appoint my brother, FRED N. CARMEN, as Trustee hereunder. In the event of his death, disability, resignation or incapacity to serve as Trustee, I appoint as successor Trustee, and as successor Trustee to fill any vacancy thereafter occurring in such office, the first in the order named who is able and willing to serve of the following:

Such individual or trust company as shall be designated by Fred N. Carmen, such designation to be in a writing that is dated and signed by him;

My attorney, STEPHEN H. GARIEPY, whose present business address is 200 Public Square, Suite 3300, Cleveland, Ohio 44114-2301;

My uncle, SHELDON BURNS;

Such individual or trust company as shall be designated by the last (until that point in time) serving Trustee, such designation to be in a writing that is dated and signed by such Trustee (it being my intention that there may be one or more successive "last serving" Trustees, each having the power to designate his successor, who thereupon shall also become a last serving Trustee with the same power to designate his successor);

Such person as shall be designated by a majority of the then current adult beneficiaries who are not incapacitated;

NATIONAL CITY BANK, of Cleveland, Ohio, or its corporate successor, provided, a majority of the then current adult beneficiaries under this Trust Agreement shall have the power, exercisable at any time to (i) designate a different trust company or (ii) remove National City Bank or any other trust company and to appoint a replacement trust company as Trustee.

The original Trustee, and any successor Trustee named above or designated pursuant to the preceding provisions of this Section 6, shall serve without bond. Except as otherwise expressly indicated, each successor Trustee shall have all the powers and immunities herein granted to the original Trustee.

SECTION 7. TRUSTEE'S DUTIES AND POWERS

All the trusts hereunder shall be held subject to the following terms and conditions, and the Trustee shall have, in addition to any other powers granted to the Trustee by law, the following powers:

A. Investments. The Trustee shall have power to improve, lease for any term or perpetually, rent, sell, exchange, grant and exercise options to buy, any property at any time held hereunder; to invest and reinvest in real or personal property of any kind, and to retain as a proper investment any such property, whether originally a part of the trust estate or subsequently acquired; and to exercise the powers granted in this Paragraph A. without being limited by any statute or judicial decision, whenever enacted or announced, imposing requirements as to assets in which investments may be made or the retention or diversification of investments; provided, however, that any loan made by the Trustee under this general investment power shall only be for adequate interest and security (which shall be presumed to exist in the case of any investment in any publicly-traded debtor securities). The foregoing powers shall include (without limitation of those powers) the power to sell any trust assets to, and/or purchase assets from, me, any descendants of mine, and/or the estate of any such person, whether or not such person is then acting as a Trustee hereunder. Furthermore, the foregoing power shall include the power to invest in any shares or participations in any common trust funds, administered by any corporate Trustee acting hereunder in its fiduciary capacity, and to invest in any security issued by any such corporate Trustee acting hereunder or any of its subsidiaries.

The Trustee shall be authorized to employ, any investment manager for the purpose of managing the trust assets, and pursuant to such employment, the Trustee may delegate to any such investment manager discretionary authority with respect to investment and reinvestment of the trust assets.

The Trustee shall be authorized to buy, sell and trade in securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by the Trustee with such brokers as security for loans and advances made to the Trustee.

B. Accumulated Income. Any accumulated income which shall not be paid to the beneficiaries hereunder by virtue of the provisions elsewhere contained herein may be added from time to time by the Trustee to the principal of the trust from which such income derived.

C. Borrowing. The Trustee shall have power to borrow money from any institution or person, including the Trustee, for the benefit of any trust, and to pledge or mortgage any part or all of the trust estates as security therefor.

D. Claims. The Trustee shall have power to arbitrate, defend, enforce, release or settle any claim of or against any trust.

E. Voting; Reorganization. The Trustee shall have power to vote, in person or by proxy, upon all securities held as a part of the trust estates; to exercise, buy or sell subscription and conversion rights and participate in reorganizations, recapitalizations, consolidations, mergers, exchanges, foreclosures, liquidations and creditors' and bondholders' agreements.

