

**ALCOR ENDOWMENT TRUST SUPPORTING ORGANIZATION**

ARTICLE 1.	ESTABLISHMENT .....	1
ARTICLE 2.	TRUST ESTATE; TRUSTEES .....	1
ARTICLE 3.	SUPPORTED ORGANIZATION: PURPOSE.....	1
ARTICLE 4.	OPERATIONS.....	2
ARTICLE 5.	RELATIONSHIP .....	2
ARTICLE 6.	CONTROL.....	2
ARTICLE 7.	CONSTRUCTION: RESTRICTIONS.....	2
ARTICLE 8.	FISCAL YEAR .....	3
ARTICLE 9.	DISSOLUTION .....	3
ARTICLE 10.	PRIVATE FOUNDATION RULES .....	3
ARTICLE 11.	CREATION OF CORPORATION.....	4
ARTICLE 12.	GENERAL ADMINISTRATIVE PROVISIONS.....	4
ARTICLE 13.	LAW GOVERNING; SAVINGS CLAUSE .....	7
EXECUTION	.....	7

**TRUST AGREEMENT FOR THE  
ALCOR ENDOWMENT TRUST SUPPORTING ORGANIZATION**

**THIS TRUST AGREEMENT** is made this 14<sup>th</sup> day of October, 2013, by and between JAMES CLEMENT (Trustor) and JAMES CLEMENT, SAUL KENT, RALPH MERKLE, GEOFFREY SHMIGELSKY (a.k.a. JEFFREY SHMIGELSKY), KENNETH WEISS, and, or their successors (for convenience referred to singularly as the Trustee).

**ARTICLE 1. ESTABLISHMENT**

Trustor and Trustees hereby establish the Supporting Organization pursuant to the terms set forth herein.

**ARTICLE 2. TRUST ESTATE; TRUSTEES**

1. **Trust Estate.** Trustees acknowledge receipt of the property of Trustor described in the attached Schedule A which, together with any other property hereafter transferred to and accepted by Trustees, shall constitute the "trust estate" and shall be administered by Trustees as provided in this agreement. The Trustees shall be prohibited from receiving property as part of the Trust estate from any donor who directly or indirectly controls, either alone or with other specified persons as defined under Code Section 509(f)(2), the Supported Organization named under Article 3.

2. **Independent Trustees.** At no time may the number of Trustees who are not "disqualified persons" as defined in Code Section 4946 ("Independent Trustees") be less than a number which is one more than the number of disqualified persons then serving as Trustees.

**ARTICLE 3. SUPPORTED ORGANIZATION: PURPOSE**

1. **Specified Organizations.** The Supporting Organization is organized, and at all times hereafter shall be operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of, the following charitable organization:

ALCOR LIFE EXTENSION FOUNDATION, Scottsdale, AZ, EIN: 23-7154039

Individually, this charity is referred to as the "Supported Organization." Within the broad purposes, the specific goals and objectives of the Supporting Organization shall be to support and benefit this Supported Organization. The Supporting Organization shall not engage in any activities which are not in furtherance of the purposes referred to in Section 509(a) (3) (A) of the Code. The Supporting Organization shall not operate to support or benefit any organization other than the Supported Organization. Specifically, the Supporting Organization will receive, hold, invest and distributed funds to the Supported Organization for the benefit of the Supported Organization's existing and future programs. Further, the Supporting Organization is organized exclusively for charitable, educational, and scientific purposes, including, for such purposes, the

making of distributions to organizations that qualify as exempt organizations under Code Section 501(c)(3), or corresponding section of any future tax code. This agreement shall be construed accordingly, and all powers and authority of Trustees shall be limited accordingly.

#### **ARTICLE 4. OPERATIONS**

The Supporting Organization shall engage in activities which benefit or support the Supported Organization.

No part of the activities of the Supporting Organization shall be in furtherance of a purpose other than supporting or benefiting one or more of the Supported Organizations.

#### **ARTICLE 5. RELATIONSHIP**

The Supporting Organization shall be a Type II Supporting Organization, and shall be under the control and management of the Supported Organization because, among other reasons, the majority of its Trustees shall also be serving concurrently as Board Members of the Supported Organization.

#### **ARTICLE 6. CONTROL**

At no time shall the Supporting Organization be controlled, directly or indirectly, by one or more disqualified persons, as defined in Code Section 4946, other than foundation managers and other than one or more of the Supported Organizations.

#### **ARTICLE 7. CONSTRUCTION: RESTRICTIONS**

Trustees intend that the Supporting Organization qualify as a "TYPE II" supporting organization described in Code Section 509(a)(3), exempt from federal income taxation under Code Section 501(c)(3), meaning such organization is supervised or controlled by the Supported Organization, and is organized exclusively for charitable, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Code Section 501(c)(3), or corresponding section of any future tax code. This agreement shall be construed accordingly, and all powers and authority of Trustees shall be limited accordingly.

