

**LAZARD/GREAT GRAY COLLECTIVE TRUST**

**2023 AMENDED AND RESTATED DECLARATION OF TRUST**

**April 28, 2023**

**Trustee:**

**GREAT GRAY TRUST COMPANY, LLC**

**LAZARD/GREAT GRAY COLLECTIVE TRUST  
2023 AMENDED AND RESTATED DECLARATION OF TRUST**

WHEREAS, Investors Bank & Trust Company formed a trust known as the Lazard/Investors Bank Collective Trust (the "Trust") under a declaration of Trust (the "Original Declaration") dated August 2, 1999, as amended and restated on August 31, 2006;

WHEREAS, Investors Bank & Trust Company served as trustee under such Trust;

WHEREAS, Investors Bank & Trust Company was acquired by State Street Bank and Trust Company, which assumed Investors Bank & Trust Company's responsibilities as Trustee to the Trust;

WHEREAS, State Street Bank and Trust Company resigned from its position as Trustee of the Trust in accordance with Section 11.1 and Section 11.2 of the Original Declaration, effective as of August 31, 2009;

WHEREAS, Wilmington Trust Retirement and Institutional Services Company ("WTRISC") was appointed as successor trustee in accordance with Section 11.3 of the Original Declaration, effective as of September 1, 2009;

WHEREAS, WTRISC was merged with and into Wilmington Trust, National Association (the "Prior Trustee") on November 1, 2015;

WHEREAS, the Original Declaration was further amended on November 1, 2015 and June 20, 2016 (the "Prior Declaration");

WHEREAS, on the date hereof, the Prior Trustee assigned all of its right, title and interest in the Prior Trustee's collective investment trust business to Great Gray Trust Company, LLC (the "Trustee"), and in accordance with the terms of the Prior Declaration, the Trustee assumed all the rights, titles, powers, duties, discretion and immunities of the Prior Trustee under the Prior Declaration;

WHEREAS, the Trustee now desires to amend and restate the Prior Declaration on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Trustee does hereby amend and restate the Prior Declaration as follows:

Pursuant to this Declaration, the Trust is renamed Lazard/Great Gray Collective Trust, and the Trustee declares that it (or its successors) will hold, administer and deal with all money and property received by it as trustee hereunder upon the following terms and conditions.

**SECTION 1. Definitions**

Wherever used in this Declaration, unless the context clearly indicates otherwise, the following words shall have the following meanings:

- 1.1 "Adoption Agreement" means an agreement and any Schedules thereto, substantially in the form approved by the Trustee from time to time, pursuant to which certain assets of an Eligible Plan will be invested in the Trust.

- 1.2 “Valuation Day” means any day or part of a day on which the New York Stock Exchange is open for business or such other time period as the Trustee may establish with respect to a particular Fund.
- 1.3 “Class” means the designation of Units issued by the Trust as a division of a Fund or Portfolio established and maintained pursuant to the provisions of Section 4.
- 1.4 “Code” means the Internal Revenue Code of 1986, as amended.
- 1.5 “Declaration” means this 2023 Amended and Restated Declaration of Trust of Lazard/Great Gray Collective Trust (as amended and/or restated from time to time).
- 1.6 “Eligible Plan” means a plan described in Subsection 2.1 of this Declaration.
- 1.7 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.
- 1.8 “Fiscal Year” means the fiscal year of the Trust, which shall be the twelve months ending on December 31 of each year.
- 1.9 “Fund” means a division of the Trust established and maintained pursuant to the provisions of Section 3.
- 1.10 “Investing Fiduciary” means the person or persons, natural or legal, including a committee, who exercise discretion to invest assets of an Eligible Plan in the Trust or, for an Eligible Plan that permits plan participants to direct investment in the Trust, a fiduciary of the Eligible Plan.
- 1.11 “IRS” has the meaning set forth in Subsection 2.1(e).
- 1.12 “Lazard” means Lazard Asset Management LLC, a registered investment adviser under the Investment Advisers Act of 1940.
- 1.13 “Participating Plan” means an Eligible Plan which, with the consent of the Trustee, has executed an Adoption Agreement and has delivered assets to the Trustee for investment in the Trust.
- 1.14 “Plan Sponsor” means the employer establishing or maintaining an Eligible Plan or, for a multiemployer plan, the board of trustees or other similar representatives who establish or maintain the Eligible Plan.
- 1.15 “Portfolios” means a Fund established and maintained pursuant to the provisions of Section 3.
- 1.16 “Prior Declaration” has the meaning set forth in the recitals to this Declaration.
- 1.17 “Prior Trustee” has the meaning set forth in the recitals to this Declaration.
- 1.18 “SEC” has the meaning set forth in Subsection 2.1(a).
- 1.19 “Segregated Account” means an account established as provided in Subsection 5.4.
- 1.20 “Trust” has the meaning set forth in the recitals to this Declaration.

- 1.21 “Trustee” has the meaning ascribed to it in the recitals to this Declaration , or such successor as permitted pursuant to the provisions of this Declaration, in its capacity as trustee under this Declaration.
- 1.22 “Unit” means an undivided interest in a Fund established pursuant to Section
- 1.23 “WTRISC” has the meaning set forth in the recitals to this Declaration.