F. Apportionment to Income and Principal. The Trustee shall have power to allocate receipts, disbursements and losses to principal or to income, in accordance with generally accepted accounting practices. In addition, the Trustee shall have the power to allocate any annuity payment, or any lump sum or periodic payment from a pension or profit-sharing plan in which I was a participant, received by any trust held hereunder to income and/or principal as the Trustee, in the Trustee's sole discretion, deems advisable, irrespective of the treatment of said payment for income tax purposes.

G. Division and Distribution of Property in Kind. In any cases in which the Trustee may be required physically to divide property held in the trust estates into parts, shares or trusts, or to distribute the same, the Trustee may, in the Trustee's discretion, make such division or distribution in kind or in money or partly in kind and partly in money, and may allocate dissimilar property and undivided interests in property to different parts, shares or trusts, without respect to the income tax basis of such property. I specifically excuse the Trustee from any duty of impartiality with respect to the income tax basis of such property. If necessary to value property to be divided or distributed, it shall be valued at the then current fair market value.

H. Power to Amortize Mortgage Out of Income. I authorize the Trustee hereunder to apply all or any part of the income of any trust hereunder to the amortization of any mortgage or mortgages which may encumber any real estate owned wholly or in part by such trusts, and may prepay to any extent any amortization installments. Any amortizing payments on a mortgage which encumbers real estate owned jointly by two or more trusts hereunder shall be made from each individual trust in the proportion that the then value of such encumbered real estate which is owned by such individual trust bears to the then full value of such encumbered real estate. The term "net income," wherever used in this document, shall mean net income remaining after any such amortization installments.

I. Assets May Be Held Collectively. All the assets held in trust for the primary benefit of any one person shall constitute a separate trust, and all such assets shall be administered and accounted for as a separate trust. Notwithstanding, however, all the assets in the several trusts may be held collectively for all the beneficiaries with no physical division thereof into trusts until such time as distribution is actually made by the Trustee.

J. Nominee. The Trustee may take and hold all securities or other personal property in bearer form, in the name of any Trustee, or in the name of a nominee, with or without disclosing any fiduciary relationship, but the Trustee shall be liable for any wrongful act of the nominee with respect to such assets.

K. Employment of Agents. I authorize the Trustee to employ and pay reasonable compensation to agents, investment counsel and attorneys, including the Trustee and any person, partnership, limited liability company, corporation or other entity with which the Trustee may be associated. The foregoing authority shall include, without limitation thereof, the power to authorize any Trustee, person or persons to withdraw funds from any bank account maintained by the trusts and/or to have access to any safe deposit box maintained by the trusts. In addition, any corporate Trustee acting hereunder is authorized to appoint and remove by written instrument, containing such terms and conditions as any such corporate Trustee may deem appropriate, any natural or legal person or persons as special Trustee or special Trustees to hold all or any part of any real property or other interest in property held in trust hereunder which any such corporate Trustee determines, in its sole discretion, it cannot or, because of legal limitations on its powers, it deems inadvisable to hold as Trustee hereunder, and any such special Trustee, except as specifically limited by the appointing instrument, shall have all the powers, authority and discretion herein granted to any such corporate Trustee with respect to the trust property held by any such special Trustee. No Trustee shall be liable for any neglect, omission, or wrongdoing of such agents, investment counsel, attorneys, or special Trustees, provided that any such corporate Trustee shall have exercised reasonable care in the selection of any such special Trustee.

L. Instruments. I authorize the Trustee to execute and deliver all necessary or proper deeds or other instruments.

M. Distribution to Minors and Incapacitated Persons. During the minority or incapacity of any beneficiary hereunder, I authorize the Trustee, in the Trustee's discretion, to pay any sum distributable to such beneficiary, without liability to the Trustee, by paying the sum to such beneficiary or to any person whomsoever (including an eligible custodian selected by the Trustee for any such beneficiary under the Ohio Transfers to Minors Act) for the use and benefit of such beneficiary, whether or not such person shall be the guardian of such beneficiary.

N. Nonliability of Purchasers and Lenders. No purchaser from nor lender to the Trustee need see to the application of the purchase or loan money to the purposes of the trust estates, but the receipt of the Trustee shall be a complete discharge to any such person.