Trustees shall have the power to amend this instrument in order to comply with the requirements of Code Section 509(a)(3) and the Regulations thereunder, and any such amendment shall be deemed effective as of the date of creation of the trust. Trustees may also amend this instrument by unanimous consent for any lawful reason not inconsistent with its purpose as a "supporting organization."

The Supporting Organization shall not carry on propaganda or otherwise attempt to influence legislation in a manner which would result in loss of its exemption under Code Section

501(c) (3). No activity of the Supporting Organization shall consist of participating in or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. No part of the net earnings of the Supporting Organization shall inure to the benefit of or be distributable to Trustor, to Trustees, or to private individuals; provided, however, that the Supporting Organization shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes as set forth in Article 3.1 above. However, under no circumstance, shall the Supporting Organization make any grant, loan, compensation or other similar payment to a substantial contributor, a member of a substantial contributor's family, or an entity directly or indirectly controlled by the substantial contributor or her family.

Notwithstanding any other provision of this document, the Supporting Organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under Code Section 501(c) (3), or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under Code Section 170(c) (2), or corresponding section of any future federal tax code.

#### **ARTICLE 8. FISCAL YEAR**

The fiscal year of the Supporting Organization shall end on the last day of December, or such other date as may be fixed from time to time by Trustees.

#### **ARTICLE 9. DISSOLUTION**

Upon the dissolution of the Supporting Organization, the Trustees shall distribute all the remaining assets for one or more exempt purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code, or corresponding section of any future federal tax code, and such assets shall only be distributed to the specified organization listed in Article 3 above.

#### **ARTICLE 10. PRIVATE FOUNDATION RULES**

If, and for so long as, the Supporting Organization is a private foundation which does not qualify as a supporting organization under Section 509(a)(3), then, notwithstanding any provision of this agreement, Trustees, Trustees' employees, and the Supporting Organization and its employees are prohibited from:

1. engaging in any act of self-dealing as defined in Code Section 4941,
2. failing to distribute income in a manner which would result in tax liability under Code Section 4942,
3. retaining any excess business holdings as defined in Code Section 4943,

4. making any investments which would subject the Supporting Organization, to tax under Code Section 4944, or

5. making any taxable expenditure as defined in Code Section 4945.

#### **ARTICLE 11. CREATION OF CORPORATION**

Trustees are authorized and empowered to form and organize a nonprofit corporation for the uses and purposes of the Supporting Organization, and qualifying as a supporting organization under Code Section 509(a)(3). Such corporation, if organized, shall be named ALCOR ENDOWMENT TRUST SUPPORTING ORGANIZATION, INC. Upon the creation and organization of such corporation, Trustees are authorized and empowered to convey, transfer and deliver to such corporation all the property and assets to which the Supporting Organization may be or become entitled. It is the purpose of this Article 11 that the board of directors of such corporation, if incorporated and organized as provided by this paragraph, shall take the place of Trustees, who shall be the incorporators of such corporation.

#### **ARTICLE 12. GENERAL ADMINISTRATIVE PROVISIONS**

##### **Duties of Trustees - -**

1. **Annual Accounting.** After the end of each fiscal year for the trust, Trustees shall prepare a statement or statements showing: (a) how the property of the trust is invested; and (b) all transactions relating to the trust for the preceding fiscal year. Trustees shall maintain the accounting statement or statements with the permanent records of the trust.

2. **Investments.** In determining the prudence of a particular investment, Trustees shall consider the proposed investment or investment course of action in relation to all property of the trust. Trustees may delegate to others such duties, powers (including discretionary powers), and authority as Trustees think necessary or proper. Trustees may incorporate, or join with others in the incorporation of, any unincorporated farm, business, or business property. If any asset donated to this Trust does not meet the requirements of the "prudent man standard" or "prudent investor standard" set forth in Section 64.2-789 of the Code of Virginia, the Trustee may nevertheless retain the asset for so long as the Trustee may deem appropriate. The Trustees hereby expressly waive the prudent man standard or prudent investor standard under Section 64.2-781 of the Code of Virginia. The Trustee may determine that the purpose of the Trust is best served without diversification, under Section 64.2-783 of the Code of Virginia.

3. **Income.** If all the income of the property of the trust is not distributed or applied during a fiscal year, Trustees shall add the undistributed portion to principal.

4. **Capital Gains and Losses.** Trustees shall allocate long term capital gains and losses to principal.

**5. Common Trust Funds.** If a corporation is serving as a Trustee, Trustees may invest all or any portion of the property of the trust in a common trust fund maintained by the corporate Trustee, to which Code Section 584 applies. Trustees shall maintain separate accounts and records which will sufficiently identify the portion of the total common trust fund which constitutes the property of the trust, and the income earned by, or attributable to, such portion.