## **SECTION 2. Eligibility for Participation; Acceptance of Assets**

### **2.1 Eligibility for Participation.**

A plan shall be an Eligible Plan, eligible to participate in the Trust, only if it meets the conditions below:

- (a) The plan is a retirement, pension, profit-sharing, stock bonus, or other employee benefit trust or custodial account which (i) is exempt from federal income taxation under Section 501(a) of the Code by reason of qualifying under Section 401(a) of the Code and, if such trust covers one or more self-employed individuals within the meaning of Section 401(c)(1) of the Code, which satisfies the applicable requirements of the Securities Act, or Rule 180 of the Securities and Exchange Commission (the “SEC”) thereunder, or any successor ruling, regulation, or similar pronouncement, regarding participation by such plan in a collective investment trust, (ii) has a governing document which specifically authorizes it to participate in the Trust via an investment in one of the Portfolios established pursuant to this Declaration or in any other common, collective, or commingled trust fund, (iii) has a governing document that expressly and irrevocably provides that it is impossible for any part of the corpus or income of such trust or custodial account to be used for, or diverted to, purposes other than for the exclusive benefit of its participants and their beneficiaries, consistent with the requirements of Treasury Regulation Section 1.401(a)-2 (as the same may be modified by amendment or statute) and (iv) specifically or in substance and effect adopts this Declaration or the plan or declaration of trust or other governing instrument under which such common, collective, or commingled trust fund is maintained, as a part of the plan of which such trust or custodial account is a part; or
- (b) The plan is a governmental plan trust or custodial account under Section 457(b) of the Code which (i) is exempt from federal income taxation under Section 457(g) of the Code, (ii) has a governing document which specifically authorizes it to participate in the Trust via an investment in one of the Portfolios established pursuant to this Declaration or in any other common, collective, or commingled trust fund, (iii) has a governing document which expressly and irrevocably provides that it is impossible for any part of the corpus or income of such trust or custodial account to be used for, or diverted to, purposes other than for the exclusive benefit of its participants and their beneficiaries, consistent with the requirements of Treasury Regulation Section 1.457-8(a)(2)(i) (as the same may be modified by amendment or statute), (iv) specifically or in substance and effect adopts this Declaration or the plan or declaration of trust or other governing instrument under which any such common, collective, or commingled trust fund is maintained, as a part of the plan of which such trust or custodial account is a part; and (v) satisfies the applicable requirements of the Securities Act and the Investment Company Act, each as amended from time to time, and any applicable

rules of the SEC thereunder, regarding participation by such plan in a collective investment fund; or

- (c) The plan is a governmental plan described in Section 401(a)(24) of the Code which (i) is not subject to federal income taxation, (ii) has a governing document which specifically authorizes it to participate in the Trust via an investment in one of the Portfolios established pursuant to this Declaration or in any other common collective, or commingled trust fund, (iii) has a governing document which expressly and irrevocably provides that it is impossible for any part of the corpus or income of such trust or custodial account to be used for, or diverted to, purposes other than for the exclusive benefit of its participants and their beneficiaries, (iv) specifically or in substance and effect adopts this Declaration or the plan or declaration of trust or other governing instrument under which any such common, collective, or commingled trust fund is maintained, as a part of the plan of which such trust or custodial account is a part; and (v) satisfies the applicable requirements of the Securities Act and the Investment Company Act of 1940, and any applicable rules of the SEC thereunder, regarding participation by such plan in a collective investment fund; or
- (d) The plan is a common, collective, or commingled trust fund, including, but not limited to, any such fund maintained by the Trustee, which (i) consists solely of the assets of Eligible Plans described in Sections 2.1 (a), (b), (c) or (h) (or, to the extent effective, Section 2.1(e) or (f)) or of funds described in this Section 2.1(d), (ii) is exempt from federal income taxation under Section 501(a) of the Code by reason of qualifying as a “group trust” under Revenue Ruling 81-100, (iii) has a governing document which specifically authorizes it to participate in the Trust via an investment in one of the Portfolios established pursuant to this Declaration or in any other common, collective, or commingled trust fund, (iv) has a governing document which expressly and irrevocably provides that it is impossible for any part of the corpus or income of such trust or custodial account to be used for, or diverted to, purposes other than for the exclusive benefit of its participants and their beneficiaries, and (v) specifically or in substance and effect adopts this Declaration or the plan or the declaration of trust or other governing instrument under which such other common, collective, or commingled trust fund is maintained, as a part thereof; or
- (e) It is a segregated asset account maintained by a life insurance company that consists solely of assets of investors that individually satisfy the requirements of Sections 2.1(a), (b), (c), (d) or (h) (or to the extent effective 2.1(f)); provided, however, that this clause (e) shall become effective only if the Internal Revenue Service (the “IRS”) issues a favorable determination letter with regard to this Declaration (without requiring deletion of this clause (e)); or
- (f) It is, to the extent permitted by applicable IRS rulings, a trust created under an employees’ pension or profit sharing plan (i) that is a Puerto Rican plan described in Section 1022(i)(1) of ERISA; and (ii) which is administered under one or more documents which specifically authorize part or all of the assets of the trust to be commingled for investment purposes with the assets of other such trusts in a collective investment trust, which specifically or in substance and effect, adopt each such collective investment trust as a part of the plan and which expressly and irrevocably provide that it is impossible for any part of the corpus or income of such trust to be used for, or diverted to, purposes other than for the exclusive benefit of its participants and their beneficiaries; or