O. Books of Account. The Trustee shall keep full books of account showing the condition of each trust, which shall be open at all reasonable times to the inspection of the respective beneficiaries of said trusts.

P. Holding and Transferring Real Estate. The Trustee shall have power to take, hold and convey title to real estate or interests therein in the name of any Trustee or in the name of the nominee of the Trustee without disclosing the trusts; and in accepting title to the real estate neither the Trustee nor the nominee shall be held to have assumed the payment of any encumbrances thereon. All conveyances executed and delivered by the Trustee or the nominee shall be without covenants of warranty except as against the Trustee's or nominee's own acts.

Q. Exculpatory Provision. The Trustee hereunder shall not be personally liable upon any contract of indebtedness of or claims against said trust estates or upon a mortgage, trust deed, note or other instrument executed under the provisions hereof.

R. Protection on Distributions. The Trustee shall be protected in continuing to make distributions of income or principal until the Trustee shall have actual knowledge of the happening of an event such as attainment of a certain age, death or other occurrence which would affect such distributions.

S. Nonliability of Trustee for Acts of Predecessor Fiduciary. Any Trustee or successor Trustee may accept and rely upon any accounting made by or on behalf of the Executor of my estate or any predecessor Trustee hereunder, and any statement or representation made by any such fiduciary as to the assets comprising this trust estate or as to any other fact bearing upon the prior administration of my estate or the trusts. A Trustee or successor Trustee shall not be liable for having accepted and relied upon such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. A Trustee or successor Trustee shall not be liable for any act or omission of any predecessor fiduciary, nor have a duty to enforce any claims against any predecessor fiduciary on account of any such act or omission.

T. Protective Provision. No interest in income or principal shall be alienated, encumbered or otherwise disposed of by any beneficiary while in the possession and control of the Trustee.

U. Anti-Perpetuities Clause. This instrument shall not be construed as postponing the distribution of any trust hereunder beyond the period of twenty-one (21) years less one day from the date of the death of the last survivor of my descendants presently in being and me. Upon the expiration of such period, the assets of each trust then being held hereunder shall be paid to its primary beneficiary (as defined in Section 4 hereof).

V. Resignation by Trustee and Designation of Successor Trustee. Any Trustee of any trust being held under this instrument may resign at any time as Trustee by an instrument in writing signed, dated, and delivered to the successor Trustee designated herein, such resignation to become effective upon the written acceptance of said trusteeship by such designated successor Trustee. If no successor Trustee is designated, or if none of the designated successor Trustees accepts such trusteeship, then any Trustee serving hereunder may resign by an instrument in writing signed, dated, and mailed to

each adult beneficiary to whom the Trustee is then directed or authorized to pay net income of such trust, such resignation to be effective upon the designation of a successor Trustee by a majority in number of the beneficiaries entitled to receive notice of such resignation. Any Trustee designated pursuant to the foregoing provisions of this paragraph shall serve without bond.

W. Decision of Majority of Trustees to Govern; Trustee's Liability for Acts of Co-Trustee. Except as is otherwise expressly provided in this document, when there are three or more Trustees authorized to act in any particular, the agreement of a majority of the Trustees shall be required, and when there are two Trustees authorized to act in any particular, the agreement of both Trustees shall be required. Each Trustee shall be liable only for the Trustee's own acts in the administration of these trusts. No Trustee shall be in any way or to any extent liable to the beneficiaries or others for anything done hereunder by a Co-Trustee to which the Trustee did not actively consent or of which the Trustee did not actively approve.

