

DO10000000/7

**TRANSMITTAL LETTER**

Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

300004415683--1  
-06/12/01--01032--002  
\*\*\*\*350.00 \*\*\*\*350.00

**SUBJECT:** Registration for the Benz Family Charitable Trust

Enclosed is an original and one (1) copy of the Declaration of Trust and a check for:  
Benz Family Charitable Trust

**FEES:**

Declaration of Trust                      \$350.00

**OPTIONAL:**

Certified Copy                      \$ 8.75

**FROM:** John E. Benz  
Name (Printed or typed)

273 Sandpiper Ave.  
Address

Palm Beach, FL 33480  
City, State & Zip

561-686-6009  
Daytime Telephone number

**AFFIDAVIT TO THE FLORIDA SECRETARY OF STATE  
TO FILE OR QUALIFY**

Benz Family Charitable Trust

A Florida TRUST

In accordance with Section 609.02 of the Florida Statutes, pertaining to  
Common Law Declarations of Trust, the undersigned, the Chairman of the  
Board of Trustees of Benz Family Charitable Trust, a  
(Name of Trust)

Florida Trust hereby affirms in order to file or qualify  
(State)

Benz Family Charitable Trust, in the State of Florida.  
(Name of Trust)

1. Two or more persons are named in the Trust.
2. The principal address is 273 Sandpiper Ave., Palm Beach, FL 33480
3. The registered agent and street address in the State of Florida is:  
John E. Benz  
273 Sandpiper Ave., Palm Beach, FL 33480
4. Acceptance by the registered agent: Having been named as registered  
agent to accept service of process for the above named Declaration of Trust  
at the place designated in this affidavit, I hereby accept the appointment as  
registered agent and agree to act in this capacity.

John E. Benz  
(Signature of Registered Agent)

5. I certify that the attached is a true and correct copy of the Declaration of  
Trust under which the association proposes to conduct its business in  
Florida.

NOTARY

John E. Benz  
Name: John E. Benz  
Chairman of the Board of Trustees

Filing Fee: \$350.00  
Certified Copy: \$ 8.75 (optional)

**AGREEMENT**

**Between**

**JOHN E. BENZ and BARBARA M. BENZ,**

**Donors,**

**and**

**JOHN E. BENZ and BARBARA M. BENZ,**

**Trustees**

**BENZ FAMILY CHARITABLE TRUST**

Executed FEBRUARY 20 2000

**CONFORMED COPY**

Marschall & Associates  
Palm Beach Gardens, Florida

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THIS AGREEMENT, made and entered into as of the 20<sup>th</sup> day of February, 200~~1~~, by and between JOHN E. BENZ and BARBARA M. BENZ, of Palm Beach, Florida (hereinafter referred to as the "Donors"), as Donors, and , JOHN E. BENZ and BARBARA M. BENZ (together with any acting successor trustee hereinafter referred to as the "trustees"), as trustees, which Trust and Agreement shall be effective upon execution by the Donors and trustees and which Trust is hereby designated and may be referred to as the "BENZ FAMILY CHARITABLE TRUST";

WITNESSETH:

That the Donors, in consideration of the agreements and undertakings hereinafter made by the trustees and other valuable consideration, does hereby assign, transfer and set over unto the trustees and any successors the property listed in Schedule A attached hereto, and the trustees are hereby authorized to and agrees that the trustees will receive and hold such property and, except as otherwise provided herein, such additional property as may be transferred, assigned or bequeathed to the trustees by any person or organization, to become a part of any trust fund or funds created hereunder, and all investments and reinvestments thereof and income therefrom for the following uses and trusts:

ARTICLE I

Dispositive Provisions

(A) The Charitable Trust is created exclusively for charitable, scientific, literary, educational or religious purposes within the meaning of Sections 170(c)(2), 501(c)(3), 2055(a)(3) and 2522(a)(2) of the Internal Revenue Code. The assets of the Charitable Trust shall be held and administered by the trustees exclusively for such purposes within the meaning of such sections of

the Internal Revenue Code.

(B) It is the Donors' intention that, to the extent permitted without affecting the qualification of this trust as a charitable trust as defined under Sections 170(c)(2), 501(c)(3), 2055(a)(3) and 2522(a)(2) of the Internal Revenue Code, the trustees shall administer the Charitable Trust pursuant to the following guidelines:

(1) It is the Donors' wish that the trust distributions of income and/or principal shall be paid to any one or more charitable organizations which are both exempt under Section 501(c)(3) of the Internal Revenue Code and described in Section 170(c)(2), 2055(a)(3) and 2522(a)(2) of the Internal Revenue Code at the time each distribution is made to such organization.

