

Attachment D

SAMPLE FULL FORM QPRT

**TRUST AGREEMENT
CREATING THE
SMITH 2010 RESIDENCE TRUST**

I, MARY SMITH, as Settlor, hereby declare that I have transferred to myself, as Trustee, all of my interests in and rights to certain real property, including all improvements thereon and appurtenances thereto, listed in Exhibit "A" attached. This property, or any property acquired as a replacement, will hereinafter be referred to as the "Residence." The Trustee accepts the Residence and any other trust property under the terms set forth in this Trust Agreement. I neither reserve nor retain any right to alter, amend or revoke this Trust Agreement or any provision thereof. The Trustee is referred to in this Trust Agreement in the singular regardless of whether one or more than one Trustee is serving.

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**Article
RECITALS**

2.1 **Purpose.** By this Trust Agreement, I desire to create a trust which shall qualify as a Qualified Personal Residence Trust pursuant to Rev. Proc. 2003-42, Section 2702(a)(3)(A) of the Code, and as described in Section 25.2702-5(c) of the Treasury Regulations.

2.2 **Name of Trust.** This trust shall be known as the SMITH 2010 RESIDENCE TRUST.

2.3 **Trust Agreement Irrevocable.** This Trust Agreement, and the trust created under its terms, shall be irrevocable and nonamendable. Notwithstanding the foregoing, the Trustee shall have the power, acting alone, to amend the trust to the extent provided in Section 25.2702-5(a)(2) of the Treasury Regulations in any manner required for the sole purpose of ensuring that the trust qualifies as a Qualified Personal Residence Trust for purposes of Sec. 2702(a)(3)(A) of the Code and Section 25.2702-5(c) of the Treasury Regulations (including, with respect to any trust assets which are converted to a Qualified Annuity Interest administered under Article 7 of this Trust Agreement, the qualification of the annuity interest under Section 2702(b)(1) of the Code and Section 25.2702-3 of the Treasury Regulations).

2.4 **Additions of Property to Trust Estate.** Except as provided in Sections 5.6 and 7.6 of this Trust Agreement, I or any other person may (i) during the Initial Trust Term, transfer cash and improvements to the Residence to the Trustee subject to the limitations of Section 25.2702-5(c)(5) of the Treasury Regulations; and (ii) after the

expiration of the Initial Trust Term, at any time and from time to time, by Will or otherwise, devise, bequeath, transfer and deliver to the Trustee cash or other property acceptable to the Trustee which shall thereupon become a part of the trust estate and shall be held and disposed of by the Trustee in all respects subject to the provisions of this Agreement.

3Article **4**DEFINITIONS

Whenever used in this Trust Agreement, the following terms shall have the meanings set forth below unless otherwise provided in this Trust Agreement.

4.1 **Agent.** References to an incapacitated person's "Agent" mean an agent for that person acting pursuant to a valid durable power of attorney authorizing the agent to act in the necessary capacity, whether or not specific reference is made to this Trust Agreement in the power of attorney (unless specific reference is otherwise required under this Trust Agreement).

4.2 **Beneficiary.** References to "beneficiary" or "beneficiaries" mean all persons who may receive distributions of income or principal of the trust or trusts created under this Trust Agreement to which reference is being made, whether their interests are current, future, vested or contingent.

4.3 **Children and Descendants**

(a) **Generally.** References to "child" or "children" mean lineal descendants in the first degree of the parent designated. References to "descendants" mean lineal descendants in the first, second, or any other degree of the ancestor designated. Except as may be specifically provided otherwise in this Trust Agreement, the inclusion of half-bloods, adoptees, persons born out of wedlock, stepchildren, and foster children within a class of "children" or "descendants" shall be determined by reference to Section 21115 of the Probate Code. Notwithstanding the foregoing, references to "my children" or "my descendants" mean only the persons described in paragraph (b) below.

(b) **My Children and Descendants.** At the date of the signing of this Trust Agreement, I am unmarried. I have two (2) living children, who are JOHN SMITH ("JOHN"), and JANE SMITH ("JANE"), both of whom are adults. All references in this Trust Agreement to my "children" mean only JOHN and JANE. All references in this Trust Agreement to my "descendants" mean my children as defined in the foregoing sentence and their respective descendants.