X. Subchapter S Stock. If at any time stock in any corporation with respect to which an election under Section 1362 of the Internal Revenue Code to be an S corporation is in effect ("subchapter S stock") is to be allocated to (or is then held in) a trust under this Agreement (a "Recipient Trust"), and if the trust holding such stock otherwise would cease to be a "permitted stockholder" within the meaning of Section 1361(c)(2), then:

(1) The Trustee of the Recipient Trust may in the Trustee's discretion make an appropriate election to qualify such a Trust as an "electing small business trust" under Section 1361(e) (if the trust would otherwise so qualify) or, if no such election is made,

(2) Such stock shall be allocated to (or held in) a separate trust for the primary beneficiary of the Recipient Trust. Each such respective separate trust holding subchapter S stock shall be held under the terms of the respective Recipient Trust; provided, only to the extent necessary to preserve the status of such corporation as an S corporation under federal tax law then in effect, each such separate Trust shall be subject to the following additional rules (and, to the extent necessary, such rules shall supersede any conflicting provisions applicable to trusts held under this Agreement):

(a) The Trustee shall pay the income of such separate trust to its primary beneficiary, and shall not make principal payments to any person other than such primary beneficiary during the life of such primary beneficiary.

(b) If, upon the death of the primary beneficiary, his separate Trust holds subchapter S stock, all accrued or undistributed income of his trust shall be paid to his estate.

It is my intention that each separate trust established under this subparagraph (2) shall qualify for treatment as a "qualified subchapter S trust" as defined at Section 1361(d).

Y. Business Powers. To continue or to permit the continuation of any business, incorporated or unincorporated, in which the trust has acquired an interest by gift, inheritance or purchase from me or any person related to or affiliated in any manner with me, my estate or any current or former beneficiary hereunder; to liquidate, sell or dissolve such business at such time and upon such terms and conditions as the Trustee may determine; to invest additional sums in any such business even to the extent that any one or more of all of the trust estates hereunder may be invested largely or entirely in any such business; to incorporate or otherwise change the legal organization of such business; to form or reform a general or limited partnership or limited liability company with others (including any Trustee or beneficiary hereunder or any person or entity related to or affiliated in any manner with any Trustee or beneficiary hereunder); to determine whether the trust shall be or become a general or limited partner of any partnership or a managing or nonmanaging member of a limited liability company; to act as or to select other persons (including any Trustee or beneficiary hereunder or any person or entity related to or affiliated in any manner with any Trustee or beneficiary hereunder) to act as directors, officers, managing partners, managing members or employees of any such business, such persons to be entitled to receive reasonable compensation in addition to any compensation as a Trustee hereunder; and to make such other arrangements in respect to such business as the Trustee shall determine;

Z. Environmental Matters. To investigate, prevent and remediate violations or possible violations of federal, state or local law regarding substances posing a hazard to the environment or to human health which may be applicable to any trust property; to undertake such actions prior to the formal enforcement of such laws by any federal, state or local agency against trust property; and to charge all expenses associated with any such investigation, prevention or remediation, including the fees of consultants and counsel, against the income or principal of the trust estate holding the property;

AA. Partnership Adjustments. To settle and adjust any partnership or limited liability company interest upon such terms as the Trustee shall deem proper, to continue any partnership or limited liability company, and to subject to the risks of the business the assets representing each trust estate's interests therein, for such period and upon such terms as the Trustee shall determine, and to increase the participation of any trust estate in any partnership or limited liability company; and no change in the constitution of such partnership or limited liability company by the death or retirement of any partners or members or the admission of any additional partners or members shall affect the powers herein granted;

BB. New Entities. To participate in any new partnership or limited liability company upon such terms as the Trustee shall determine and to act as a general or limited partner or a managing or nonmanaging member;

CC. Conflict of Interests. I intentionally have granted broad powers in this Trust Agreement to enable the Trustee to manage and dispose of the property comprising each trust estate in such manner as the Trustee, acting with sole discretion, may deem appropriate under the circumstances, and I recognize that in the exercise of such powers, the Trustee may be placed in a position of having actual or potential conflicting interests, directly or indirectly, as a fiduciary under this Trust Agreement, as an individual or in another capacity, or by relationship to or affiliation with other individuals or entities. I expressly waive each and every such conflict of interest, whether actual or potential or direct or indirect, and in specific furtherance of such waiver, but not in limitation of it, I expressly provide that no Trustee shall be prevented from serving in such capacity or prevented from or required to obtain court approval for performing any function or exercising any authority herein conferred upon such Trustee by reason of the fact that such Trustee, or any person or entity to whom or with which such Trustee is related or affiliated in any manner, is or may be interested as a director, officer, employee, shareholder, partner, member, manager, co-owner or otherwise of any corporation, partnership, limited liability company or other business enterprise or property interest in which any trust estate hereunder has an interest, or of any corporation or other business enterprise acting as or affiliated with a Trustee hereunder, or as a beneficiary or a Personal Representative, Trustee or other fiduciary with respect to any estate or trust which may be a party to a transaction or other dealing with such trust estate, regardless of any such conflict of interest.