(2) It is the Donors' wish that in making trust distributions of income and/or principal hereunder, due consideration be given to the charitable purposes expressed by the Donors as may be promoted from time to time by the Donors, as well as any subsequent expressions made by the Donors with respect to charitable preferences.

(C) No part of the net earnings of the Charitable Trust shall inure to or be payable to or for the benefit of any private shareholder or individual within the meaning of Section 501(c)(3) of the Internal Revenue Code (other than reimbursement of actual expenditures and reasonable fees for personal services rendered in connection with the administration of the trust, including the fees of the trustee hereof). No substantial part of the activities of the trust shall be carrying on propaganda, or otherwise attempting to influence legislation, and such trust shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

(D) The Donors hereby establish an advisory committee for the sole purpose of making

periodic recommendations to the trustees with respect to proposed qualified charities that they wish to receive grants from the charitable trust. The advisory committee shall make recommendations to the trustees but the trustees shall have the final determination as to the names of the charitable recipients and the amounts to be distributed to the charitable recipients. The initial advisory committee members are JOHN BENZ, BARBARA BENZ, JOHN E. BENZ, JR., ROBERT BENZ, MARY VIRGINIA PARKER, NANCY BITTER, BARBARA DUVJNAK and THOMAS BENZ. At all times there shall be at least three or more advisory committee members and the decision of the majority of the advisory committee members shall control. Each advisory committee member shall serve as an advisor for a one year period of time on a calendar year basis. If a successor advisory committee member is not appointed to succeed an existing advisory committee member, the existing advisory committee member shall continue to act as an advisory committee member for the subsequent calendar year. The Donors, acting jointly, if able to act, shall have the authority to remove any advisory committee members and may appoint successor advisory committee members from time to time. If only one Donor is living and able to act, then that Donor shall have the authority to remove any advisory committee members and may appoint successor advisory committee members. The advisory committee members shall meet periodically either in person, by telephone or by proxy for the purpose of making recommendations with respect to proposed qualified charities that they wish to receive grants from the charitable trust. The trustees of the charitable trust will consider all such recommendations but are not obligated to honor any recommendations that, in their estimation, are not compatible with the charitable goals or general purposes of the charitable trust. In the event the advisory committee fails to make recommendations with respect to proposed grants, then the trustees shall make all such determinations. The powers granted to the advisory committee members shall be exercised only in a fiduciary capacity.

(E) The trustees of the Charitable Trust may distribute for the purposes designated in Paragraph (A) and (B) of this Article so much of the income and/or principal of the trust fund as the trustees in their absolute and uncontrolled discretion shall determine, after giving consideration to the recommendations of the advisory committee and shall make such distributions at such time and in such manner as not to become subject to the tax on undistributed income under Section 4942 of the Internal Revenue Code.

(F) The Charitable Trust shall continue perpetually; provided, however, that the trustees may terminate the Charitable Trust at any time if such action is deemed advisable and for the best interests of such trust, whether by reason of economic, tax or political emergency or for any other reason, in the sole and absolute discretion of the trustees then in office, whose judgment thereon shall be conclusive and free from question by anyone or in any court. Upon such termination, any remaining principal of the trust, together with all accrued, accumulated and undistributed income thereof, shall be paid over and distributed exclusively for the purposes of the Charitable Trust in such a manner, or to such organizations organized and operated exclusively for the purposes of the Charitable Trust in such a manner, or to such organizations organized and operated exclusively for one or more exempt purposes within the meaning of Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code or to one or more entities described in Section 170(c)(1) of the Internal Revenue Code, as the trustees shall determine, in the trustees' absolute discretion. Any such assets not so disposed of shall be disposed of by the court having jurisdiction over trust proceedings in the county in which the principal office of the Charitable Trust is then located, exclusively for such purposes or such organizations, as the court shall determine, which are organized and operated exclusively for such purposes.

(G) Notwithstanding any other provisions herein, the trust shall not carry on any activities



not permitted to be carried on (a) by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (b) by an organization, contributions to which are deductible under Sections 170(c)(2), 2055(a)(3) and 2522(a)(2) of the Internal Revenue Code.