- (g) It is a church plan (as defined in Section 414(e) of the Code), including a plan described in Section 401(a) of the Code and a retirement income account described in Section 403(b)(9) of the Code, or an organization described in Section 414(e)(3)(A) of the Code the principal purpose or function of which is the administration of such a plan or account; or
  - (h) It is a plan or trust which is permitted by Revenue Ruling 81-100, as modified or amended from time to time, and by applicable rules and regulations of, as applicable, the SEC, and the Internal Revenue Service to pool their funds in a bank collective investment fund.
- 2.2 Participating Plans. To become a Participating Plan, an eligible Plan must (a) complete and return to the Trustee an Adoption Agreement, (b) specifically authorize and direct the investment of assets in the Trust, and (c) provide such other documentation, representations and warranties or other assurances as the Trustee may, in its sole discretion request.
- 2.3 Termination of Participation. If at any time a Participating Plan no longer satisfies the conditions for constituting a Participating Plan hereunder, (a) the Participating Plan shall immediately notify the Trustee in writing and (b) all investments of a Participating Plan shall be withdrawn and distributed to the Participating Plan as soon as practicable thereafter.
- 2.4 Acceptance of Deposits. The Trustee shall accept assets under this Declaration only from plans represented by Investing Fiduciaries to be Eligible Plans. All assets so accepted together with the income therefrom shall be held, managed and administered pursuant to this Declaration.
- 2.5 Qualification as a Group Trust. It is intended that the Trust be exempt from taxation under Code Section 501(a) and qualify as a “group trust” under Internal Revenue Service Revenue Ruling 81-100 and other applicable Internal Revenue Service rules and regulations. In furtherance of this intent, each Investing Fiduciary which seeks to invest in the Trust shall represent and warrant that the Participating Plan is an Eligible Plan.

### **SECTION 3. Funds of the Trust**

- 3.1 Establishment of Funds. The Trustee shall have the authority to establish from time to time in accordance with this Declaration such separate and distinct Funds or Portfolios as it deems necessary or advisable to provide for the collective investment and reinvestment of assets of Participating Plans. At any time and from time to time, the Trustee shall, in its discretion, establish one or more Funds or Portfolios or terminate or merge, split, or reorganize previously established Funds or Portfolios. Each Fund or Portfolio shall have such investment objectives and guidelines as the Trustee may determine from time to time. Each Fund or Portfolio shall be a separate trust and, except as otherwise expressly provided herein, the Trustee shall hold, administer, value, invest, reinvest, distribute, account for and otherwise deal with each Fund and Portfolio separately. Each Fund and Portfolio established pursuant to this Declaration is set forth in a Fund declaration, which may be amended from time to time by the Trustee in its sole discretion.
- 3.2 Allocation to Funds. All assets transferred to the Trustee by a Participating Plan shall be allocated by the Trustee among the Funds and Portfolios as directed by the Investing Fiduciary. Subject to any restrictions contained in the Adoption Agreement and any legal

or regulatory prohibitions or restrictions, the Trustee may transfer all or any part of the assets of any Fund or Portfolio to one or more of the other Funds or Portfolios at any time. The Trustee shall allocate the deposited assets among the Funds and Portfolios as directed by the Investing Fiduciary or by authorized participants covered under the Participating Plan.

- 3.3 Trustee's Responsibility Regarding Funds. Other than as specifically provided herein, the Trustee shall have no responsibility with respect to the establishment, allocation or termination of any Fund or Portfolio.

#### **SECTION 4. Units of Participation**

- 4.1 Unit Accounting. Each Fund or Portfolio may be divided into three or more Classes. The Classes of each Fund shall be identical except as to expenses to be borne by a particular Class. The beneficial interest of each Participating Plan in a Class shall be represented by Units, each one of which shall be of equal value to every other Unit of that Class. Each Unit shall represent an undivided proportionate interest in all assets and liabilities of the Class, and all income, profits, and losses of a Fund or Portfolio, as the case may be, shall be allocated pro rata by the Trustee among the Classes. No certificates representing Units shall be issued, but the Trustee shall keep books in which shall be recorded the number of Units outstanding to the credit of each Participating Plan. The Trustee may from time to time divide the Units of any Class of any Fund or Portfolio into a greater number of Units of lesser value or decrease the number of Units into a lesser number of Units of greater value provided that the proportionate interest of each Participating Plan in the Class shall not thereby be changed.
- 4.2 Apportionment of Income, Profits and Losses. All income earned by a Fund or Portfolio after expenses shall be added to the principal of the Fund or Portfolio and invested and reinvested as a part thereof. Profits and losses of a Fund or Portfolio shall be credited or charged to the Fund or Portfolio and allocated among the Classes as set forth in Subsection 4.1.
- 4.3 Net Asset Value of Units. The value of each Unit shall be determined in accordance with the following provisions of this Subsection 4.3. As of the close of business on each Valuation Day, the Trustee shall determine the per Unit value of each Class of a Fund or Portfolio by allocating a pro rata share of the then market value of the net assets of the Fund (as determined in accordance with Subsection 4.4) among the Classes, applying Class specific expenses and then dividing by the number of Units of the Class. Each valuation shall be completed as rapidly as practicable and, in any event, within the period specified by applicable laws or regulations.
- 4.4 Valuation of the Trust and Fair Market Value. The Trustee will value the Trust and each Fund or Portfolio in accordance with the valuation procedures the Trustee may establish from time to time. Subject to the foregoing, the Trustee may utilize any prudent method in the valuation of assets comprising each Fund or Portfolio and any such method of valuation shall be conclusively presumed to constitute a correct method of establishing value and shall not be subject to challenge unless the Trustee failed to act prudently in establishing such valuation method.