DD. Business Holdings. I anticipate that the trust property may include substantial interests in one or more business enterprises which may be speculative in nature, and I intentionally have granted broad powers in this Trust Agreement to enable the Trustee to manage and dispose of such business interests in such manner as the Trustee, acting with sole discretion, may deem appropriate under the circumstances. In furtherance of the free exercise of such powers by the Trustee, I expressly waive and negate any duty on the part of the Trustee to diversify the investments comprising the trust estates held hereunder from time to time and I expressly provide that each Trustee hereunder shall be deemed to have acted within the scope of his or her authority, to have exercised reasonable care, diligence and prudence, and to have acted impartially as to all persons interested unless the contrary be proved by affirmative evidence, and in the absence of such proof shall not be liable for any loss arising from depreciation or shrinkage in value of any property comprising any trust estate from time to time.

EE. Trustee's Duty to Notify and Provide Information.

(1) To the full extent permitted by law, I hereby waive any provision of the Ohio Trust Code or any similar law of any jurisdiction that would otherwise require the Trustee to perform any one or more of the following acts at any given time or times:

(a) Notify any beneficiary of (i) the existence of any trust established hereunder, (ii) the acceptance of the trusteeship by the Trustee,

(iii) the Trustee's identity (including, without limitation, the Trustee's name, address and telephone number), (iv) my identity, (v) the right of any beneficiary to request or receive a copy of this Trust Agreement and the Trustee's reports, (vi) any change in the method or rate of determining the Trustee's compensation, and (vii) the division or consolidation of any trust or trusts established hereunder; and

(b) Furnish to any beneficiary, whether periodically or upon request, (i) a copy of this Trust Agreement and (ii) the Trustee's reports and other information.

For purposes of this Paragraph EE(1), the term "Trustee's reports" shall mean those reports described in Section 5808.13(C) of the Ohio Revised Code (as such Section or any successor or similar Section is in effect from time to time).

(2) The foregoing to the contrary notwithstanding, the Trustee shall perform any act described in Paragraph EE(1) above if and to the extent that (a) any other provision of this Trust Agreement requires the Trustee to perform such act or (b) the Trustee determines, in the Trustee's sole discretion, that the performance of such act is appropriate. The Trustee shall have no liability for any determination made pursuant to the provisions of clause (b) of the immediately preceding sentence unless the Trustee is proven to have acted in bad faith or with willful disregard of its duties as a fiduciary.

SECTION 8. LIFE INSURANCE

The owner of any policies of insurance payable to the Trustee hereunder shall have the right to exercise any right or option owned or possessed by such owner under said policies, without the consent of the Trustee. In making payment upon such policy, the insurance company issuing the same or obligated thereon shall not be responsible for the proper application or disposition of any fund paid to the Trustee, but the receipt of the Trustee shall be a complete discharge to such insurance company. The Trustee shall not be obligated to pay the premiums on said policies.

SECTION 9. ADD PROPERTY; TRUST IS IRREVOCABLE

I reserve the right, for myself and other persons, to add other property to this trust by making lifetime transfers to the Trustee with the consent of the Trustee, and by making

testamentary or other transfers of property to the Trustee without the consent of the Trustee. I reserve no right to amend or revoke this trust instrument.

SECTION 10. OHIO LAW CONTROLS

The validity, effect and interpretation of this instrument and of the property interests herein created shall be controlled by the laws of the State of Ohio.