**6. Powers of Trustees.** Trustor grants to Trustees the continuing, absolute, discretionary power to deal with any property, real or personal, held in the trust estate as freely as Trustor might in the handling of Trustees own affairs. In addition, Trustees shall have all of the power, authority and discretion given a trustee under the laws of the Commonwealth of Virginia on this date, including those set forth in Sections 64.2-105 and 64.2-778 of the Code of Virginia (or any successor provisions thereto), as amended, which powers are incorporated in this Agreement by this reference. Such powers may be exercised independently and without the approval of any court in Virginia or any other jurisdiction. Such powers shall be exercised by a majority vote of the Trustees; however, Trustees may delegate to a single Trustee the ability to do any acts that the Trustees could vote on collectively.

**7. Fees and Expenses of Trustees; Bond.** Trustees shall be entitled to reasonable compensation for the acceptance and administration of the trust and for the payments and distributions made by Trustees. Trustees are entitled to extra compensation for unusual or extraordinary services. Trustees shall be reimbursed for all expenses reasonably incurred in the administration of the trust. No bond or other security shall be required of Trustees or any of them in any jurisdiction.

**8. Resignation of Trustee; Appointment of Successor Trustee.** Any Trustee shall have the right to resign as a Trustee without court proceedings. The remaining Trustees shall have the right, without court proceedings, to appoint a successor Trustee by a majority vote. However, no successor Trustee shall be liable for the acts or omissions of any prior Trustee. Trustees may be removed by a majority vote of the Trustees and the remaining Trustees shall have the right, without court proceedings, to appoint a successor Trustee. Notwithstanding anything in this Trust Agreement to the contrary, the majority of the Supporting Organization Trustees shall also serve concurrently as Board Members of the Supported Organization.

**9. Extent of Liability.** Trustees shall have the duty to act in good faith and with reasonable care and, in the absence of affirmative evidence to the contrary, shall be deemed to have so acted.

**10. Liability of Trustee and Former Trustees.**

A. No Trustee or former Trustee (collectively referred to in this Agreement as the "Indemnified Group") shall be personally liable for:

- (1) any liability or obligation of the Trust under any agreement;

(2) errors in judgment (including acting in reliance on the opinion of legal counsel or public accountants or believing in good faith that he or she is acting within the authority granted in this Agreement);

(3) any acts or omissions that do not constitute fraud, gross negligence or willful misconduct; or

(4) the negligence, whether of omission or commission, dishonesty or bad faith of any employee or agent selected and supervised by a member of the Indemnified Group with reasonable care or of any other member of the Indemnified Group;

but each member of the Indemnified Group shall be liable only for his or her respective fraud, gross negligence or willful misconduct.

B. In any threatened, pending or completed action, suit, or proceeding (civil or criminal) to which a member of the Indemnified Group was or is a party or is threatened to be made a party by reason of the fact that he or she is or was a Trustee of a Trust, or because he or she executed an agreement for the benefit of a Trust, that Trust shall indemnify and hold harmless that member of the Indemnified Group against all expenses (including reasonable attorneys' and accountants' fees, court costs and expenses), judgments and amounts paid in settlement actually and reasonably incurred by him or her in connection with that action, suit or proceeding if the conduct of that member of the Indemnified Group did not constitute fraud, gross negligence or willful misconduct.

C. To the extent that a member of the Indemnified Group has been successful on the merits in seeking indemnification in accordance with this ARTICLE 12, paragraph 10, the Trust shall indemnify him or her and hold him or her harmless against the expenses (including reasonable attorneys' and accountants' fees, court costs and expenses) actually and reasonably incurred by him or her in seeking that indemnification.

D. For purposes of Article 12, paragraphs 10B and 10C, the termination of any action, suit or proceeding by judgment, order, and settlement or otherwise shall not create a presumption that the conduct of a member of the Indemnified Group constituted fraud, gross negligence or willful misconduct.

E. Expenses (including reasonable attorneys' and accountants' fees, court costs and expenses) incurred in defending any claim, action, suit or proceeding (civil or criminal) shall be paid by the Trust in advance of final disposition of the matter upon receipt of an undertaking by or on behalf of that member of the Indemnified Group to repay that amount if that member of the Indemnified Group is ultimately determined not to be entitled to be indemnified.

**11. Tax Return.** The Trustees shall file Form 990, and shall include information listing the Supported Organizations, the Supporting Organization's status as a Type II Supporting Organization, and a certification that it satisfies the control test under Section 509(a)(3).

**ARTICLE 13. LAW GOVERNING; SAVINGS CLAUSE**

This instrument shall be governed by the laws of the Commonwealth of Virginia. Any provision prohibited by law or unenforceable shall not affect the remaining provisions of this instrument. However, in any conflict with Code Section 509(a)(3) of the Code and the Regulations thereunder, that Code section and the Regulations shall govern.

EXECUTED by Trustor and Trustees on the day and year first above written. This Agreement may be signed in counterparts, each of which will constitute an original.

TRUSTEES:

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**JAMES CLEMENT**

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**SAUL KENT**

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**RALPH MERKLE**

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**GEOFFREY SHMIGELSK**

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**KENNETH WEISS**