## **SECTION 5. Deposits and Withdrawals**

- 5.1 **Deposits.** With the consent of the Trustee, and upon such prior notice as the Trustee may specify from time to time to the Participating Plans, a Participating Plan may, as of any Valuation Day deposit assets in the Trust. Only money and such other assets as are permissible investments for the Trust, and acceptable to the Trustee, may be deposited in the Trust. Assets other than money deposited in the Trust shall be valued at their fair market value (as determined under Subsection 4.4) as of the close of business on the Valuation Day on which the deposit is made. The Trustee shall credit to the account of each Participating Plan which makes a deposit in a Class of a Fund or Portfolio of the Trust that number of Units which the deposit will purchase at the then current value of each Unit. All deposits shall be deemed to have been made as of the close of business on the relevant Valuation Day.
- 5.2 **Withdrawals.** The Investing Fiduciary may, as of the close of business on any Valuation Day, withdraw any number of Units from any Class of any Fund or Portfolio which are attributable to the Participating Plan. Notice of withdrawal must be received by the Trustee according to the terms specified in the Adoption Agreement.
- 5.3 **Distributions Upon Withdrawal.** Upon the withdrawal of Units from a Class of a Fund or Portfolio, the Trustee shall distribute in accordance with directions received from an Investing Fiduciary a sum arrived at by multiplying the number of Units withdrawn by the value of each Unit, determined as of the close of business on the relevant Valuation Day. The sum shall be distributed in cash or in kind or partly in cash and partly in kind, as the Trustee in its sole discretion shall determine; provided, however, that as of any Valuation Day all distributions shall be made on the same basis. The value of any asset other than cash which is transferred shall be deemed to be the value thereof (as determined under Subsection 4.4) as of the close of business on the Valuation Day on which the withdrawal is made. Such distribution shall be effected within a reasonable time following the applicable Valuation Day except that such distribution may be delayed if the Trustee determines that the Trustee cannot reasonably make such distribution on account of an order, directive or other interference by an official or agency of any government or any other cause reasonably beyond its control, including but not limited to illiquid markets or illiquid securities. The Participating Plan receiving such distribution shall not be entitled to any interest or income earned on such assets pending distribution.
- 5.4 **Segregation of Securities.**
- (a) The Trustee, in its discretion and upon consultation with Lazard, may at any time segregate and place in a Segregated Account, to be held, distributed in-kind and liquidated for the pro rata benefit of the Participating Plans of a particular Fund or Portfolio, any property of such Fund or Portfolio which is illiquid or which the Trustee deems advisable and in the interest of such Participating Plans. Property held in a Segregated Account shall not be considered to be an asset of such Fund or Portfolio. However, each Segregated Account shall be deemed to be a part of the Trust for purposes of the settlement of the accounts of, and the payment of compensation to, the Trustee.
  - (b) The Trustee shall have all rights, powers and duties with respect to each Segregated Account which it has with respect to any Fund or Portfolio, except that the Trustee need not invest the cash thereof and may distribute the cash not required to pay



expenses pro rata to those who have interests in the Segregated Account at the time of distribution.

- (c) The Trustee shall make distributions from a Segregated Account, in cash or in kind, in accordance with the respective interests of the affected Participating Plans. The Trustee shall liquidate the assets held in a Segregated Account and distribute the proceeds as and when the Trustee deems such liquidation and distribution to be in the best interests of the affected Participating Plans.
- (d) No additional money or property shall be invested in a Segregated Account. However, to protect any asset held therein, the Trustee, in its discretion, may borrow money on the security of any asset held in the Segregated Account.

5.5 Distributions Upon Disqualification. Notwithstanding any provision herein to the contrary, if the Trustee receives notice that a Participating Plan has ceased to be an Eligible Plan, then all Units allocated to that Participating Plan shall be canceled and the entire interest of such Participating Plan shall be distributed from the Trust as of the close of business as rapidly as practicable after the Trustee receives such notice and distribution shall be made in accordance with Subsection 5.3 as soon as reasonably possible.

5.6 Title to Assets. All of the assets of each Fund and Portfolio shall at all times be considered as vested in the Trustee in a fiduciary capacity. No Participating Plan shall be deemed to have severable ownership in any individual asset in any Fund or Portfolio or any right of participation or possession thereof. Except as otherwise specifically provided herein, each Participating Plan shall have a proportionate, undivided, beneficial interest in each Class of each Fund or Portfolio in which such Participating Plan participates and shall share ratably in the income, profits and losses thereof with the other Participating Plans participating in that Class of such Fund or Portfolio.

## **SECTION 6. The Trustee**

6.1 Contributions. The Trustee shall allocate the assets among the Funds and Portfolios in accordance with the provisions of Section 3 and shall hold the assets subject to the provisions of this Declaration.

6.2 General Scope of Authority of Trustee. The rights, powers, authorities, duties and responsibilities of the Trustee shall be solely and exclusively as provided in this Declaration. The Trustee shall have only such duties with respect to any Participating Plan as are specified in this Declaration and, without limitation, the Trustee shall have no responsibility for the administration of any Eligible Plan or, except for the investment of Trust assets, the manner of investment of assets thereof. The Trustee shall be entitled to receive and may rely upon the certification of the Investing Fiduciary with respect to the compliance of any Participating Plan with the conditions set forth in Subsection 2.1.

6.3 Specific Authority, Duties, and Powers of the Trustee. The Trustee shall have all power and authority to take all action reasonably necessary or appropriate to conduct the operation and to administer the affairs of the Trust, including without limitation:

- (a) To establish and terminate Funds, Portfolios and Classes.