4.4 **Code.** References to the "Code" mean the Internal Revenue Code of 1986, as amended, and corresponding provisions of any subsequent federal internal revenue law,

as well as any applicable Treasury Regulations with regard to the Section or Sections of the Code so referenced.

4.5 **Conservator.** References to an incapacitated person’s “Conservator” mean the legal conservator of such person’s estate appointed by a court of proper jurisdiction.

4.6 **Corporate Trustee.** References to a “Corporate Trustee” mean a trust company or a bank in the business of administering trusts which, together with its affiliated entities that are also in such business, has (i) combined capital and earned surplus of not less than Fifty Million Dollars (\$50,000,000), and (ii) at least One Hundred Million (\$100,000,000) of trust assets under management (excluding the trusts administered under this Trust Agreement), and in each case indexed for inflation in the manner described in Section 17.6 of this Trust Agreement.

4.7 **Current Beneficiary.** References to a “Current Beneficiary” or the “Current Beneficiaries” have the meaning set forth in Article 8 of this Trust Agreement.

4.8 **Disqualified Person; Disqualified Trustee.** References to a “Disqualified Person” or “Disqualified Trustee” mean the persons described in Section 15.4 of this Trust Agreement.

4.9 **Education.** References to “education” mean preschool, primary, secondary, college, graduate, and post graduate study, as well as trade school or vocational training, internships, and athletic, musical, artistic or other special activities, so long as the Trustee determines such study or activity is being pursued to the beneficiary’s advantage. Education expenses may include tuition, living expenses, books, supplies, educational equipment, travel expenses and other incidental expenses, provided any such expenses must be reasonable. Education may also include expenses related to foreign travel if such travel is being pursued for educational purposes (such as study abroad), as well as extra curricular activities pursued for educational purposes, provided any such expenses must be reasonable.

4.10 **Generation-Skipping Transfer (GST) Tax.** References to the “generation- skipping transfer tax” or the “GST tax” mean any federal transfer tax described in Sections 2601 *et seq.* of the Code and corresponding provisions of state law.

4.11 **Guardian.** References to a person’s “Guardian” mean the natural guardian of a minor person, the adoptive parent of a minor adoptee, or the legal guardian of a minor person’s estate appointed by a court of proper jurisdiction. Unless the Trustee has actual knowledge to the contrary, the Trustee may regard any relative of a minor person with whom such minor is living as his or her Guardian.

4.12 **Heirs.** The distribution of trust property to a designated individual’s “heirs” or “heirs at law” shall be determined under Probate Code Sections 6400 *et seq.*

Incapacity; Inability to Serve

(a) **Generally.** References to “incapacity,” “incapacitated,” “incompetent,” “unable to serve” or equivalents thereof, mean not only a Trustee, beneficiary, or other person who has been judicially declared incompetent or for whom a Guardian, Conservator, or other fiduciary of the person, estate or both shall have been appointed, but also a person who is incapacitated by reason of physical or mental

disability, or other similar cause, such that it is impossible or improbable for such person to exercise consistently good judgment in matters concerning the management of the trust estate or distributions therefrom.

(b) **Evidence of Incapacity.** A person's incapacity may be evidenced either by a judicial declaration, or by the written statement of two licensed physicians, both of whom have examined the person. Without such evidence, the Trustee and any successor Trustees may conclusively assume that the person is not incapacitated, and shall bear no liability for such assumption to any person interested in the trust estate. Upon receipt of such evidence that an acting Trustee is incapacitated, a successor Trustee may commence acting without need for a judicial proceeding to remove the incapacitated Trustee.

(c) **Regaining Capacity.** Unless a person shall have been judicially declared incompetent, such person's capacity shall be determined restored upon a written statement to that effect by the original, certifying physicians, or two other licensed physicians, both of whom have examined the person.

(d) **Missing Persons.** Until such time as a missing person has been declared "deceased" by judicial determination or by operation of law, the words "incapacity," "incapacitated," or "incompetent," and the term "unable to serve" or equivalents thereof, may also refer to an individual who has been legally declared "missing" by a law enforcement, military or other governmental agency, or whose whereabouts are otherwise unknown to the Trustee and cannot be ascertained with reasonable diligence under the circumstances.

