

## Complex beneficiary agreement.

### Beneficiary Agreement

THIS AGREEMENT is made and entered into on \_\_\_\_\_ [date]. The parties are all the beneficial interest holders of a certain Land Trust known as \_\_\_\_\_ [name of trustee] Trust No. \_\_\_\_\_. The principal of the Land Trust is in certain real estate situated in \_\_\_\_\_ County, \_\_\_\_\_ [state], consisting of \_\_\_\_\_ [describe property].

The parties enter into this Agreement to provide for the orderly management of the property and to provide for the methods by which sale of any beneficial interest may be made.

In consideration of the mutual promises and covenants of the other, the parties agree as follows:

#### Article One.

##### Management of Property and Division of Profits or Losses

1. The property is being held as \_\_\_\_\_ [describe use of the property, for example: rental office space], in the operation of which one or more of the parties to this agreement is a material participant. No party shall have any authority to obligate the others for any expense, loan (whether secured or unsecured), or any other liability in connection with it, or to contract or deal with the property on behalf of another, except on the written approval of beneficial interest holders holding in the aggregate more than fifty percent of the beneficial interest of the Land Trust. Each beneficial interest holder shall be only liable for his or her proportionate share of the taxes, debts, special assessments, public liability insurance if any, and other expenses incurred in the operation and maintenance of the property.

2. The parties shall share in the earnings, losses and avails of the property in the proportion in which they hold beneficial interest.

3. Full and accurate books of account showing all income, expense, advances, withdrawals, assets, and liabilities shall be maintained by the person designated by the beneficiaries.

4. On the written approval of beneficiaries holding in the aggregate more than fifty percent of the beneficial interests in the Land Trust, an individual shall be designated to be the person responsible for delivery of all checks, payments, or other matters pertaining to the orderly conduct of the business, and further to be responsible for making all deposits.

5. Failure by any beneficial interest holder to contribute his or her pro rata share of the money necessary to accomplish any of the purposes for which the property is held, or to pay his or her share of any expenses or liabilities in connection with that purpose, shall, at the option of the majority in interest of the other parties, create a debt from the delinquent party to the other parties in the amount of his or her liability, plus interest at the rate of \_\_\_\_\_ percent yearly until paid, collectible either by suit or by charging the delinquent liability against any income or proceeds of sale then or later due to the delinquent party. All parties grant authority to offset any unpaid debts against their share of income or sale proceeds. In the event a failure to pay or delinquency shall continue for a period in excess of \_\_\_\_\_ [specify, for example: one year], then, at their sole option, a majority in interest of the other parties may consider that failure as an offer by the delinquent party to sell his or her interest pursuant to Article Two.

#### Article Two.

##### Transfer of Beneficial Interest

1. In the event any party desires to sell, give, or otherwise transfer all or any part of his or her interest to another person or entity, or in the event of the bankruptcy of any party, assignment for benefit of creditors by any party, or any levy, garnishment, or other court enforcement of collection of debt against a beneficial interest, then the other parties shall have the first right to purchase that beneficial interest, on the following terms and conditions:

(a). Each party shall have the right to purchase in the same proportion as his or her individual interest bears to the total interest of the other beneficial interest holders at that time, provided that if one or more of the beneficial interest holders elects not to purchase his or her proportion of the selling party's interest, the unexercised portion of the first right to purchase shall be prorated among those who exercised their right to purchase on the basis of their respective interests.

(b)(i). If the selling party receives a bona fide offer from a third party which he or she desires to accept, to purchase all or part of his or her interest, then the selling party shall give notice to the other parties of the terms and conditions of that offer, and the other parties have the right, if they so elect, to purchase on the terms and conditions offered. This right shall be in accordance with the provisions and in the proportions stated in Article Two, Paragraph 1, Subparagraph (a) above.

(ii). More limited terms of the offer notwithstanding, the nonselling party shall have fifteen days after notice is given to elect to purchase on or before fifteen days from receiving notice, the electing party shall have ten days after expiration of the original fifteen day period to make the final election to purchase his or her pro rata share of any unexercised portion of the first right to purchase. All parties will give notice to all other parties of their intent to purchase or not to purchase.

(iii). Any interest or part of it offered for sale and not elected to be purchased by any of the other parties, after the expiration of the twenty-five day period for acceptance, may be sold to the original proposed purchaser.

(iv). If a party has notified the others that he or she has a bona fide offer to purchase, and that he or she desires to sell all or part of his or her interest, and if the other beneficial interest holders do not exercise the right to purchase provided for here, and if later the party giving notice of offer to sell does not complete the sale of such interest within sixty days from the date of his notice to the other beneficial interest holders, the right of that party to sell his or her interest pursuant to that notice shall terminate, and the reasons for notice and first right to purchase provided for in this section must be complied with again.