- (b) To allocate the cash and property of the Trust among the several Funds, Portfolios and Classes.
- (c) To direct the transfer of all or any part of the assets of any Fund or Portfolio to one or more of the other Funds or Portfolios, subject to the Offering Memorandum.
- (d) To direct the investment and reinvestment of the assets of the Trust and its several Funds and Portfolios.
- (e) In its discretion, to take the other actions contemplated to be taken by it hereunder, including without limitation, modifying, amending or terminating this Declaration in the manner provided for in Section 12 hereof.
- (f) In performing its duties under this Declaration, the Trustee shall be entitled to retain the services of lawyers, accountants and other professional advisers and shall be fully protected to the extent permitted by law in reasonably relying upon the advice of such persons.
- (g) To purchase, receive or subscribe for any securities or other property and to retain in trust such securities or other property.
- (h) To sell for cash or on credit, to grant options, convert, redeem, exchange for other securities or other property, to enter into stand-by agreements for future investment either with or without a stand-by fee or otherwise to dispose of any securities or other property at any time held by it.
- (i) To settle, compromise or submit to arbitration any claims, debts, or damages, due or owing to or from the Trust, to commence or defend suits or legal proceedings and to represent the Trust in all suits or legal proceedings in any court of law or before any other body or tribunal; provided, however, that the Trustee reserves the right, in its sole discretion, to bring, join in or oppose any such suits, proceedings, settlements or arbitrations where it may be adversely affected by the outcome, individually or as Trustee, or where it is advised by counsel that such action is required on its part by ERISA or other applicable law.
- (j) To exercise any conversion privilege and/or subscription right available in connection with any securities or other property at any time held by it; to oppose or consent to the reorganization, consolidation, merger or readjustment of the finances of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the securities of which may at any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which may be necessary or advisable in connection therewith, and to hold and retain any securities or other property which it may so acquire; and to deposit any property with any protective, reorganization or similar committee; and to pay or agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to property so deposited.

- (k) To exercise, personally or by general or limited power of attorney, any right, including the right to vote, appurtenant to any securities or other property held by it pursuant to this Agreement at any time.
- (l) To borrow money and to pledge any securities or other property for the repayment of any such loan.
- (m) To lend, pledge, mortgage, hypothecate, write options on and lease any of the securities, instruments or assets referred to in this Subsection, and without limiting the foregoing, to engage in any securities lending program on behalf of a Fund (and in connection therewith to direct the investment of cash collateral and other assets received as collateral in connection therewith), and during the term of such loan of securities to permit the securities so lent to be transferred in the name of and voted by the borrower, or others.
- (n) To purchase, enter, sell, hold and generally deal in any manner in and with contracts for the immediate or future delivery of financial instruments of any issuer or of any other property, to grant, purchase, sell, exercise, permit to expire, permit to be held in escrow, and otherwise to acquire, dispose of, hold and generally deal in any manner with and in all forms of options in any combination; and, in connection with its exercise of the powers hereinabove granted, to deposit any securities or other property as collateral in an account maintained with any broker-dealer or other person, to permit securities or other property to be held by or in the name of others or in transferable form, to retain any form of securities or other property received as a result of the exercise of any of the foregoing powers whether or not investment in such securities or other property is otherwise authorized under this Declaration and to hold and administer any securities or other property with respect to which the foregoing powers have or may be exercised, including any security or collateral acquired by it or interest in any property received as a result of its exercise of such powers, as a part of the account subject to the foregoing powers, or in any subaccount, which property may be invested in securities or other property of different types from the securities or other property otherwise held in the account.
- (o) To appoint custodians and subcustodians for securities and other property and, subject to Subsection 6.7 hereof, to hold securities or other property in trust or custodial accounts outside the jurisdiction of the district courts of the United States in compliance with regulations adopted by the United States Department of Labor under Section 404(b) of ERISA.
- (p) To retain Lazard to provide investment advice to the Trustee for use in connection with the investment of the Trust's assets and to retain such other investment advisers or subadvisers as it deems necessary to assist it in performing its obligations under the Trust; provided, however, that the Trustee may not delegate its responsibilities as to the management or control of the assets of the Trust.
- (q) To hold part or all of the assets of the Trust uninvested or on deposit in non-interest or interest bearing accounts.
- (r) To enter into spot or forward foreign exchange contracts and to convert currencies received into dollars or other currencies employing customary channels which may include the Trustee, its subsidiaries, affiliates or subcustodians.

- (s) To employ suitable agents and counsel for the Trust and for the Trustee in connection with the performance of its duties hereunder and to pay their reasonable and proper expenses and compensation as an expense of the Trust.
- (t) To register any security held by it hereunder in its own name or in the name of a nominee, but only with the addition of words indicating that such securities are held in a fiduciary capacity, and to deposit any securities or other property in a depository or a clearing corporation, either domestic or foreign.
- (u) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the powers listed in Subsection 6.2 or in this Subsection 6.3.
- (v) When directed by the Plan Sponsor, or its authorized agent, (i) to make payments of benefits under a Participating Plan to such trustee(s), persons or accounts, in such manner, at such time and in such amounts as the Plan Sponsor or authorized agent may from time to time in writing direct, and the Trustee shall be fully protected in making payments out of the Trust in accordance with such written directions and (ii) to receive and hold for any Participating Plan any funds or property transferred in accordance with the provisions of the Participating Plan to the Trustee from any trust or other funding entity which forms a part of another retirement plan which meets the eligibility requirements set forth in Section 2.1 hereof.
- (w) To perform all other acts which, in the Trustee's judgment, are appropriate for the proper management, investment and distribution of the Trust.