(H) It is the express intention of the Donors that the Charitable Trust created by this instrument shall be exempt to the maximum possible extent from any and all income, death, succession, gift, inheritance or estate taxes of whatever kind or nature imposed by the laws of the United States of America and/or any applicable state, and this instrument and all powers, trusts, directions, authorizations, instructions and obligations granted to or imposed upon the trustee by this instrument shall be construed so as to effect this intent. To this same end and purpose, the trustees are expressly authorized and empowered, by an instrument in writing subscribed by the trustees then in office and attested before a notary public (or any other officer duly authorized and empowered to administer oaths) and executed at any time to amend this Charitable Trust (including provisions relating to the powers and duties of the trustees), in whatever manner the trustees, in their sole and absolute discretion, shall deem necessary or desirable to minimize or eliminate any liability to the United States of America and/or any state for any income, death, succession, gift, inheritance or estate taxes sought to be levied upon any part of this Charitable Trust, the Donors or the estates of the Donors; provided that the Charitable Trust may not be amended in such a way that the Charitable Trust shall not thereafter be described in Sections 170(c)(2), 501(c)(3), 2055(a)(3) and 2522(a)(2) of the Internal Revenue Code. The trustees shall not possess any power of amendment hereinbefore mentioned under any circumstances wherein the possession of such power will itself result in the imposition of any tax not otherwise applicable.

(I) Any other provisions of this instrument notwithstanding, the trustees shall not engage in any of the following activities:

(1) The trustees shall not engage in any act of self-dealing as defined by Section 4941(d) of the Internal Revenue Code.

(2) The trustees shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code.

(3) The trustees shall not make any investments in such manner as to subject the trust to the tax under Section 4944 of the Internal Revenue Code.

(4) The trustees shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

## ARTICLE II

### Additions

The Donors or any other person or organization may at any time give, transfer or bequeath to this trust, either by inter vivos transfer or testamentary disposition, additional money or property of any kind acceptable to the trustee, and in such event, such additional property shall become a part of the principal of this trust. Notwithstanding the foregoing, the trustees of the Charitable Trust are expressly forbidden to accept any gift, bequest, contribution, or any other thing of value whatsoever which may be subject to a condition that it, or any part thereof, shall be used for any purpose which in the opinion of the trustees is or might be in violation of the express provisions of the Charitable Trust with respect to its charitable purpose and nature, or which would or could cause the Charitable Trust, in the opinion of the trustees, to lose tax exempt status under Section 501(c)(3) of the Internal Revenue Code or lose eligibility for receipt of tax deductible contributions under Section 170(c)(2), 2055(a)(3) or 2522(a)(2) of the Internal Revenue Code.

## ARTICLE III

### Trust is Irrevocable

It is the intention of the Donors that this instrument shall constitute an irrevocable gift in trust of all property at any time held hereunder, and any right, title or reversionary interest therein, of any kind or description, which the Donors now have or may subsequently acquire, either by operation of law or otherwise, is hereby renounced and relinquished forever. Any future gift of property to this trust, whether by either or both Donors or any other person, shall likewise be irrevocable, and any right, title or reversionary interest therein, of any kind and description, which the Donors thereof may have or subsequently acquire, by operation of law or otherwise, shall, by the making of such gift to this trust, be renounced and relinquished forever.

#### ARTICLE IV

##### Administrative Powers.

Subject to the provisions and limitations herein expressly set forth in Article I and in other provisions of this instrument, the trustees of this Agreement shall have in general the power to do and perform any and all acts and things in relation to the property and trust estate from time to time in such trustees' hands in the same manner and to the same extent as an individual might or could do with respect to his own property, subject, however, to the duty to make and keep the overall principal, but not necessarily each and every asset, reasonably productive of income. No enumeration of specific powers herein made shall be construed as a limitation upon the foregoing general powers, and the powers, or any of them, herein conferred upon the trustees of this Agreement shall not be exhausted by any use thereof, but each shall be continuing. Subject to the aforesaid provisions and limitations of this instrument, the trustees are specifically authorized and empowered, in such trustees' sole discretion:

- (1) To retain any and all stocks, bonds, notes, securities and other property, real or personal (but not wasting assets), comprising a part of the trust herein provided without liability for any decrease in the value thereof.

(2) For fair and adequate consideration, to sell, at public or private sale, exchange for like or unlike property, convey, lease for longer or shorter terms than the trust herein provided, and otherwise dispose of, any and all property, real or personal, held hereunder upon such terms and credits as the trustees may deem proper, including specifically the power to sell or otherwise dispose of any such property for less than its acquisition or appraised value, without liability for any loss resulting from such disposition.

(3) For fair and adequate consideration, to invest any money held hereunder and available for investment in any and all kinds of securities or property except wasting assets, whether or not of the kind authorized by the common law or by the laws of any state or country to which they would, in the absence of this provision, be subject, and to form or join in forming any corporation and subscribe for and acquire stock in any corporation in exchange for money or other property.