(c). All offers to sell and acceptance of offers shall be in writing. Any assignment or attempted assignment of beneficial, whether inter vivos, testamentary, by personal representatives, or by any means, to any party, shall be deemed an offer to sell pursuant to the terms of this Article of the agreement.

(d)(i). If there is no bona fide offer of purchase, the sales price shall be a price equal to the value of the selling party's interest at its then value, as agreed to by all the beneficial interest holders, or as determined by the average of appraisals by two real estate appraisers who shall be approved by a majority in interest of the then beneficial interest holders or their trustees or personal representatives. All parties shall be given notice of the desire to sell, and shall be given notice of the appraisals obtained.

(ii). If any of the other parties agree to exercise the right to purchase after notice of the appraisals, notice shall be given to the selling party within fifteen days of notice of appraisals. Unless the offer to sell otherwise provides, payment shall be made on tender of proper instruments of transfer not later than sixty days after the notice of acceptance is given.

(iii). In the event no party exercises the right to purchase after notice of the appraisals, the selling party or parties shall have no right to sell or otherwise dispose of their property except as provided for here.

(iv). The cost of appraisals shall be borne by the beneficial interest holder desiring to sell.

#### Article Three.

##### Transfer in Event of Death or Incompetency

In the event of the death of any beneficial interest holder, the other beneficial interest holders shall have the obligation to purchase the interest of the deceased, for a price to be determined in accordance with the method described in Article Two, Paragraph (1)(a) and (d) above; except that, for this purpose, the appraisal fee shall be paid by those participating in the purchase. The transfer and payment according to the provisions of Article Five below shall be completed within sixty days after the death.

#### Article Four.

##### Liens in Event of Transfer

In the event of any transfer of any interest, whether inter vivos, intestate, or testamentary, there shall be a lien on the beneficial interest and any income attributable to it for any outstanding indebtedness, taxes, assessments, or other charges, whether or not yet due or payable. Any proceeds of sale or income shall first be applied to payment of the transferring beneficial interest holder's pro-rata portion of debts, taxes, assessments, or other charges.

#### Article Five.

##### Payment of Purchase Price

1. In the event of sale of any of the beneficial interest of \_\_\_\_\_ Trust No. \_\_\_\_\_ in accordance with the terms of this agreement, the purchase price shall be payable as follows:

(a). Twenty percent of the purchase price shall be payable at the time of closing;

(b). The remaining eighty percent of the purchase price shall be amortized over a twenty-year payment schedule, which schedule shall include interest payable at the rate of \_\_\_\_\_ percent yearly, the payments to be made on an annual basis. This indebtedness shall be evidenced by a promissory note providing for payment according to the above terms.

(c). If the beneficial interest holder is the owner and beneficiary of any insurance of the life of a deceased beneficial interest, an amount equal to the death benefits payable to the beneficiary under the policy or policies

shall be paid in cash to the estate of the deceased beneficial interest holder on account of the purchase price of the beneficial interest, and only the balance, if any, may be deferred as provided in Article Five, Subparagraph (b). If the insurance proceeds exceed the purchase price of the beneficial interest, the excess is the property of the surviving beneficial interest holders pro rata according to their interest.

Article Six

Amendments and Miscellaneous

1. Any additions or amendments shall require the approval of the then holders of more than fifty percent of the beneficial interest.
2. This Agreement shall be binding on the parties, their heirs, personal representatives, and assigns.
3. Original documents need not be signed by all parties but shall be deemed to be signed by all parties if counterparts are signed by all parties.
4. Notice as used here shall mean written notice, and shall be deemed given when placed in the United States mail, certified mail, return receipt requested, with all first class and certified mail postage prepaid. This written notice shall reasonably describe the intended or desired action.

Article Seven.

Effect on Subsequent Transferees

This Agreement shall be binding on all subsequent transferees or assignees of any beneficial interest in the above-named Land Trust, regardless of whether they obtain their beneficial interest by purchase or otherwise. All beneficial interest holders shall make any transfers or conveyances of any beneficial interest expressly subject to these terms, provided however, that failure of the beneficial interest holder to include those items shall not be deemed to avoid application of this provision, and the assignee shall take subject to this Agreement. This paragraph notwithstanding, in the event of sale or mortgage of the entire premises, or of pledge or security assignment of all or part of the beneficial interest for business purposes, then these restrictions shall not apply, and all provisions are expressly subordinated to any security of mortgage loan.

Dated \_\_\_\_\_.

[Signatures of parties]