#### 6.4 Fiduciary Standards and Liabilities of the Trustee.

- (a) The Trustee acknowledges that it is a "fiduciary," as defined in ERISA, with respect to the Trust and each trust which is part of any Eligible Plan. Accordingly, the Trustee shall discharge its duties hereunder solely in the interest of the participants or the beneficiaries thereof who are entitled to benefits from the Participating Plans and shall act with the degree of care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (b) Subject to applicable law, the Trustee shall be hereby indemnified, protected and held harmless by the Trust in relying upon a certification of any Investing Fiduciary, or any person designated by any Investing Fiduciary to provide instructions, with respect to any instruction, direction or approval of any such Investing Fiduciary.
- (c) To the extent permitted by law, the Trustee shall not incur any liability to anyone when acting upon and relying on any signature, instrument, consent, order, report, opinion, certificate, affidavit, document, resolution or other information furnished by any Participating Plan or any other fiduciary of the Participating Plan reasonably believed by the Trustee to be authorized and genuine.
- (d) Subject to applicable law, the Trustee is and shall be hereby indemnified, protected and held harmless by the Trust with respect to any and all liability or claim of liability

to which it may be subjected by reason of any act either done or omitted to be done in good faith and without gross negligence in connection with the administration of the Trust or the investment of the assets of the Trust, including all reasonable fees and expenses of counsel and all other fees and expenses reasonably incurred in its defense. If any such liability or claim of liability is alleged in good faith by a person entitled to sue under Section 502 of ERISA to arise directly from a breach of fiduciary duty by the Trustee, no amounts may be paid under this provision with respect to such liability or claim of liability unless either (i) a majority in interest of the Participating Plans agree to such payment, or (ii) a court or other tribunal (which tribunal must be acceptable to any Participating Plan that is a party to such claim) of competent jurisdiction determines that the Trustee has not breached its fiduciary duties with respect to the Trust.

- (e) All persons dealing with the Trustee hereunder are released from inquiry into the decision or authority of such Trustee.
- (f) Without limiting the foregoing, the Trustee shall not be liable for any loss which results from (i) the general risk of investing or (ii) investing or holding assets of the Trust in a particular country including, but not limited to, losses resulting from nationalization, expropriation or other governmental actions, regulation of the banking or securities industry, currency restrictions, devaluations or fluctuations, and market conditions which prevent the orderly execution of securities transactions or affect the value of assets of the Trust.
- (g) The Trustee shall not be liable for any loss due to forces beyond its control including, but not limited to, strikes or work stoppages, acts of war or terrorism, insurrection, revolution, nuclear fusion, fission or radiation, or acts of God, provided that the Trustee has implemented and has in place reasonable backup and disaster recovery procedures designed to minimize any such loss.

6.5 Separate Accounting for Assets. The assets of the Trust shall be accounted for separately from all other property belonging to, or in the custody of, the Trustee hereunder.

6.6 Situs. The Trust shall be maintained at all times as a domestic trust in the United States of America and the Trustee shall at all times be a “bank” within the meaning of Section 202(a)(2) of the Investment Advisers Act of 1940. It shall be the responsibility of the Trustee to comply with the requirements of the Department of Labor under ERISA with respect to maintenance of “indicia of ownership” of plan assets held by the Trust in accordance with Section 404(b) of ERISA.

6.7 Proper Application. Persons dealing with the Trustee shall be under no obligation to see to the proper application of any money paid or assets delivered to the Trustee or to inquire into the Trustee’s authority as to any transaction.

## **SECTION 7. Investments**

7.1 The Investments. Each Fund and Portfolio shall be separately invested and reinvested, without distinction between principal and income, as the Trustee may determine. The Funds and Portfolios may be invested in such property as the Trustee in its sole discretion may deem proper. To this end, the Trustee may in its sole discretion cause any or all of the assets of a Fund or Portfolio to be invested in any property wherever situated, including

without limitation, debt or equity securities, marketable or non-marketable, including without limitation, government, corporate or personal obligations, trust or participation certificates, options and futures contracts, spot and forward foreign exchange contracts, certificates of deposit, real estate interests or interests of limited partnerships, and insurance company separate accounts. The Trustee may also invest and commingle the assets of any Fund or Portfolio in the collective trust of another entity, provided that such collective investment trust also meets the qualification requirements for a "group trust" as established under Rev. Ruling 81-100. In making any such investment, the Trust shall concurrently adopt the terms of the collective trust into which the investment is made.

- 7.2 Cash and Cash Balances. The Trustee shall invest cash in short-term investments which it determines will bear a reasonable rate of interest.

### **SECTION 8. Non-diversion; Prohibited Transactions; and Bonding**

- 8.1 Prohibition Against Diversion and Assignment. Notwithstanding anything to the contrary contained in this Declaration or in any amendment hereto, no part of the Trust which equitably belongs to any Participating Plan, other than such part as is required to pay taxes and the expenses of, or charges against, the Trust as provided in Section 10 hereof, shall be used for or diverted to purposes other than the exclusive benefit (as that term is used in Section 401(a) of the Code) of the participants, respectively, or their beneficiaries who are entitled to benefits under that Participating Plan. No Participating Plan shall be permitted to assign any part of its equity or interest in the Trust, and any such purported assignment shall be null and void.
- 8.2 Amendments to this Section. The provisions of this Section 8 may only be amended on such terms as will permit the Trust to continue as an exempt trust under Section 501(a) of the Code.
- 8.3 Prohibited Transactions. Unless appropriate exemptions shall have been provided or shall have been obtained pursuant to Section 408 of ERISA and Section 4975 of the Code, where applicable, the Trust shall not engage in any transaction that is prohibited under the terms of Section 406 of ERISA or Section 4975 of the Code.
- 8.4 Bonding. The Trustee will comply with any applicable bonding requirements of Section 412 of ERISA and, to the extent necessary to comply with those requirements, will cause its directors, officers, and employees to be appropriately bonded.