(4) To invest and reinvest and retain the investment of the whole or any part of the trust fund or any and all of the proceeds from the disposition of any assets of any trust fund in any single security or other asset, or any limited number of securities or other assets, or any exchanged or merged or substitute or successor security or securities, or any single type or limited number of types of securities or other assets, without liability for any loss resulting from any lack of diversification; it being the intention hereby to free and absolve the trustee from any and all obligation or liability for any lack of diversification of investments and assets held in the trust fund, or any loss resulting therefrom, regardless of whether such investments or assets were held or owned by either Donor at any time or whether they are exchanged or merged or successor or substitute investments for assets owned by either Donor or whether they are investments or assets acquired during either Donor's life or after either Donor's death by the trustee.

(5) To retain cash included in the trust fund without investment thereof for such period of time as the trustees shall deem advisable, whenever the trustee shall determine that it is inadvisable to invest such cash because of market conditions or for any other reason.

(6) To vote directly or by proxy at any election or stockholders' meeting any shares of stock held hereunder.

(7) To exercise or dispose of or reject any purchase rights arising from or issued in connection with any stock, securities or other property held hereunder.

(8) To repair, alter or demolish any existing building or structure and to erect any buildings and structures upon any real estate held hereunder.

(9) To effect fire, rent, title, liability, casualty or other insurance of such nature and in such form and amount as may be desirable upon any property held hereunder.

(10) To participate in any plan or proceeding for protecting or enforcing any right, obligation or interest arising from any property held hereunder or for reorganizing,

consolidating, merging or adjusting the finances of any corporation issuing the same; to accept in lieu thereof any new property; to pay any assessment or expense incident thereto; to join in any voting trust agreement and to do any other act or thing which the trustees may deem necessary or advisable in connection therewith.

(11) To employ, upon such terms and with such discretionary powers as the trustees may approve, servants, agents, custodians of securities or other property, accountants or other professional persons, and attorneys-at-law or in-fact, and to obtain the advice of any bank, trust company, investment counsel or any other institution or individual and permit books of account to be kept by any of the foregoing and pay for such services out of the trust fund profiting thereby, making such division as between principal and income thereof as the trustee may deem just within the scope of generally accepted accounting principles.

(12) To collect, pay, abandon, contest, compromise or submit to arbitration any claim in favor of or against the trust fund, or any part thereof, or the trustee.

(13) To borrow money for such periods of time and upon such terms and conditions as the trustees may deem advisable for any purpose whatsoever, and the trustees may mortgage or pledge such part or the whole of the trust fund as may be required to secure such loan or loans.

(14) To delegate from time to time the exercise of the trustees' powers and duties, in whole or in part, to one or more other trustees if any additional trustee or trustees are acting hereunder or to attorneys or agents, including in either case delegation of discretionary as well as ministerial powers and the delegation of the performance and execution of all acts and the exercise of all judgment and discretion in connection with the administration or performance of the trust.

(15) To manage and conduct or participate in the management or conduct of the affairs of any corporation, the stock of which may be held hereunder, to act as officer, director, attorney or employee of any such corporation or for the trust or trustees and to receive reasonable compensation for acting as such; to vote such stock in favor of the increase or decrease of the capital of any such corporation and to take such action with regard to such stock in the interest of the trust as the trustees in the trustees' discretion may determine, and personally to own stock or be interested in any corporation or business in which the trust shall own stock or be interested.

(16) To hold stocks and other assets and to open bank accounts for deposits of money comprising a part of the trust fund in the individual name of a trustee or the trustees' nominee with or without disclosing any fiduciary relationship, and to employ custodians of securities or other property, and to permit such custodians to hold such securities or other property in their own name or in the name of a nominee, with or without disclosing any fiduciary relationship.

(17) Subject to the provisions of Article II, to accept and receive additional assets,

securities and property of any kind which any person may pay, transfer and deliver to the trustee to be added to the trust herein created and held and administered as integral parts thereof.

(18) With respect to property subject to depreciation or depletion, to withhold an amount from trust income in the discretion of the trustee to provide for a reasonable allowance for depreciation or depletion on such property under generally accepted accounting principles.

(19) To change the situs of the trust and of any property which is a part of the trust to any place in the United States of America.

#### ARTICLE V

##### Application of Florida Law.

This agreement and trust are specifically created as a Florida agreement and trust, and the construction, validity and effect of this agreement and the rights and duties of the beneficiaries and the trustees hereof shall at all times be governed exclusively by the laws of the State of Florida.

#### ARTICLE VI

##### Counterparts.

This agreement may be executed in any number of counterparts, any one of which shall constitute the agreement between the parties.