SECTION 11. TRUSTEE FEES

Reasonable compensation may be paid to any individual serving as Trustee hereunder, unless such individual waives the right to receive compensation. The corporate Trustee's compensation for its ordinary services hereunder shall be at the rates prescribed for similar trust services in its standard compensation schedule in effect at the time of each charging of such compensation, unless a different fee arrangement is agreed to in writing by the corporate Trustee. The corporate Trustee shall receive reasonable additional compensation for any extraordinary services requested or required. The compensation hereunder shall be deductible by the Trustee at such time or times and from such source or sources as the Trustee may reasonably determine.

SECTION 12. SURVIVORSHIP REQUIREMENT

Should any person or persons who would take under this instrument, but for this provision, fail to survive me by more than ninety (90) days, such person or persons shall be deemed to have predeceased me for the purposes of construing all of the terms of this instrument.

SECTION 13. MERGER AND DIVISION OF TRUSTS

If because of differences in dispositive or administrative provisions, advisability of separate investment policies or other differences with respect to interests in a single trust, it is advisable to divide any trust into separate trusts, or for tax reasons, it is important or necessary to

separate assets otherwise allocable to a single trust, the Trustee may, in the Trustee's discretion, so divide such trust at any time during my lifetime or thereafter. For example, if only part of a trust consists of generation-skipping tax exempt assets, the Trustee may divide it so that such property is a separate trust.

Following my death, if the provisions under which any trust created herein is held and/or disposed of shall be or shall become substantially the same as the provisions under which another trust established by me is held and/or disposed of, and if the Trustee and the beneficiaries of each such trust shall be the same, then the Trustee hereunder shall be authorized to (i) terminate such trust held hereunder and distribute all of the assets therein to the Trustee under such other trust, and the assets so distributed shall be merged into, and treated as an addition to, such other trust and shall be held and disposed of as a part thereof, or (ii) terminate such other trust and distribute all of the assets thereof to the Trustee under this trust instrument, in which event I direct the Trustee hereunder to accept such assets, the assets so distributed to the trusts held hereunder to be merged into, and treated as an addition to, the trusts held hereunder and disposed of as a part hereof.

The Trustee, in exercising all such discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor the Trustee considers important.

SECTION 14. INCOME, ESTATE AND GENERATION-SKIPPING TAXES

A. Income Taxes. During such time as this trust is a grantor trust under Section 671 of the Internal Revenue Code, as may be amended, the Trustee shall pay all federal, state and local income taxes attributable to the trust's income.

B. Estate Taxes. The Trustee is authorized to take such steps and enter into such transactions as may reduce or eliminate the federal and state estate and inheritance taxes imposed on my estate. Such transactions may include, for example, private annuities and sales for self-cancelling installment obligations.

C. Generation-Skipping Taxes. It is my intention to eliminate (or to reduce as fully as allowed by law) any "generation-skipping transfer taxes" on transfers of property pursuant to this trust instrument. Accordingly, notwithstanding any other provision of this trust instrument:

(1) Division of Trusts into Separate Trusts. The Trustee shall have the authority first to divide into separate trusts the rights to receive divisions or distributions into what would otherwise have been one trust, make any such divisions or distributions into such separate trusts, and then make the appropriate allocations of any available generation-skipping transfer tax exemption, in order to allocate effectively different types of GST exempt property to separate trusts so that later distributions of such property will have an inclusion ratio of zero (so as not to generate any generation-skipping transfer tax).

(2) General Vesting. In order to minimize the total amount of all transfer taxes due with respect to a transfer from a trust held under the Section titled "Descendant's Trust: Trust for Any Descendant of Mine," I hereby vest such a trust in its primary beneficiary by granting such beneficiary upon his or her death the power to appoint such trust to or for the benefit of any person, including his or her estate, but only to the extent that such vesting will reduce the combined amount of (i) the sum of the federal and any other generation-skipping transfer taxes due as a result of a transfer from such trust, and (ii) the sum of all estate, inheritance and other death taxes (except generation-skipping transfer taxes) due as a result of such beneficiary's death.

Any parts of his or her vested trusts which such beneficiary does not effectively appoint shall be treated as provided in this trust instrument for disposition upon his or her death.