### **SECTION 9. Accountings and Returns**

- 9.1 Statements by Trustee.
- (a) The Trustee shall prepare and deliver to each Investing Fiduciary a statement, as soon as practicable after the end of each month, showing, as of the last Valuation Day of that month, the number of outstanding Units of each Class of each Fund and Portfolio, the Unit value of each such Class, the number of Units added or withdrawn during that month, the dollar amounts and Unit value pertinent to such additions or withdrawals and the nature and value of any other interests which the Participating Plans may have in the Trust.

- (b) Each Fund(s) shall be audited at least once during each Trust year by auditors responsible only to the Board of Directors of the Trustee.
- (c) Within ninety (90) days following the close of each Fiscal Year, the Trustee shall prepare a written account of all transactions relating to the Trust and each Fund. The written account shall be based on the audit performed pursuant to paragraph (b) above and shall include the following: (a) a list of all investments showing cost and current value; (b) a statement for the Fiscal Year showing purchases with cost, sales with profit or loss, other investment changes and income and disbursements; and (c) an appropriate notation as to any investments in default. The Trustee shall give notice of the availability of the account to the Plan Sponsor of the Participating Plan, or such other person designated for the purpose of receiving such account on behalf of the Participating Plan, and a copy of the account shall be furnished upon request to the Participating Plan. If the Participating Plan shall not, within ninety (90) days after the mailing of such statement of account, notify the Trustee, in writing of its disapproval of the same, such statement shall constitute a valid accounting of the Trust as if the account had been duly approved by the Participating Plan in writing. If the Trustee and Participating Plan cannot agree with respect to any act or transaction reported in the accounting, the Trustee and the Participating Plan shall have the right to have its accounts settled by judicial proceedings, in which event, only the Trustee and the Participating Plan shall be necessary parties.

9.2 Approval of Statements. A person to whom a statement pursuant to Subsection 9.1 is submitted may approve the account or statement by an instrument in writing delivered to the Trustee. If such person does not file exceptions or objections to such statement with the Trustee within six (6) months after it is received such person shall be deemed to have approved such statement. Upon the approval of a statement rendered in good faith, where approval is either in writing or by failure to file timely exceptions or objections with the Trustee by all persons to whom the trustee of a Participating Plan is required to submit the statement furnished pursuant to Subsection 9.1 hereof, the Trustee shall, to the extent permitted by applicable law, be released, relieved and discharged of and from all liability to all such persons with respect to its acts or failures to act described by or reasonably inferred from such statement during the period covered thereby as if there had been a judicially settled accounting of its activities for such period.

9.3 Judicial Accountings. The Trustee, the trustee of any Participating Plan, or any person to whom the trustee of a Participating Plan is required to account, shall have the right to apply at any time to a court of competent jurisdiction within the State of Nevada for the judicial settlement of the accounts of the Trustee; provided that, except to the extent otherwise provided under ERISA or other applicable law, no person shall have the right to apply for a settlement of the accounts of the Trustee for any period with respect to which (i) such person does not have an interest in the Trust by virtue of an interest in a Participating Plan or (ii) the Trustee has been discharged as to such person under Subsection 9.2 hereof. In any such action or proceeding, it shall be necessary to join as parties only the persons to whom the trustee of the Participating Plan must account. Any judgment or decree which may be entered therein shall be conclusive on all persons then or thereafter interested in any such Participating Plan.

9.4 Governmental Returns and Reports. The Trustee shall prepare, certify and submit on a timely basis such returns and reports of the Trust, including without limitation returns and

reports for the Internal Revenue Service, the United States Department of Labor, and otherwise as may be required under the Code or ERISA or other applicable law.

#### **SECTION 10. Compensation and Expenses Fiduciary Insurance**

10.1 Compensation. The Trustee shall be entitled to receive compensation for the services that it renders to the Trust and the expenses incurred in connection therewith in accordance with the fees schedule included in the Adoption Agreement and in the Offering Memorandum. The compensation, custodial fees and expenses of the Trustee shall be paid from the Trust.

10.2 Expenses.

(a) All expenses incurred by the Trustee in the performance of its duties hereunder, including all brokerage commissions, transfer taxes and all other transaction costs incurred in connection with the operation of the Trust, all expenses incurred in connection with the acquisition or holding of real or personal property, any interest therein or mortgage thereon, or any interest which may be payable on money borrowed by the Trustee for the purposes of the Trust and any other investment expense, including printing, wiring, mailing, agents' fees, filing fees and pricing services, fees for legal and auditing services rendered to the Trustee, all taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Funds or Portfolios or the income thereof, any expense of registering the Trust or any interests therein under any existing or future securities law which the Trustee in its sole discretion deems applicable, expenses of litigation, and all other proper charges and disbursements (including fees and expenses of counsel) of the Trustee (including extraordinary expenses), unless otherwise paid, shall be withdrawn by the Trustee and paid from the Trust and shall be allocated among the Funds, Portfolios and Classes thereof in the proportions in which they are properly so allocable, as determined by the Trustee in such manner as it shall deem equitable, and such allocation shall be deemed conclusive and binding.