4.14 Independent Person; Independent Trustee. References to an "Independent Person" mean an individual or an entity that (a) is not me or a beneficiary of the trust to which reference is being made; (b) is not related or subordinate, within the meaning of Section 672(c) of the Code, to me during my lifetime, or to any living beneficiary; (c) is not an adverse party under Section 672(a) of the Code; and (d) is a U.S. Person, as defined in Section 3.8 of this Trust Agreement. References to an "Independent Trustee" mean the then acting Trustee or Trustees that are Independent Persons.

4.15 Individual Professional Trustee. References to an "Individual Professional Trustee" mean an individual (non-corporate) Trustee who is an Independent Trustee providing fiduciary services for a fee to no fewer than five (5) other unrelated trusts or estates of reasonably equivalent (or higher) value to the combined value of all trusts such Trustee will simultaneously administer under this Trust Agreement. Furthermore, an Individual Professional Trustee shall be at least thirty-five (35) years of age and shall possess no less than a four (4) year college degree.

4.16 Principle of Representation. The division of trust property upon the "principle of representation" shall in all cases be determined as provided in Probate Code Section 246.

4.17 Probate Code. References to the "Probate Code" mean the California Probate Code, as amended, and corresponding provisions of any subsequent state law.

4.18 Qualified Organization. References to a "Qualified Organization" mean an organization described in Section 2055(a) of the Code.

4.19 **Transfer; Transferor.** References to a “Transfer” (with initial capitalization) mean an amount transferred directly or indirectly to the Trustee during the Transferor’s lifetime which is considered a gift for federal gift tax purposes. References to a “Transferor” (with initial capitalization) mean me and any other living person who is treated as the “donor” for federal gift tax purposes with respect to a Transfer.

4.20 **Trustee.** References to a “Trustee” or “Trustees” mean the Trustee or Trustees (including, where appropriate, the Special Trustee) serving from time to time under this Trust Agreement.

4.21 **UPAIA.** References to the “UPAIA” mean the California Uniform Principal and Income Act, Probate Code Sections 16320-16375 as it may be amended from time to time.

4.22 **UPIA.** References to the “UPIA” mean the California Uniform Prudent Investor Act, Probate Code Sections 16045-16054, as it may be amended from time to time.

5 Article

6 APPOINTMENT, RESIGNATION, AND REMOVAL OF THE TRUSTEE

The provisions of this Article shall govern the appointment, designation, resignation, and removal of Trustees of all trusts established under this Trust Agreement. It is my intention that the same Trustee shall serve simultaneously with regard to all separate trusts administered under this Trust Agreement and the terms of this Article shall be construed consistently with such intent.

6.1 **Initial Trustee.** I am the initial Trustee of the trusts established under this Trust Agreement, provided, however, that the Special Trustee shall exercise all powers of the Trustee which I cannot exercise because I am a Disqualified Trustee.

Special Trustee

(a) **Generally.** Certain provisions of this Trust Agreement provide that a power, authority or discretion (“power”) of the Trustees may be exercised only by a Trustee who is other than a Disqualified Trustee with respect to such power. If all of the Trustees then acting are Disqualified Trustees with respect to such power, then such power shall be exercised, if at all, by a Special Trustee appointed or designated pursuant to the provisions of this Article who is not a Disqualified Trustee with respect to such power. Unless otherwise provided under this Trust Agreement, the powers of a Special Trustee shall be limited to those specified in the instrument of such Special Trustee’s appointment or designation, or if none, to the powers of the Trustees under this Trust Agreement which cannot be exercised by any other Trustee or Special Trustee then acting because all such Trustees and Special Trustees are Disqualified Trustees with respect to such powers or because such powers are reserved for the Independent Trustee and no other acting Trustee is an Independent Trustee. All of the remaining provisions of this Article concerning the appointment, designation, resignation and removal of Trustees shall apply to the position of the Special Trustee, provided, however, that (i) the Special Trustee must be an Independent Person; (ii) no provision of this Article shall be