#### ARTICLE VII

##### Definitions.

(A) Unless the context requires otherwise, all words used in this instrument in the singular number shall extend to and include the plural, all words used in the plural number shall extend to and include the singular, and all words used in any gender shall extend to and include all genders.

(B) As used in this instrument, the term "trustees" shall include, collectively, all those holding such office hereunder from time to time without regard to whether they were initially appointed, successor or additional trustees.

(C) As used in this instrument, the term "Internal Revenue Code" means the Internal Revenue Code of 1986 and any amendments or successor laws thereto. Any reference to a particular section of the Internal Revenue Code shall be construed to refer to said section as now enacted and to any subsequent amendments of said section.

(D) The titles to articles and any table of contents are included for convenience and are not intended to construe or alter the substance of such articles.

#### ARTICLE VIII

##### Appointment of Trustee.

(A) JOHN E. BENZ and BARBARA M. BENZ are hereby appointed initial trustees hereunder. If either one of them shall fail or cease to act as a trustee, then Donors' son, JOHN E. BENZ, JR., shall act as a successor co-trustee with the remaining trustee. It is the Donors' intent that there will always be two acting trustees. Thus, if either one or both of the Donors who are acting as trustees or one or more of Donors' children are unable or unwilling to serve or to continue to serve as co-trustees, the Donors appoint the Donors' then oldest living child or children who are not acting as trustees to act as individual successor co-trustees so that there are always two trustees acting. If a further vacancy occurs in the office of trustee of this trust so that there is only one individual trustee who is able and willing to act, then a corporate trustee shall be appointed to act as a co-trustee with the individual trustee by the Florida court having jurisdiction over such trust upon application of any person interested in such trust or upon application of the retiring trustee. If the remaining individual trustee shall fail or cease to act as a trustee when a corporate trustee is acting as a co-trustee with such individual trustee, then the corporate trustee shall act as sole trustee hereunder.

(B) Any trustee serving hereunder may resign as trustee of the trust created hereunder by delivering a written instrument to such effect signed by or on behalf of such trustee to the designated successor trustee. Any such resignation shall be effective as of the date of completion of delivery of such instrument or as of such later date as shall be specified in such instrument.

(C) All discretionary powers and duties vested in any corporate trustee hereunder which is not a natural person may be exercised on its behalf, from time to time, by its governing board, or by an appropriate committee, or by its principal officers or trust officers. Any corporate trustee shall be entitled to receive compensation in accordance with its fee schedule then in effect.

(D) No bond or other security shall ever be required to be given or be filed by any trustee hereunder for the faithful execution of such trustee's duty hereunder. If, notwithstanding the foregoing provision, a bond shall nevertheless be required, no sureties shall be required thereon.

(E) No trustee hereunder shall be liable except for such trustee's own willful malfeasance or bad faith. The trustees, including any former trustees, shall be entitled to have their administration of the trust presented to an appropriate court for approval in judicial proceedings, to undertake, maintain and defend legal proceedings for approval and allowance of their accounts and administration of the trust, whether instituted by them or by others, and in such legal proceedings, to defend their accounts and their administration of the trusts. The trustees, including any former trustees, shall be entitled to have all the reasonable costs of such legal proceedings paid to them or on their behalf from the trusts involved as such costs are incurred in the course of such proceedings. Any successor trustee may rely upon the accounting and administration of the trust by the prior trustee without any liability for so doing.



IN WITNESS WHEREOF, JOHN BENZ and BARBARA BENZ, as Donors, and JOHN BENZ and BARBARA BENZ, as trustees, have hereunto set their hands and seals as of the date first above written.

John E. Benz  
JOHN E. BENZ, Donor

Barbara M. Benz  
BARBARA M. BENZ, Donor

John E. Benz  
JOHN E. BENZ, Trustee

Barbara M. Benz  
BARBARA M. BENZ, Trustee

Signed, sealed, published and declared by BARBARA M. BENZ and JOHN E. BENZ as and for their Trust Agreement in our presence and we, at their request and in their presence, and in the presence of each other, have hereunto subscribed our names as witnesses the day and year above set out.

John S. Marshall  
Witness  
Robert P. Marshall  
Witness

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20th day of February, 2000, by BARBARA M. BENZ and JOHN E. BENZ, who are personally known to me and who did not take an oath.

Robert P. Marshall  
Notary Public  
State of Florida  
My commission expires:

NOTARY PUBLIC - STATE OF FLORIDA  
ROBERT P. MARSHALL  
COMMISSION # CC773822  
EXPIRES 11/28/2002  
BONDED THRU ASA 1-888-NOTARY1