(b) In the event a tax that is generally assessed against the Trust is not payable with respect to assets beneficially owned by one or more Participating Plans, any reduction in the tax payable, or any refund of the tax previously paid, will be paid to the Participating Plan or trust involved in the appropriate amounts as determined by the Trustee. The Trustee shall not be required to institute any claim for refund of any such tax (other than tax reclaims of foreign tax, subject to the provision to the Trustee of information necessary to prepare such tax reclaims), but may do so if the Participating Plans to benefit therefrom agree to bear the expense thereof.

10.3 Fiduciary Insurance. To the extent permitted by applicable law, the Trustee may purchase insurance covering fiduciary liability with respect to the Trust, the expense of which would be borne by the Trust.

#### **SECTION 11. Resignation**

11.1 General. The Trustee shall serve as such until its resignation.

11.2 Resignation. The Trustee may resign at any time, with such resignation to become effective upon the earlier of: (i) one hundred and eighty (180) days written notice to the Investing Fiduciaries, or (ii) the appointment of a successor trustee by a majority in interest of the



Participating Plans. The Investing Fiduciaries may appoint a successor trustee via written consent.

- 11.3 Appointment of Successor. The appointment of a successor trustee in accordance with Section 11.2(ii) above is subject to that successor being a “bank” as defined in Section 202(a) (2) of the Investment Advisers Act of 1940. The appointment of the successor trustee will become effective upon delivery of the successor trustee’s written acceptance of its appointment to the Investing Fiduciaries.
- 11.4 Successors and Assigns. Any corporation or association (i) into which the Trustee may be merged or with which it may be consolidated, (ii) resulting from any merger, consolidation, or reorganization to which the Trustee may be a party, or (iii) to which all or any part of the Trustee’s fiduciary business which includes the Trust may be transferred shall become successor Trustee, and shall have all the rights, titles, powers, duties, discretion, and immunities of the Trustee under this Declaration, without the necessity of executing any instrument or performing any further act. This Declaration shall be binding upon and inure to the benefit of the Trustee, each Participating Plan and its participants and beneficiaries, and their respective successors.
- 11.5 Duties of Resigning and Successor Trustee. A Trustee that resigns shall furnish promptly to the successor trustee an accounting of its administration of the Trust from the date of its last account with respect to the Trust. Each successor trustee shall succeed to the title of the Trust vested in its predecessor without the filing of any instrument. Each resigning Trustee shall execute all documents and do all acts necessary to vest such title of record in the successor trustee. The rights, powers and duties of the resigning Trustee shall continue until such time as the assets of the Trust are effectively transferred to the successor Trustee. Each successor trustee shall have all the powers conferred by this Declaration as if originally named Trustee. No successor Trustee shall be liable for any act or failure to act of a predecessor trustee, and no predecessor Trustee shall be liable for any act or failure to act of a successor Trustee.

## **SECTION 12. Amendment and Termination**

- 12.1 Amendment. The Trustee may, without the consent of the Participating Plans, amend this Declaration at any time and for any reason. In case the amendments would adversely affect the economic rights of the plans under this Declaration, no such amendment shall take effect until 30 days after notice thereof shall have been delivered to each Investing Fiduciary, unless all of said parties expressly consent to an earlier effective date, or such earlier effective date as may be required by applicable law.
- 12.2 Termination. The Trustee may, in its discretion, for any reason or for no reason, terminate the Trust or any Fund or Portfolio at any time upon thirty (30) days’ notice of such termination to each Participating Plan in the Trust, Fund, or Portfolio, as the case may be. If the Trust, Fund, or Portfolio is terminated by the Trustee, all the rights, titles, powers, duties, discretions, and immunities imposed on or reserved to the Trustee shall continue in effect with respect to the Trust, Fund, or Portfolio, as applicable, until all assets of the Participating Plans in the Trust or such Fund or Portfolio have been distributed by the Trustee to the Participating Plans. Upon termination of this Trust, Fund, or Portfolio, the Trustee shall first reserve such reasonable amounts as it may deem necessary to provide for the payment of any expenses or fees then or thereafter chargeable to the Trust, Fund, or Portfolio, as applicable.

- 12.3 Withdrawal not Affecting Trust. No withdrawal of any amounts from the Trust by any Participating Plan shall operate to terminate this Declaration, or entitle such Participating Plan to claim an accounting or to take any action or proceeding in any court of competent jurisdiction for a partition or winding up of the Trust created hereunder, or otherwise affect the rights, obligations and liabilities of any Participating Plan or the parties hereto or any of them.

### **SECTION 13. Miscellaneous**

- 13.1 Spendthrift Provision. The beneficial interests of the Participating Plans shall not be assignable or subject to attachment or receivership nor shall such interests pass to any trustee in bankruptcy or be reached or applied by any legal process for the payment of any obligation of any Participating Plans.
- 13.2 Controlling Law. The powers and duties of the Trustee and all questions of interpretation of this Declaration shall be governed by ERISA and other applicable federal laws and, to the extent permitted by ERISA and such other federal laws, by the laws of Nevada. The Trust established by this Declaration is organized in the United States of America and will be maintained at all times as a domestic trust in the United States of America.

IN WITNESS WHEREOF, Great Gray Trust Company, LLC has caused this Declaration to be executed and delivered on April 28, 2023.

**GREAT GRAY TRUST COMPANY, LLC**

By:   
\_\_\_\_\_  
Christopher Randall  
Chief Operating Officer

Attest:

  
\_\_\_\_\_  
Jennifer Matz  
Chief Compliance Officer