SECTION 15. SPECIAL POWER

A. Designation of Special Power Holder.

(1) The initial Special Power Holder shall be my attorney, STEPHEN H. GARIEPY, whose present business address is 200 Public Square, Suite 3300, Cleveland, Ohio 44114-2301. In the event that STEPHEN H. GARIEPY shall become unable to exercise the Special Power (as defined in Paragraph B of this Section 15), then the Special Power Holder shall be the person or persons designated by STEPHEN H. GARIEPY. In the event that STEPHEN H. GARIEPY shall be unable to exercise the Special Power and there is no one designated by him who is able to exercise the Special Power (such event being hereinafter referred to in this Paragraph A(1) as a "Vacancy"), then the Special Power Holder (and any successor thereto) shall be such person or persons as shall be designated by the Board of Directors or other governing body of the law firm of Hahn Loeser & Parks LLP, of Cleveland, Ohio, or any successor thereto. During any period following a Vacancy in which said law firm shall not have designated a person as Special Power Holder who is able to exercise the Special Power, the Special Power shall be exercisable by the then acting chief executive officer, managing partner or equivalent officer of said law firm. Any person or law firm given the power to designate a Special Power Holder may designate a successor or a list of successors to hold the Special Power, including any partner, shareholder, fellow shareholder, employee or fellow employee of such person or law firm, and may make such designation in advance of a Vacancy, which designated may be amended or revoked at any time prior to becoming effective. Any such designation or amendment or revocation of a designation shall be made by written instrument delivered to the Trustee.

(2) Any person designated pursuant to this Paragraph A as successor Special Power Holder shall be a nonadverse party (as that term is defined in Section 672 of the Internal Revenue Code, as such Section or any successor or similar Section is in effect at the time of such designation). In no event shall any of the following be a Special Power Holder: (a) any of my parents' descendants (including myself) or any spouse of any such person, (b) any person who is an adverse party (as that term is defined in Section 672 of the Internal Revenue Code, as such Section or any successor or similar Section is then in effect) or (c) any person who, at the time such person would otherwise be the Special Power Holder, is serving as Trustee hereunder. If any Special Power Holder shall become an adverse party or Trustee hereunder, then, for purposes of this Paragraph A, such Special Power Holder shall be deemed to be unable to exercise the Special Power.

B. Grant of Special Power. Any at time or times, the Special Power Holder shall have the power (referred to as the "Special Power"), acting in a non-fiduciary capacity, without the consent of the Trustee or any other person and without the

requirement of any court approval, to direct the Trustee to lend to me any part or all of the principal or income or both of each and every trust estate held hereunder, without any requirement that I provide adequate security for any such loan notwithstanding any provision of Section 7 hereof to the contrary. The Trustee shall be obligated to follow any directions made by the Special Power Holder pursuant to this Paragraph B. Any Special Power Holder may exercise the Special Power multiple times. The Special Power shall be exercisable only during my lifetime; provided that, to the extent that the Special Power is exercised during my lifetime, the exercise of the power shall not be revoked by reason of my death.

C. Release or Termination of Special Power. Any Special Power Holder may at any time, by written instrument delivered to the Trustee, permanently release the Special Power. If not previously released as provided in this Paragraph C, the Special Power shall terminate upon my death. In the event that the Special Power Holder shall permanently release the Special Power or upon my death, whichever shall first occur, there shall no longer be a Special Power Holder.

SECTION 16. DEFINITIONS

Where necessary or appropriate to the meaning hereof, the singular and plural shall be interchangeable, and words of any gender shall include all genders. "Descendants," "children" and words of similar purport include any person whose relationship to the ancestor designated is created by or through lawful birth or adoption, whenever occurring. No descendant or child shall lose such descendant's or such child's status as such through adoption by another person. A person in gestation, which person is later born alive, shall be regarded in this instrument as a person in being during the period of gestation.

IN WITNESS WHEREOF, the undersigned have signed this Trust Agreement, in duplicate, on the day and year first above written.

Signed and acknowledged
in the presence of:

Wey Allen

Phyllis A. Harding

Wey Allen

Phyllis A. Harding

Eric H. Carmen
Eric H. Carmen

Fred N. Carmen
Fred N. Carmen, Trustee

Schedule A

_____ membership units in The Carmen Group, LLC
